

**GLOBAL AGREEMENT TO THE HEALTHY RIVERS AND LANDSCAPES  
PROGRAM IN THE BAY-DELTA**

**March 29, 2024 draft**

This “Global Agreement to the Healthy Rivers and Landscapes Program in the Bay-Delta” (“Global Agreement”), is made by and among the signatories hereto.

**RECITALS**

The Parties execute this Global Agreement based on the following recitals. The recitals include terms as defined in Section 2.

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital G.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. In May 2017 then-Governor Edmund G. Brown, Jr. issued “Principles for Voluntary Agreements,” stating in relevant part: “The goal is to negotiate durable and enforceable Voluntary Agreements that will be approved by applicable regulatory agencies, will represent the program of implementation for the water quality objectives for the lower San Joaquin and Sacramento Rivers and Delta, will forego an adjudicatory proceeding related to water rights, and will resolve disputes among the parties regarding water management in the Sacramento-San Joaquin-Bay-Delta Watershed.” In accordance with the VA Principles, interested parties undertook extensive efforts in 2017 and 2018 to negotiate the Voluntary Agreements.

F. On December 12, 2018, the Directors of CDFW and CDWR appeared before the State Water Board and presented the results of the Voluntary Agreement negotiation process to date. Specifically, the Directors presented a “Framework Proposal for Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan” (“Agreement Framework”). Appendix 1 to the Agreement Framework contained proposed term sheets.

G. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

H. In January 2019, the Newsom Administration confirmed its intention to complete the efforts to reach Voluntary Agreements. On March 1, 2019, the Directors of CDFW and CDWR entered into a “Planning Agreement Proposing Project Description and Procedures for the Finalization of the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan” (“Planning Agreement”). The purposes of this Planning Agreement were to propose (1) a project description; (2) the process by which the parties would recommend the State Water Board analyze the project description; and (3) the process for developing appropriate terms for, and subsequent implementation of, Voluntary Agreements, in accordance with the State Water Board’s directive quoted in Recital G above as well as the Agreement Framework.

I. From 2019 through 2022, the Parties and other interested entities undertook extensive efforts to develop a program pursuant to the Planning Agreement.

J. On March 29, 2022, certain of the Parties signed a “Memorandum of Understanding Advancing a Term Sheet for The Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions” (“MOU” and “Term Sheet,” respectively). MOU section 2.1 provides:

“This MOU is signed by executive leadership for the Parties. For each party, implementation is conditioned upon and subject to review and approval by the decisional body of the Party, if required. By signing this MOU, the Parties agree to advance the VA Program as reflected in the Term Sheet to the decisional body, if any, for consideration as outlined in the Term Sheet.”

K. Certain of the Parties submitted the Term Sheet to the State Water Board, as provided in MOU section 1.2:

“The Parties intend to cooperate to submit the Term Sheet to the State Water Board, so that it may consider including the Voluntary Agreements Program, consistent with Resolution 2018-0059, as the pathway to implement the Narrative Salmon Objective and a proposed Narrative Viability Objective for the Parties. The Parties further intend to undertake a process to assist the State Water Board in its independent analysis of that pathway.”

L. In 2024 the Parties submitted the VA Program, now known as the Healthy Rivers and Landscapes Program, for the State Water Board’s consideration.

M. Using its independent authority, the State Water Board has amended the Bay-Delta Plan. The Parties support the approval of the Supported Amendments stated in Exhibit A.

N. Having received the approval by their respective decisional bodies, the Parties now sign this Global Agreement. Parties concurrently sign the Implementation and Enforcement Agreements, Exhibits B and C hereto.

### **TERMS OF AGREEMENT**

1. **Purpose.** The Parties will implement the Healthy Rivers and Landscapes Program to contribute to the implementation of Covered Water Quality Objectives in the Bay-Delta Plan.

2. **Definitions.**

**2.1. Applicable Law** means: state or federal law, including a Constitution, statute, regulation, court decision, precedential adjudicative decision, or common law, that applies to obligations or activities of Parties contemplated by this Agreement.

**2.2. Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018), as amended [(date of Final Action)].

**2.3. CDFW** means: the California Department of Fish and Wildlife.

**2.4. CDWR** means: the California Department of Water Resources.

**2.5. Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.6. Contributed Funds** means: funds paid by Parties pursuant to the applicable Implementation Agreement and deposited by the Systemwide Funding Entity in either the Structural Science and Habitat Fund or the Revolving Water Transfer Fund, also pursuant to the applicable Implementation Agreement.

**2.7. Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in the applicable Enforcement Agreement.

**2.8. Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as defined below.

**2.9. Enforcement Agreements** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any VA-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscapes Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscapes Program.



**2.10. Final Action** means: final action by the State Water Board to amend the Bay-Delta Plan to approve the Supported Amendments authorizing the implementation of the Healthy Rivers and Landscapes Program.

**2.11. Global Agreement** means: this Agreement.

**2.12. Governance Program** means: the governance procedures that the Parties will follow to implement the Healthy Rivers and Landscapes Program as described in Section 9.

**2.13. Healthy Rivers and Landscapes Program** means: the measures, rights and obligations stated in this Global Agreement and:

- A. Supported Amendments to Bay-Delta Plan (Exhibit A);
- B. Implementation Agreements (Exhibit B.1 – B.10);
- C. Enforcement Agreements (Exhibit C.1 – C.10);
- D. Strategic Plan (Exhibit D), including:
  - (i). Memorandum of Understanding (2022) (Appendix A thereto);
  - (ii). Governance Program (Appendix B thereto);
  - (iii). Science Plan (Appendix C thereto); and
- E. Funding Plan (Exhibit E).

**2.14. Implementation Agreements** means: the agreements to implement flow, habitat restoration, and other measures, specific to a water source.

**2.15. Implementing Entities** means: Parties that sign an Implementation Agreement, and other entities specified therein, that have responsibilities to implement measures stated in the agreement.

**2.16. Material Modification** means: a change in Applicable Law, or a new or amended regulatory action similar in character to pending actions described in Section 12.6(A), that imposes additional constraints on water supply operations, increases contributions of water for instream flow or Delta outflow, increases required habitat

restoration, or increases contributions of funds, to an extent that materially impairs the bargained-for benefits of this Agreement. Section 14.2(A) establishes the criteria and procedures for response to a potential Material Modification.

**2.17. Memorandum of Understanding or MOU** means the “Memorandum of Understanding Advancing a Term Sheet for The Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions,” dated March 29, 2022.

**2.18. Narrative Viability Objective** means: a new water quality objective that the Parties support in the Bay-Delta Plan, as stated in Exhibit A section 1 and restated below:

“Maintain water quality conditions, including flow conditions in and from tributaries and into the Delta, together with other measures in the watershed, sufficient to support and maintain the natural production of viable native fish populations. Conditions and measures that reasonably contribute toward maintaining viable native fish populations include, but may not be limited to, (1) flows that support native fish species, including the relative magnitude, duration, timing, temperature, and spatial extent of flows, and (2) conditions within water bodies that enhance spawning, rearing, growth, and migration in order to contribute to improved viability. Indicators of viability include population abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity.\* Flows provided to meet this objective will be managed in a manner to avoid causing significant adverse impacts to fish and wildlife beneficial uses at other times of the year.

\* The actions the State Water Board and other agencies expect to take to implement this objective are described in section [insert number] of this Plan’s Program of Implementation.”

**2.19. Parties** means: signatories to this Global Agreement.

**2.20. Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments would amend this program as needed to authorize implementation of the Healthy Rivers and Landscapes Program.

**2.21. Regulatory Obligations** means: obligations designated in the Enforcement Agreements as enforceable by the State Water Board pursuant to Government Code section 11415.60, or, with respect to federal Parties, as designated in the Memorandum of

Understanding regarding Enforcement. These agreements identify each such obligation, Responsible Parties, conditions associated with performance, and associated remedies for non-performance.

**2.22. Responsible Parties** means: the Parties who are Implementing Entities and sign an Enforcement Agreement.

**2.23. Revolving Water Transfer Fund** means: an account created by the Systemwide Funding to compensate Parties for flow contributions pursuant to the applicable Implementation Agreements.

**2.24. San Joaquin SED** means: the substitute environmental document discussed in Recital G.

**2.25. Science Program** means: the procedures and other requirements that the Parties will use to evaluate the effects of the Healthy Rivers and Landscapes Program, as described in Section 10.

**2.26. State Water Board** means: the State Water Resources Control Board.

**2.27. State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

**2.28. Strategic Plan** means: the plan developed, maintained, and updated by the Systemwide Governance Committee to describe the schedule and other details of implementation of the VA measures, as stated in Section 9.3(A).

**2.29. Structural Science and Habitat Fund** means a fund created by the Systemwide Funding Entity to support science and habitat programs within the Healthy Rivers and Landscapes Program in accordance with this Global Agreement and the applicable Implementation Agreements.

**2.30. Substitute Environmental Document or SED** means: the substitute environmental document that analyzes the effects of implementing the Healthy Rivers and Landscapes Program, as well as other issues as necessary for the update to the Bay-Delta Plan, in compliance with the California Environmental Quality Act. The SED is part of the State Water Board's Staff Report for the updated Bay-Delta Plan.

**2.31. Supported Amendments** means: amendments to the Bay-Delta Plan, including Table 3 and Program of Implementation, to authorize implementation of the Healthy Rivers and Landscapes Program. Such amendments are described in Section 5

and stated in Exhibit A. The Parties sign this Agreement following the State Water Board's Final Action on the Supported Amendments.

**2.32. Systemwide Funding Entity** means: the funding entity established pursuant to Section 11. The Systemwide Funding Entity may be either an already existing entity or a new entity formed by one or more Parties with the written consent of the other Parties.

**2.33. Term Sheet** means: the "Term Sheet for The Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions" (March 29, 2022).

**2.34. USBR** means: the United States Bureau of Reclamation.

**2.35. VA Program** means: the Healthy Rivers and Landscapes Program.

**2.36. Voluntary Agreements or VAs** means: this Global Agreement, the Implementing Agreements, and the Enforcement Agreements, which constitute the Healthy Rivers and Landscapes Program.

**2.37. Year means:** time starting on the Effective Date of this Global Agreement. Year 0 begins on that date.

**3. Structure.** The Parties agree that the Healthy Rivers and Landscapes Program consists of three types of agreements. These are:

**3.1. Global Agreement** that describes the structure, funding, Science Program, and Governance Program for the Healthy Rivers and Landscapes Program. This agreement is signed by all Parties.

**3.2. Implementation Agreements**, each stating in detail the flow, habitat restoration, funding specific to the agreement, and other measures for a water source, which is a participating tributary, the Sacramento River mainstem, and the Delta, as applicable. An agreement for a water source will be signed by those Implementing Entities which have responsibility for implementation thereunder.

**3.3. Enforcement Agreements**, each stating the obligations of Responsible Parties to implement flow, habitat restoration, and other measures. Such agreements state the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to non-federal Responsible Parties, and pursuant to a Memorandum of Understanding regarding Enforcement with respect to federal Responsible Parties. Each such agreement specifies any contingencies outside the

reasonable control of the Responsible Party related to performance of a measure. These agreements provide assurances by the State Water Board that these agreements state the total obligations of the Responsible Parties, as well as other Implementing Entities, to implement the Narrative Salmon Objective and Narrative Viability Objective for the term of the Healthy Rivers and Landscapes Program.

**4. Approach.** The Healthy Rivers and Landscapes Program integrates flow measures, habitat restoration measures, and other measures to contribute to implementation of the Covered Water Quality Objectives.

**4.1. Comprehensive Approach.** The Parties agree that, in the Bay-Delta watershed, a comprehensive approach is appropriate to protect native fish and wildlife species, while concurrently protecting water supply reliability, consistent with Water Code section 13241's requirement of providing reasonable protection for all beneficial uses.

**4.2. Integrated Approach.** The Healthy Rivers and Landscapes Program commits flow, habitat restoration, and other measures to contribute to maintenance of the viability of native fishes. The Parties agree that modifications to riverine channel form and function, restoration of marshlands, and flow schedules that take advantage of such landscapes changes, are expected to significantly enhance ecosystem function and resilience, both in tributary channels as well as in the Delta.

**4.3. Reasonable Protection.** The Healthy Rivers and Landscapes Program is intended to result in reasonable protection of beneficial uses, and specifically to contribute to implementation of Covered Water Quality Objectives, in accordance with Water Code section 13241 and other Applicable Law.

**4.4. Additional Contributions.**

- A. The flows described in Appendix 1 (derived from MOU Appendix 1) are additive to the Delta outflows required by Revised Water Rights Decision 1641 (Revised D-1641) and resulting from the 2019 Biological Opinions, although the 2019 Biological Opinions may be modified, including to resolve litigation concerning those opinions.
- B. The habitat restoration measures described in Appendix 2 (derived from MOU Appendix 2) are additive to physical conditions and regulatory requirements existing as of December 2018, when the State Water Board adopted Resolution 2018-0059. Implementation of such measures by Parties after that date, but prior to execution of the Global, Implementation and Enforcement Agreements,

contributes towards implementation of the Narrative Salmon Objective and Narrative Viability Objective.

- C. The Parties agree to these additional contributions in consideration of the assurances stated in Enforcement Agreement section 5.

**5. Support for Supported Amendments.** Consistent with Section 12, the Parties support the State Water Board's approval of the Supported Amendments to the Bay-Delta Plan.

**5.1. Narrative Viability Objective.** The Parties support the amendment of the Bay-Delta Plan to include the new Narrative Viability Objective.

**5.2. Implementation Pathway.** The Parties support the amendment to the Program of Implementation to include the Healthy Rivers and Landscapes Program as a pathway to implement the Narrative Salmon Objective and Narrative Viability Objective, including the finding that this pathway in conjunction with the regulatory pathway described in Section 5.3 below will provide reasonable protection of the associated beneficial uses as documented in the State Water Board's Staff Report.

**5.3. Additional Implementation Pathway.** The Parties support the amendment to the Program of Implementation to include an additional pathway to implement the Narrative Salmon Objective and Narrative Viability Objective. The Parties understand that this pathway will apply to tributaries, or persons or entities, not covered by a VA. The Parties further understand that, pursuant to this pathway, the State Water Board will use its legal authorities and public processes to establish conditions to require flows and other measures by persons or entities not covered by a VA to provide reasonable protection of beneficial uses associated with the Narrative Salmon Objective and Narrative Viability Objective. The Parties support the amendment to the Program of Implementation to include an opportunity for water right holders not covered by a VA to, at a later date, commit to contributions to implement the Narrative Salmon Objective and Narrative Viability Objective under the Healthy Rivers and Landscapes Program as approved by the State Water Board.

**5.4. Other Elements.** The Parties further support the amendments to the Program of Implementation to include these elements of the Healthy Rivers and Landscapes Program:

- A. Summary description of the flow, habitat restoration, and other measures as stated in the Implementation Agreements (Exhibit B);
- B. Strategic Plan (Exhibit D);

- C. Obligations of the State Water Board and Implementing Entities to implement their commitments, pursuant to Enforcement Agreements (Exhibit C);
- D. Governance Program (Exhibit D Appendix B);
- E. Science Program (Exhibit D Appendix C);
- F. Procedures for the State Water Board's Executive Director to recognize unanticipated permitting delays prior to Year 1 and to defer review and performance milestones within the Program of Implementation accordingly to better align the VA implementation with State Water Board's processes, provided such delay results from actions or inactions that were beyond the control of the Parties; and
- G. Procedures for renewal, modification, and extension of the Healthy Rivers and Landscapes Program, as stated in Exhibit A section 2.

**5.5. SED.** The Parties support the State Water Board's having certified the Substitute Environmental Document to the extent that it provided a basis for Final Action approving the Supported Amendments.

**6. Flow Measures.** The Parties will implement flow measures as generally described in MOU Appendix 1, attached hereto for reference. The Implementing and Enforcement Agreements state the enforceable commitments to such flow measures.

**6.1. Shaping of Flow Measures.** Flow measures may be shaped in timing and seasonality, to test biological hypotheses and respond to hydrologic conditions while reasonably protecting beneficial uses.

- A. Such shaping will occur through the Governance Program, subject to the applicable Implementation Agreements and regulatory requirements. The Parties understand that a portion of these flows will be managed with a priority of providing increased flows in the months of April and May in Dry, Below Normal, and Above Normal water-years to replicate average outflow resulting from the I/E ratio in the 2009 Salmonid Biological Opinion, as modeled.
- B. Flow measures generally described in Appendix 1, and stated in Implementation Agreements, as "Water Purchase Program" or other

water purchases will be obtained through a free-market program for single-year transfers, subject to applicable law. The Parties acknowledge that, if the water purchases do not occur, then the Healthy Rivers and Landscapes Program may be subject to the procedures stated in Exhibit A section 2.2(B)(ii) or (iii).

**6.2. Limits on Water Right Proceedings to Implement the Water Quality Objectives.** The Parties will implement the Healthy Rivers and Landscapes Program without reliance on water right proceedings, except to the extent that a Party voluntarily initiates a State Water Board water right proceeding as a means of implementing one or more elements of the Healthy Rivers and Landscapes Program for which that Party is responsible.

**6.3. Protection of Flows.** The Parties support the State Water Board's use of its legal authorities to protect all flows generated under Implementation Agreements against diversions for other purposes for the term of the Healthy Rivers and Landscapes Program.

- A. The Parties support the amendment to the Bay-Delta Plan to include the methods to provide these protections as stated in Exhibit A section 3. During administrative proceedings thereafter, the Parties will support the developed protections, provided the Parties agree with the authority cited by the State Water Board for the proceedings, the scope of proceedings, and the technical methodology.
- B. The Parties request that State Water Board will report annually on what actions it has taken to protect these flows from unauthorized uses.
- C. The Parties agree that all San Joaquin River watershed flows required as a result of implementing the 2018 Bay Delta Plan Update or Healthy Rivers and Landscapes Program will be protected as Delta outflows to the maximum extent feasible.
- D. The Parties support the amendment of the Bay-Delta Plan to include the methods stated in Exhibit A section 4, to identify and resolve any redirected adverse impacts to water supply in excess of Appendix 1 contributions resulting from the protection of these flows as Delta outflow.
- E. The Parties support the amendment of the Bay-Delta Plan to include accounting procedures to assure that flows and habitat restoration



provided under the Healthy Rivers and Landscapes Program are Additional Contributions as stated in Section 4.4. These procedures, which are subject to the approval of the State Water Board, are stated in Exhibit A section 5.

7. **Habitat Restoration Measures.** The Parties will implement the habitat restoration measures as generally described in Appendix 2. The Implementation and Enforcement Agreements state the enforceable commitments to such measures, subject to any necessary regulatory approvals.

8. **Permitting.** The Parties with regulatory authorities will expedite and coordinate permitting of flow, habitat restoration, and other measures specified in the Enforcement and Implementation Agreements, consistent with Applicable Law.

8.1. **Timely Implementation.** Each Party acknowledges that a metric for success in the Healthy Rivers and Landscapes Program is timely completion of such measures.

8.2. **Fish and Game Code.** CDFW will apply innovative uses of its regulatory authorities to expedite permitting of flow and habitat restoration measures.

8.3. **Water Quality Authorities.** The Parties anticipate that the State Water Board will complete and employ its regulatory authorities to expedite permitting of flow and habitat restoration measures.

8.4. **Federal Authorities.** The United States Fish and Wildlife Service and National Marine Fisheries Service will use regulatory tools to expedite permitting of flow and habitat restoration measures.

8.5. **Multi-Disciplinary Unit.** California will establish a multi-disciplinary restoration unit of 8 full-time specialists to track, permit and implement flow and habitat restoration measures. This team will regularly report to Secretaries for Environmental Protection and Natural Resources.

8.6. **Other Coordination.** The relevant state and federal agencies involved in implementation of these flow and habitat restoration measures will convene with other Parties as part of the Governance Program to otherwise coordinate on timely implementation of these measures.

8.7. **Governor's Office.** The relevant state and federal agencies involved in implementation of the Healthy Rivers and Landscapes Program will update the California Governor's Office regularly on status of permitting these measures.

**8.8. Expeditious Action.** The Parties with permitting authority recognize their affirmative obligation to move as expeditiously as possible to complete permitting processes prior to Year 1. The Parties agree to provide sufficient and timely information requested by the regulatory agencies to support permitting and understand that mitigation measures and project modifications may be required to allow for permitting.

**9. Governance Program.** The Parties will implement the Governance Program to direct flow, habitat restoration, and other measures, conduct assessments, develop strategic plans and annual reports, implement a science program, and hire staff and contractors. The Governance Program is set forth in Exhibit D Appendix B.

**9.1. Governance Entities.** Parties agree to establish the following entities to govern implementation of the Healthy Rivers and Landscapes Program unless a comparable governance entity already exists. Each governance entity will adopt a charter that is consistent with the Global Agreement and applicable Implementation Agreement. All entities described in this section may include members from appropriate stakeholders who are not Parties.

- A. **Systemwide Governance Committee** will make recommendations related to deployment of flow and non-flow measures as provided in its charter, oversee Triennial Reports regarding implementation and effects, any revision to the Strategic Plan, and overall coordination of the Healthy Rivers and Landscapes Program. Through the Strategic Plan and otherwise, this committee will assure that implementation is consistent with the terms of applicable Implementation Agreements.
- B. **Water source-specific Governance Entities** will be responsible for implementation of the Implementation Agreement for which that entity is responsible, including deployment of flow and non-flow measures as specified in those Implementation Agreements, and preparation and submittal of associated Annual Reports to the Systemwide Governance Committee. Each such Governance Entity will include Parties subject to the applicable agreement.
- C. **Science and Technical Committee** will be responsible for implementation of the Systemwide Governance Committee's scientific and technical priorities.
- D. **Flow Operations Team** will make recommendations to the Systemwide Governance Committee, as well as the water source-

specific Governance Entities, regarding options and risks of possible deployment of Flow Assets; and will provide support for reporting on an annual basis.

- E. **Program Office** will be responsible for the ongoing administration of the Healthy Rivers and Landscapes Program, including: coordination of development of the Strategic Plan; facilitation for all meetings of the Governance Entities and any subcommittees; associated work plans and budgeting; development of consolidated reports to the State Water Board; and documentation of any disputes that arise in the implementation of the Healthy Rivers and Landscapes Program and associated resolutions.

## **9.2. Governance Procedures for Flow Measures.**

- A. Tributary flow measures will be subject to implementation in accordance with the recommendation of the Systemwide Governance Committee, consistent with rules set forth in the Implementation Agreements. A Tributary Governance Entity may consent but is not required to agree to a recommendation for implementing a measure in a manner that would be inconsistent with its Implementation Agreement.
- B. Delta flow measures will be subject to implementation in accordance with the recommendation or request of the Delta Governance Entity consistent with rules that will define the scope that the measure is available to be adaptively managed. Such implementation will be coordinated with the Systemwide Governance Committee.

**9.3. Strategic Plans.** The Parties will implement the initial Strategic Plan (Exhibit D) and subsequent versions of this plan.

- A. The plan provides multi-year guidance for the implementation of flow and other measures, set priorities to guide the Science Program, and establishes reporting procedures related to implementation and effects.
- B. The State Water Board approved the initial Strategic Plan as part of its Final Action. The Systemwide Governance Committee may revise the initial Strategic Plan in Years 3 and 6, and subsequently as applicable, subject to the State Water Board's review and approval

of any adaptive management outside of the express limits established in the initial Strategic Plan.

#### **9.4. Annual and Triennial Reports.**

- A. In coordination with the Program Office, the water source-specific Governance Entities will prepare Annual Reports of their implementation of the Healthy Rivers and Landscapes Program in the preceding year, and the Systemwide Governance Committee will compile and integrate these reports for annual submittal to the State Water Board.
  - (i). Reports will inform adaptive management.
  - (ii). Reports will be technical in nature, identify actions taken, monitoring results, and milestones achieved.
  - (iii). Reports will document status and trends of native fish.
  - (iv). Reports will document whether commitments for VA asset deployments are being met. Commitments will be documented using a State-approved accounting methodology and validated to be true and correct by a third party independent registered professional engineer.
  - (v). Reports will document progress toward completion of VA habitat restoration projects. Each report will document permit success in terms of applications submitted, processing timelines, and permits obtained.
  - (vi). Reports will document efforts to seek new funding to support program.
- B. In Years 3 and 6, and subsequently as applicable, the Systemwide Governance Committee acting in coordination with the Program Office will prepare a Triennial Report to analyze progress across the Delta watershed and, in coordination with the water source-specific Governance Entities, will submit these reports to the State Water Board.

- C. The State Water Board will hold a public informational workshop on the Healthy Rivers and Landscapes Program following receipt of each Triennial Report.

**10. Science Program.** The Parties will implement the Science Program described below.

**10.1. Purposes.** The Science Program serves the following purposes: (A) inform decision-making by the Systemwide Governance Committee, water source-specific Governance Entities, and Parties; (B) track and report progress relative to the metrics and outcomes stated in the Science Plan; (C) reduce management-relevant uncertainty; (D) produce an ecological outcomes report prior to year 7 that synthesizes the scientific data and information generated by the Science Program and demonstrates expected ecological outcomes from continuing the Healthy Rivers and Landscapes Program, including quantifying how the continuation of these agreements will improve species abundance, ecosystem conditions and contribute to meeting the Covered Water Quality Objectives; and (E) provide recommendations on adjusting management actions to the Systemwide Governance Committee, water source-specific Governance Entities and Parties.

**10.2. Principles.** The Science Program is guided by the principles of best available science, efficiency, forward-looking perspective, shared risk in addressing uncertainty in data and analyses, transparency, collaboration, and timeliness.

**10.3. Science Plan.** The Parties will implement the Science Plan (Exhibit D Appendix C). This plan is based on the following elements:

- A. Implement specific experiments. The Science Program will adopt a “safe to fail” experimental approach to maximize learning.
- B. Test hypotheses. The program will identify and test key hypotheses/assertions, especially/even if conflicting, about how the ecosystem functions and what measures will be most effective at achieving desired outcomes.
- C. Learn from the experiments. Ensure that each measure is designed and implemented in a manner that maximizes learning.
- D. Design the experiments to test specific outcomes.
- E. Facilitate a collaborative process. All Parties will be engaged in the development and implementation of the Science Program.

- F. Facilitate a transparent process. All Parties will facilitate a transparent process through collaboration, reporting, and open data.
- G. Monitoring. The Science Program will ensure one or more monitoring regimes are developed that will allow the Parties to collect data on target species and their habitats necessary to assess the efficacy of flow, habitat restoration, and other measures, for the purposes of implementing the procedures for renewal, modification, and extension stated in Exhibit A section 2.

**10.4. Adaptive Management.** The Science Program includes structured decision-making processes for flow and non- flow measures, direct science efforts, and incorporate outcomes of the testable hypotheses to continue to inform decision-making, consistent with applicable provisions of the Governance Program.

**11. Funding.** The Parties will implement the funding commitments stated in the Funding Plan, which is Exhibit E.

**11.1. Assurances for Funding Commitments.** The Parties will undertake the actions specified in Exhibit E to implement the funding commitments. Such actions will be enforceable as specified in the Enforcement Agreements; provided that the outcomes of such actions are subject to the independent authorities of Congress, the State Legislature, and other decisional bodies under Applicable Law.

**11.2. Systemwide Funding Entity.** This entity will be responsible for managing funds from the Parties as provided in Exhibit E. Funds will be contributed as provided in Exhibit E.

**11.3. Establishment of Accounts.**

- A. **Structural Science and Habitat Fund).** The Systemwide Funding Entity will create an account named the Structural Science and Habitat Fund. Funds deposited in the SSHF will only be spent on science and habitat as directed by the Systemwide Governance Committee unless otherwise governed by the applicable Implementation Agreements.
- B. **Revolving Water Transfer Fund.** The Systemwide Funding Entity will create an account named the Revolving Water Transfer Fund. Funds from this account will be used to compensate for flow contributions in accordance with Exhibit E and the Implementation Agreements.

**11.4. Disbursement of Funds.** The Parties agree that the Systemwide Funding Entity will disburse funds from the Structural Science and Habitat Fund and the Revolving Water Transfer Fund as specified in Exhibit E and applicable Implementation Agreements.

**11.5. Acceptance of Funds.** The Systemwide Funding Entity will have authority to accept local, state, federal and private grant monies to assist in implementing the Healthy Rivers and Landscapes Program.

**11.6. Reporting.** The Systemwide Funding Entity will annually prepare a report summarizing the advances or contributions received, and expenditures made pursuant to, this Agreement. The first such report will be completed not later than March 31, [*year after Final Approval*] and thereafter not later than March 31 of each subsequent year.

**11.7. Contracting.** The Program Office will be responsible for contracting necessary to implement its responsibilities under Section 9.1(E).

**11.8. Unspent Funds.** Upon termination of this Agreement, the Parties intend that any unspent Contributed Funds remaining after payment of all costs for which the funds were contributed will be returned to USBR, CDWR, or both as the applicable collecting agency, with those funds to be further allocated to those Parties who contributed the funds or, if that further disbursement is prohibited by law, to be expended at the direction or by USBR, CDWR, or both consistent with the purposes for which the money was collected, and after consultation with the Parties who contributed such unspent funds.

**12. Support for Implementation.** The Parties support the Healthy Rivers and Landscapes Program and its implementation.

**12.1. Regulatory Approvals.**

- A. Each Party will support any further regulatory approvals necessary to implement the flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program. Further, each Party may comment on the consistency with the Healthy Rivers and Landscapes Program of any plan, other document, or data arising during the implementation of this Agreement. Each Party may comment in opposition to any action which would result in a Material Modification, including any action which would result in redirected impacts subject to Exhibit A section 4.

- B. Section 12.1(A) does not apply to any Party exercising authority for regulatory approval. The Parties do not intend this agreement to exercise, modify, or supersede the regulatory authority of any Party that is a regulatory agency or any subordinate agency of such a Party, and any commitment to implement the flow and non-flow measures described herein is dependent on all necessary environmental review and regulatory approvals. Accordingly, the Parties acknowledge that nothing herein can foreclose any legally required consideration of alternatives.

**12.2. Defense of Agreement.** If any administrative or judicial action is brought against any Party to challenge the validity of this Agreement, or a regulatory approval necessary to implement the Healthy Rivers and Landscapes Program, each Party which participates in such action will support the challenged element, subject to the exception in Section 12.1(B). If requested by a Party that is a defendant in such action, other Parties will make a good faith effort to join in an *amicus curiae* brief, letter or other filing that supports the challenged element of the Healthy Rivers and Landscapes Program. Each Party may oppose any aspect of an action which would result in a Material Modification, including an aspect of the action that would result in redirected impacts subject to Exhibit A section 4. This section does not limit the Parties' rights to participate in such actions with respect to all other matters.

**12.3. Obligation to Implement.** Each Party will implement each of its obligations in the Healthy Rivers and Landscapes Program in good faith and with due diligence.

- A. Any obligation identified as an obligation of all of the Parties does not obligate any individual Party to take any action itself or itself make any specific commitment other than to participate in the applicable procedures.
- B. A Party may participate in a proceeding to address another Party's failure to implement a Regulatory Obligation.

**12.4. Cooperation Among the Parties.** Each Party will cooperate in the implementation of the Healthy Rivers and Landscapes Program. The Parties support the water purchase programs described in this Global Agreement and support the use of funds from the Revolving Water Transfer Fund to support water purchases identified in Global Agreement Appendix 1. Where a Party's responsibility for a flow measure identified in Appendix 1 and under the applicable Implementation and Enforcement Agreements is associated with a specific water source or water project, that Party will reasonably cooperate with other Parties in identifying and securing of flow measures not



associated with that water source or water project. Nothing in this Agreement requires a Party to suffer an injury to its legal uses of water under applicable law, nor to provide flow or funding contributions which exceeds the flow or funding measures specified as the responsibility of that Party or, as applicable, group of Parties within a water source, in any Enforcement Agreement,

**12.5. Timeliness.** The Parties will undertake to implement this Agreement in a manner consistent with the schedules in this Agreement and the Enforcement and Implementation Agreements. If any Party requires more time than permitted by this Agreement, or the applicable Enforcement and Implementation Agreements, to perform an obligation, that Party will provide notice to other Parties 30 days before the applicable deadline, unless the applicable agreement establishes a different period. The notice will explain: (i) the obligation that the Party is attempting to perform; (ii) the reason that performance is or may be delayed; and (iii) the steps the Party has taken or proposes to take to timely complete performance. Any delay in performance under an Enforcement Agreement is subject to potential remedy as stated in that agreement.

**12.6. Resolution of Litigation and Other Related Regulatory Proceedings.**

- A. As of the Effective Date, Parties involved in litigation and regulatory actions pertaining to the 2018 Bay-Delta Plan, 2019 Biological Opinions for the SWP and CVP, the 2020 Incidental Take Permit for the SWP, and Clean Water Act section 401 water quality certifications, interim operations in 2023 and 2024, and other regulatory authorizations and proceedings that relate to the Healthy Rivers and Landscapes Program, have undertaken to resolve such actions.
- B. The Parties expect that the contributions from the Healthy Rivers and Landscapes Program, to the maximum extent allowable under Applicable Law, will be recognized in the resolution of ongoing and future regulatory proceedings, including during any consultation on ongoing CVP and SWP operations and/or application for a new or amended incidental take permit for operations.

**13. Decision-making and Dispute Resolution Procedures.**

**13.1. Cooperation.** Disputing Parties will cooperate in good faith to promptly schedule, attend, and participate in the dispute resolution process. Unless otherwise agreed among the Disputing Parties, each Disputing Party will bear its own costs for its participation in these procedures.

### 13.2. Procedures.

- A. **Systemwide Governance.** The Parties will follow the decision-making and dispute resolution procedures in the Governance Program, Exhibit D Appendix B, with respect to all decisions involving Systemwide Governance as specified in Section 1.2.2 thereto.
- B. **Water Source-Specific Governance.** The Parties to an Implementation Agreement will follow the decision-making and dispute resolution procedures in that agreement, or if none are stated there, the procedures stated in this Section 13.D, with respect to decisions within the scope of responsibilities in such agreement.
- C. **Enforcement.** The Parties to an Enforcement Agreement will follow the decision-making and dispute resolution procedures in that agreement, with respect to potential violations of Regulatory Obligations and resolution thereof.
- D. **Other Disputes.** The Parties will follow the procedures below for all other disputes related to this Agreement.
  - (i). **Dispute Initiation Notice.** A Party claiming a dispute will give notice of the dispute to all other Parties, within seven days of becoming aware of the dispute. Such notice will describe: (i) the matter(s) in dispute; (ii) the identity of any other Party alleged to have not performed an obligation arising under this Agreement; and (iii) the specific relief sought. Collectively, the Party initiating the procedure, the Party complained against, and any other Party which provides Notice of its intent to participate in these procedures, are “Disputing Parties.”
  - (ii). **Informal Meetings.** Disputing Parties will hold at least two informal meetings to resolve the dispute, commencing within 20 days after the Dispute Initiation Notice, and concluding within 45 days of the Dispute Initiation Notice unless extended upon mutual agreement of the Disputing Parties. If the Disputing Parties are unable to resolve the dispute, at least one meeting will be held within the 45 days after the Dispute Initiation Notice, including senior management representatives of the Disputing Parties.

- (iii). **Mediation.** If the dispute is not resolved in the informal meetings, the Disputing Parties will decide whether to use a neutral mediator. The decision whether to pursue mediation, and if affirmative the identity and allocation of costs for the mediator, will be made within 75 days after the Dispute Initiation Notice. Mediation will not occur if the Disputing Parties do not unanimously agree on use of a mediator, choice of mediator, and allocation of costs. The mediation process will be concluded not later than 135 days after the Dispute Initiation Notice. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.
- (iv). **Dispute Resolution Notice.** The Disputing Parties will provide notice to all Parties stating the results of the Dispute Resolution Procedures. The notice will: (i) restate the disputed matter, as initially described in the Dispute Initiation Notice; and (iii) state whether resolution was achieved, in whole or part, and state the specific relief, including timeline, agreed to as part of the resolution. Each Disputing Party will promptly implement any agreed resolution of the dispute.

**13.3. No Exhaustion.** A Party may bring a judicial or other action under Applicable Law, without exhausting these dispute resolution procedures.

#### **14. Effective Date and Term.**

**14.1. Effective Date.** This Agreement is effective on the date that the Parties sign. The Parties sign after the following events have occurred:

- A. State Water Board took Final Action approving the Supported Amendments;
- B. Parties determined that the Final Action does not involve a Material Modification thereto; and
- C. Parties determined that they are prepared to concurrently sign the Implementation and Enforcement Agreements.

**14.2. Term.** This Agreement will remain in effect for a term of 8 years.

- A. The Agreement is subject to early termination if the following conditions occur:
- (i). A Party provides Notice objecting that an event is a potential Material Modification; and the Notice specifies with particularity how the event impairs its bargained-for benefits and meets the criteria stated in Section 2.14;
  - (ii). Systemwide Governance Committee meets and determines that the event is a Material Modification;
  - (iii). The Parties undertake to cure the Material Modification, or otherwise respond to the objecting Party's Notice, through the applicable procedures in Section 13; and
  - (iv). At the conclusion of those procedures, one or more Parties withdraw from the Agreement, or provide notice of intent to withdraw; and
  - (v). the remaining Parties determine that they are unable to achieve the purposes of the Healthy Rivers and Landscapes Program and decide to terminate this Agreement.
- B. The Agreement is subject to extension pursuant to the procedures stated in Exhibit A section 2, as adopted into the Program of Implementation. Any such extension will be stated in an Amendment.

**15. Withdrawal.** A Party that objects to a potential Material Modification affecting its rights and obligations will provide Notice. It will undertake the applicable procedures under Sections 12.2 and 13 to address the modification. It may withdraw if the potential Material Modification is not resolved to its satisfaction; provided that the Parties acknowledge that any such withdrawal may impair the durability of benefits of the Healthy Rivers and Landscapes Program for other Parties; and provided further that the Parties intend that any such withdrawal will be a last resort when the objecting Party determines that applicable procedures under Section 12.2 and 13, including any resulting proposed amendments to Implementation and Enforcement Agreements, will not protect its rights, obligations, and interests. Withdrawal by a Party does not itself terminate the Agreement, such termination to occur only pursuant to Section 14.2(A).

**16. Remedies.** This Agreement does not create any remedies, other than dispute resolution pursuant to Section 13, and does not alter any remedies that may be available

under Applicable Law. Regulatory Obligations stated in the Enforcement Agreements will be subject to the remedies stated therein

**17. Consistency with Legal Authority.** By executing this Agreement, each Party represents that it believes that this Agreement is consistent with its statutory, regulatory and legal obligations.

**18. Reservations.**

**18.1. Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, or regulatory responsibilities or to comply with any judicial decision. Nothing in this Agreement will be interpreted to require any Party to implement any action that is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State of California.

**18.2. Availability of Public Funds.** Funding by each of the Parties under this Agreement is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the appropriation, reprogramming or expenditure of any funds by any Party except as otherwise permitted by Applicable Law.

**18.3. No Alteration of Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act, California Environmental Quality Act, or other Applicable Law, to the environmental review of the Healthy Rivers and Landscapes Program and its implementation.

**19. No Precedent.** The Parties recognize that this Agreement, including the Implementation Agreements, Enforcement Agreements, and other exhibits and appendices are public documents. The Parties also acknowledge and agree, however, that: (a) all of the documents referenced in the preceding sentence comprise a settlement of extensive disputed issues; and (b) those documents are subject to Evidence Code sections 1152 and 1154, as well as Federal Rules of Evidence, Rule 408, and therefore may not be offered for or against a Party as an admission of law or fact, or to prove any point of law or fact in any proceeding or forum, except as needed to enforce an Party's obligations under that Healthy Rivers and Landscapes Program.

**20. No Determination of Water Rights.** No water rights or water rights claims are determined, quantified or limited pursuant to this Agreement, except as expressly provided.

21. **Amendment.** This Agreement may be amended only by a written amendment executed by all Parties.

22. **Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Settlement. No assignment may take effect without the express written approval of the other parties, which approval will not be unreasonably withheld.

23. **Notice.** Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Responsible Parties as of the Effective Date is attached as Appendix 3 hereto. Each such entity will provide Notice of any change in the authorized representatives designated in Appendix 3, and Program Office will maintain the current distribution list of such representatives. The Parties agree that failure to provide the Program Office with current contact information will result in a waiver of an entity's right to Notice under this Agreement. The Party who has waived Notice may prospectively reinstate its right to Notice by providing current contact information to the Program Office.

24. **Construction and Interpretation.** This Agreement has been arrived at through negotiation and each of the Parties has had a full and fair opportunity to revise the terms of this Agreement.

24.1. **General.** As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in the construction or interpretation of this Agreement.

24.2. **Heading Titles.** The heading titles used in this Agreement are intended for convenience only and will not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties.

25. **No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

26. **Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

27. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the matters covered by this Agreement and supersedes all prior agreements and understandings, written or oral.

28. **Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if one or more provisions of this Agreement is held to be unlawful, invalid or unenforceable, the Parties will under the dispute resolution procedures stated in Section 13, and will undertake to reform such provisions to be lawful, valid, and enforced without Material Modification of this Agreement.

29. **Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

30. **Counterparts.** This Agreement may be executed: (a) in separate counterparts, each of which when so executed and delivered will be an original; and (b) by pdf signatures. All such counterparts will together constitute but one and the same instrument.

**[Signature blocks]**

**Appendix 1.**  
**SUMMARY OF FLOW MEASURES IN HEALTHY RIVERS AND**  
**LANDSCAPES PROGRAM**



**Appendix 1.**  
**Flow Tables**

**Table 1a: New Contributions to Tributary Flow and Delta Outflows in Thousand Acre Feet<sup>1,2,3</sup>**

Source	C (15%) <sup>4</sup>	D (22%)	BN (17%)	AN (14%)	W (32%)
<b>San Joaquin River Basin</b>					
Tuolumne River Downstream of the La Grange Dam <sup>5,6,7,8</sup>	86(17)	140(40)	127(98)	138	138
Additional Maximum Tuolumne Flows <sup>9,10</sup>	16	19	30	8	0
<b>Friant</b>	0	50	50	50	0
<b>Sacramento River Basin<sup>11</sup></b>					
Sacramento <sup>12</sup>	2	102	100	100	0
Feather	0	60	60	60	0
Yuba	0	50	50	50	0
American <sup>13</sup>	30	40	10	10	0
Mokelumne <sup>14</sup>	0	5	5	7	0
Putah <sup>15</sup>	7	6	6	6	0
<b>CVP/SWP Export Reduction<sup>16</sup></b>	0	125	125	175	0
<b>PWA Water Purchase Program</b>					
Fixed Price (see Table 1b)	3	63.5	84.5	99.5	27

Market Price <sup>17, 18</sup>	0	45 (+5)	45 (+15)	45 (+38)	0
<b>Permanent State Water Purchases<sup>19</sup></b>	65	108	9	52	123
<b><i>Year 1 New Outflow Above Baseline (Low Target)</i></b>	<b><i>155</i></b>	<b><i>825.5</i></b>	<b><i>750.5</i></b>	<b><i>824.5</i></b>	<b><i>150</i></b>

**Table 1b: Supporting Details for New Flow Contributions (Table 1a) and Year 8 Water Storage**

		<b>C (15%)</b>	<b>D (22%)</b>	<b>BN (17%)</b>	<b>AN (14%)</b>	<b>W (32%)</b>
<b>PWA Fixed Price Water Purchase Program</b>						
Sac Valley NOD			10	10	10	
CVP SOD			12.5	24.5	35	
WWD SOD <sup>20</sup>	3		6	15	19.5	27
Add CVP SOD <sup>20</sup>			5	5	5	
SWP SOD			30	30	30	

<b>New Water Projects (Before Year 8)<sup>21</sup></b>					
Chino Basin	0	50	50	0	0
Kern Fan	0	18	18	0	0
Willow Springs Conjunctive Use	0	19	29	0	0

**Notes for Tables 1a and 1b:**

<sup>1</sup> This table summarizes operational detail as of March 29, 2024.

2

Outflows additive to baseline and will be provided January through June. A portion of the VAs’ flows can be flexibly shaped to other times of year to test biological hypotheses while reasonably protecting beneficial uses. Such shaping will be subject to VAs’ governance program. Flows made available through reservoir reoperations will be subject to accounting procedures described in term sheet and all flows will be verified as a contribution above baseline using these accounting procedures.

3

An assessment based on the accounting procedures to be developed pursuant to Term Sheet section 8.4 will be conducted prior to year 8 of VA to determine if the flows in this table have materialized on average above baseline by water year type. The VA parties acknowledge that, if this analysis does not demonstrate that flows have materialized as shown in this table, then the VAs will be subject to Term Sheet provisions of Section 7.4(B)(ii) or (iii).

4

C year off-ramps subject to negotiation, but flows in this table must reflect average C year contributions over the term of the VA.

5

Tuolumne Parties flow contributions, additive to average January-June minimum instream flow requirements on the Lower Tuolumne River, as set-forth in the current FERC license for the Don Pedro Project and measured at the USGS gage downstream of La Grange Dam. Values in parenthesis apply in critical, dry, and below normal year following a critical, dry or below normal year.

6

Tuolumne Parties are releasing or bypassing flow contributions at their lowest point of control, which is La Grange Dam. This is the point at which the State Water Board will have authority to enforce the flow measures as contemplated by [specify counterpart to Term Sheet section 7.2].

7

Modeling done by the State predicts that with implementation of the Tuolumne VA that Tuolumne River flows as measured at the Modesto gage, on average by water year type, will exceed the average January-June flows in the base case (flow resulting under current conditions with the 1995 FERC Settlement Agreement in effect). The modeling projects the following resultant flows at Modesto Gage that will be protected as Delta outflows.

	C (15%)	D (22%)	BN (17%)	AN (14%)	W (32%)
<i>Resultant Tuolumne River flows at the Modesto Gage</i>	37	62	78	27	0

Consistent with [counterpart to Term Sheet Section 8.3], these flows will be protected in the Tuolumne River as VA flows that implement the native fishes water quality objective and will be protected as Delta outflow. Term Sheet Section 8.1 anticipates that the State Water Board will use its legal authorities to protect VA flows and obligates VA parties to support the State Water Board in its proceedings to protect VA flows. The Tuolumne Parties will assist and partner in this endeavor consistent with [counterpart to section 8.1 of term sheet]. The resultant flows at Modesto gage are not flow commitments that will be enforceable against the Tuolumne Parties pursuant to [counterpart to Term Sheet Section 2.2(C)].

8

The State and Tuolumne Parties understand these flows will be included in the systemwide assessment as specified in Footnote 3 in Appendix 1 Flow Tables, Table 1a: “An assessment based on the accounting procedures to be developed pursuant to [counterpart to Term Sheet section 8.4] will be conducted prior to year 8 of VA to determine if the flows in this table have materialized on average above baseline by water year type. The VA parties acknowledge that, if this analysis does not demonstrate that flows have materialized as shown in this table, then the VAs will be subject to [counterpart to Term Sheet provisions of Section 7.4(B)(ii) or (iii)].”

9	Tuolumne Parties will work collaboratively with DWR, Reclamation, and other VA parties to set the terms and conditions (e.g., additional flows will only occur when the Delta is in balanced conditions, etc.) of providing additional flow contributions consistent with [counterpart to Sections 8.1 and 8.3 of the Term Sheet].
10	Real-time hydrology dependent. The Tuolumne Parties will work collaboratively with DWR, Reclamation, and other VA Parties in each year where Tuolumne VA Flows are provided to determine the total volumetric need for these additional flows. The Tuolumne's additional flow contribution shall equal 1/3 of this agreed upon volume, or the Additional Maximum flow contribution, whichever is less. These volumes, when provided will provide instream flow benefits, but will not be subject to flow protection below La Grange Dam.
11	The new flow contributions from the Sacramento River Basin identified in this Table 1a, plus new flow contributions resulting from the below-referenced PWA Water Purchase Program, Permanent State Water Purchases, and PWA Fixed Price Water Purchase Program line items in Tables 1a and 1b, are not intended to result in idling more than 35,000 acres of rice land in the Sacramento River Basin.
12	VA parties agree that the Sacramento River flow contribution of 100 TAF will be provided during the January through June period, except when it is recommended through the VA governance process that shifting the timing of a portion of this contribution would be in the best interest of the fishery. Recommendations by the VA governance group require approval from the following agencies: National Marine Fisheries Service, California Department of Fish and Wildlife, and the State Water Board.
13	Contingent on funding groundwater substitution infrastructure to be completed by a subsequent year. These flows are included in the Year 1 subtotal.
14	EBMUD will operate to the tributary flows proposed in Appendix A5 of the Memorandum of Understanding dated March 1, 2019 ("Mokelumne River Proposal" or "2019 MRP"). Modeled flows in the 2019 MRP were above the existing requirements in EBMUD's D-1641/Joint Settlement Agreement (JSA) year types. EBMUD will present modeling, consistent with the VA flow accounting procedures, to demonstrate average long-term contribution of new flows from the Mokelumne, and if a shortfall is determined relative to the flows stated in modified Table 1a above for a given Sacramento River index year type EBMUD will commit to funding the purchase of any remaining volume difference when that Sacramento year type occurs during the 8-year term of the agreement. The VA Parties will endeavor to achieve fair and equitable pricing for all VA water purchases.
15	Consistent with the safe yield of the Putah Creek Accord (2000).
16	If, in any year, this level of Exporter contribution would reduce supplies that would otherwise be provided to Exporters to protect M&I Public Health and Safety, then the Exporter contribution will be reduced to avoid reduction of M&I Public Health and Safety water, consistent with operations contemplated in D-1641 and the biological opinions for the coordinated operations of the CVP and SWP to protect health and safety water supplies.
17	The VA's governance program will be used to determine the use of available funding to provide additional outflow in AN, BN, or W years. If DWR is called upon to provide the water by foregoing SWP exports, such call will be handled through a separate agreement between DWR and its contractors.

18

EBMUD commits to coordinating and prioritizing possible water purchases from the Mokelumne River system to the extent feasible and practical and acceptable to EBMUD. And, consistent with footnote 12 of Appendix 1 Flow Tables, Table 1a: *The VA's governance program will be used to determine the use of available funding to provide additional outflow in AN, BN, or W years. If DWR is called upon to provide the water by foregoing SWP exports, such call will be handled through a separate agreement between DWR and its contractors.*

19

State to permanently acquire 65TAF of water in all water year types to contribute to meeting the flow targets specified in row 27 of this table. After applying this 65TAF in all water years a gap of 43TAF will persist in D years and a gap of 58TAF will persist in W years; however, there will be a surplus of 56TAF in BN years and a surplus of 13TAF in AN years. D and W year gaps to filled by redistributing a portion of the PWA water purchase contribution from BN and AN years, and through additional State water purchases in W years.

20

If flows are not obtained through this source, the equivalent volume would be obtained at market price or otherwise obtained through other mechanisms.

21

State funding to be secured, and projects to be phased-in, by Year 8.

**Appendix 2.**  
**SUMMARY OF HABITAT RESTORATION MEASURES IN HEALTHY RIVERS**  
**AND LANDSCAPES PROGRAM**

**Appendix 2.<sup>1</sup>**  
**Minimum Additive Contributions to Habitat Restoration**

Area	Total Acres <sup>2</sup>
<b>Tuolumne<sup>3</sup></b>	75,000 tons of new gravel between river mile (RM 52 and RM 39 and approximately 25,000 tons of new gravel between RM 39 and RM 24.5 to create additional spawning/rearing habitat.  77 acres of newly constructed rearing/floodplain habitat which will be inundated at the proposed Tuolumne VA flow.
<b>Sacramento Basin</b>	
Sacramento	137.5 (instream), 113.5 (spawning)
Sutter Bypass, Butte Sink, and Colusa Basin	20,000 (floodplain), <sup>4</sup> 20,000 (fish food production) <sup>5</sup> <i>Initial Targets per funding and permitting</i>
Feather	15 (spawning), 5.25 (instream), 1,655 (floodplain) <sup>6</sup>
Yuba <sup>7</sup>	50 (instream), 100 (floodplain)
American	25 (spawning), 75 (rearing)
Mokelumne	1 (instream), 25 (floodplain)
Putah	1.4 (spawning)
<b>North Delta Arc and Suisun Marsh</b>	5,227.5 <sup>8</sup>
<b>Notes for Appendix 2:</b>	
<sup>1</sup> To expedite the completion of these projects, the State will commit to establish a new, multi-disciplinary restoration unit, with authority to coordinate and work collaboratively to obtain all permits required to implement the restoration activities. The unit will track and permit these projects and seek to: (1) encourage coordination between and among state and federal agencies, (2) avoid repetitive steps in the permitting process, (3) avoid conflicting conditions of approval and permit terms, and (4) provide an expedited path to elevate and resolve permitting challenges.	
<sup>2</sup> This column summarizes the habitat restoration commitments proposed in the VA Program.	
<sup>3</sup> Tuolumne Parties will work to define the habitat projects below in collaboration with the California Department of Fish and Wildlife – that were drawn from the prior 15-year VA habitat list – that will be funded by the Tuolumne Parties and implemented, subject to and depending on obtaining applicable requirements for project-specific environmental review or regulatory approval, within the 8-year term of the agreement:	

REF	PROJECT NAME	CAPITAL COST	O&M COST
1	Riffle A2 Rehabilitation	\$0.6 M	\$0.13 M
2	Riffle A3 Rehabilitation	\$0.8 M	\$0.13 M
3	Riffles 3A and 3B	\$3.2 M	\$0.13 M
4	Gravel Cleaning	\$1.2 M	\$2.85 M
5	Lower Tuolumne River Habitat Improvement Program	\$19 M	\$7.5 M
6	Riffle A5	\$1.5 M	\$0.13 M
7	Riffle A6	\$1.8 M	\$0.13 M
8	Basso Pool	\$2.2 M	\$0.13 M
9	Large Woody Debris	\$3.7 M	\$0.3 M
10	Infiltration Galleries	\$13 M	\$0.6 M
11	Riffle A3/A4 Gravel Augmentation	\$0.6 M	\$0.13 M
12	Fish Counting and Barrier Weir	\$12 M	\$1.2 M
13	Predator Control	\$0.2 M	\$1.0 M
14	Reduce Redd Superimposition (seasonal weir)	\$4.2 M	\$0.2 M
15	Tuolumne Partnership Advisory Committee	\$0.1 M	\$2.9 M
	<b>TOTAL</b>	<b>\$64.10</b>	<b>\$17.46</b>

4

Floodplain habitat will be generated via Tisdale Weir and other modifications. Subject to analysis showing that acreage meets suitability criteria.

5

Subject to analysis of effectiveness. Water will be pumped onto rice fields, held for a period of time to allow fish food production (e.g., zooplankton), and then discharged to the river for the benefit of native fishes downstream.

6

This consists of added instream habitat complexity and side-channel improvements.

7

This constructed floodplain will be activated at 2,000 cfs.

8

This will be tidal wetland and associated floodplain habitats



**Appendix 3.**  
**DESIGNATED REPRESENTATIVES OF THE PARTIES**

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**Exhibit A.**  
**Proposed Amendments to Bay-Delta Plan**  
**Program of Implementation**

**Exhibit A.**  
**SUPPORTED AMENDMENTS TO THE BAY-DELTA PLAN**

**March 29, 2024 Draft**

**1. New Water Quality Objective.** The Parties support Final Action that adds the following to Bay-Delta Plan Chapter III, as a new water quality objective:

“Maintain water quality conditions, including flow conditions in and from tributaries and into the Delta, together with other measures in the watershed, sufficient to support and maintain the natural production of viable native fish populations. Conditions and measures that reasonably contribute toward maintaining viable native fish populations include, but may not be limited to, (1) flows that support native fish species, including the relative magnitude, duration, timing, temperature, and spatial extent of flows, and (2) conditions within water bodies that enhance spawning, rearing, growth, and migration in order to contribute to improved viability. Indicators of viability include population abundance, spatial extent, distribution, structure, genetic and life history diversity, and productivity.\* Flows provided to meet this objective shall be managed in a manner to avoid causing significant adverse impacts to fish and wildlife beneficial uses at other times of the year.

\* The actions the State Water Board and other agencies expect to take to implement this objective are described in section [insert number] of this Plan’s Program of Implementation.”

**2. Procedures for Renewal, Modification, and Extension.** The Parties support Final Action that amends the Bay-Delta Plan Chapter IV, Program of Implementation, to include the following procedures related to renewal, modification, and extension of the Healthy Rivers and Landscapes Program.

**2.1. “Information.** The State Water Board will consider the following information with respect to the Healthy Rivers and Landscapes Program:

- A. Science Program’s synthesis of the most current science and analyses of the effects of the implementation of the Healthy Rivers and Landscapes Program;
- B. Past, present, and probable future beneficial uses of water;
- C. Environmental characteristics of the Bay-Delta watershed, including the quality of water available thereto;

- D. Water quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the Bay-Delta watershed; and
- E. Economic considerations.

**2.2. Procedures.** In Year 6, the State Water Board will initiate the process to evaluate and determine the implementation pathway for Parties to the Healthy Rivers and Landscapes Program after Year 8. At Year 8, the State Water Board will consider potential amendments to the Program of Implementation under the green - yellow - red structure described below, which will be informed by the consideration of the scientific analysis and information submitted pursuant to [this Exhibit A Section 2.2]. If under the “red” option below, the Parties may present new agreements to fulfill the purpose stated in Section 1, or the State Water Board will begin implementing the Bay Delta Plan through the additional pathway described in Global Agreement Section 5.3.

- A. In Year 6, the State Water Board will issue a notice to initiate the process. It will hold a public informational workshop, at which time the Parties will present on their second Triennial Reports and Strategic Plan for Years 6-9. Based on these reports and the information gathered by the Science and Technical Committee, the Parties, through the Systemwide Governance Committee, will recommend to the State Water Board whether the Healthy Rivers and Landscapes Program should continue for another term with limited modification or if more significant changes to the VA terms are needed. The State Water Board will consider the Systemwide Governance Committee’s recommendation and all public comments on the progress of implementation of the Healthy Rivers and Landscapes Program, technical information, and the implementation pathway in Year 8.
- B. Following the workshop and after consideration of all comments, the State Water Board will distribute a draft proposed pathway to be implemented for the Parties to the Healthy Rivers and Landscapes Program after Year 8. In summary form, it will select from three options:
  - (i). **Green** – The Healthy Rivers and Landscapes Program is substantially achieving the required metrics as described in the Science Plan; and the ecological outcomes analysis

described there supports the conclusion that continuing the agreements, together with other actions in the Bay-Delta Plan, will result in attainment of the narrative objectives. If so, the Parties will continue implementation of the Healthy Rivers and Landscapes Program without any substantial modification in terms, except for necessary changes to provide for funding and other measures necessary to continue the Global, Implementation, and Enforcement Agreements. Necessary updates to the terms of the agreements (if any) will be determined and the process to renew the agreements will be initiated so that renewed agreements are in place at Year 9.

(ii). **Yellow** – The Healthy Rivers and Landscapes Program is meeting a significant number of metrics as described in the Science Plan; and the ecological outcomes analysis as described there supports the conclusion that continuing the agreements, together with other actions in the Bay-Delta Plan, will result in attainment of the narrative objectives, but some modifications are needed. If so, the Parties will continue implementation with substantive modification in terms. The process to modify the terms of the agreements to address deficiencies will be initiated. Concurrently, the State Water Board will consider alternative means to address deficiencies in achieving the metrics as described in the Science Plan.

(iii). **Red** – A new pathway is required because the Healthy Rivers and Landscapes Program is not achieving required metrics as described in the Science Plan; and the ecological outcomes analysis as described there does not support the conclusion that continuing the agreements, together with other actions in the Bay-Delta Plan, will result in attainment of the narrative objectives. New agreements will be negotiated, or the Bay-Delta Plan's Program of Implementation will be implemented through the State Water Board's regulatory authorities and the Parties reserve all rights to fully participate in the related regulatory processes, and potential remedies related thereto.

C. Factors the State Water Board will consider in selecting one of the three options from subsection (B), will include, but not necessarily be limited to:

- (i). Whether permits required for implementation were pursued and available within a reasonable timeframe.
  - (ii). Whether Parties timely and fully performed flow asset commitments in the Healthy Rivers and Landscapes Program.
  - (iii). Whether the Triennial Reports analyze progress across the Delta watershed, provide considerations for updating the Strategic Plan, include considerations for updating the VA flow and non-flow measures, and are timely submitted to the State Water Board to inform its triennial review process.
  - (iv). Whether the guidance as set forth in the Strategic Plan for the initiation and construction of habitat projects has been achieved.
  - (v). Whether the Healthy Rivers and Landscapes Program was fully funded through Year 8.
  - (vi). Whether the Triennial Reports or other sources of reliable information indicate that factors outside of the Healthy Rivers and Landscapes Program are impairing the relevant fish species;
  - (vii). Whether flows have been adequately protected pursuant to Global Agreement Section 6.3; and
  - (viii). Whether additional funds are available to continue the Healthy Rivers and Landscapes Program.
- D. Prior to selecting one of the three options from subsection (B), the State Water Board will:
- (i). Hold appropriate hearings to review and receive input on the scientific reports, analysis, information, and data generated by the Science Program and other sources and receive recommendations on the anticipated effectiveness of continuing or modifying the agreements or implementing the regulatory pathway described in Global Agreement Section 5.3; and

- (ii). Conduct a Delta Independent Science Board review to receive input and recommendations on the scientific rationale for continuing or modifying the Healthy Rivers and Landscapes Program.
- E. In Year 8, the Parties will submit their final Annual Report. The State Water Board will distribute any proposed amendments to the Bay-Delta Plan's Program of Implementation, which will be informed by the consideration of factors in Global Agreement Section 12.6(C), to be implemented after Year 8.
- F. If, by the end of Year 8, no new agreements have been adopted or State Water Board has not yet assigned responsibility for implementing the Bay-Delta Plan through a regulatory pathway described in amendments to that Bay-Delta Plan's Program of Implementation, the original agreements (and their terms concerning water- user funding for flow contributions) will continue, but unless otherwise negotiated, those obligations will not extend beyond 15 years.
- G. In the Enforcement Agreements, the Parties and the State Water Board have established a procedure for timely and effective referral of disputes that arise during any update to the Bay-Delta Plan's Program of Implementation described herein. The procedure will promptly involve executive leadership (across the Parties) in resolution of disputes that, if unresolved, would involve significant risk of delay in final action.
- H. The Enforcement Agreements authorize an extension of the agreements beyond Year 8 to continue until new agreements are adopted or the State Water Board adopts a pathway as described in [this Exhibit A section 2.2(B)]. Parties that are water agencies will reserve remedies specified in these agreements."

**3. Procedures for Protection of Flows.** The Parties support Final Action that amends the Bay-Delta Plan Chapter IV, Program of Implementation, to include procedures for protection of flows that are Additional Contributions (as described in Global Agreement section 4.4(A)), incorporating the following considerations.

- "A. The State Water Board will rely on various authorities to protect flows generated by the 2024 update to the Bay-Delta Plan. Specific protections, whether arising from regulatory actions of the State

Water Board or as part of Government Code section 11415.60 agreements will include provisions specifying that water contributed under the Healthy Rivers and Landscapes Program:

- (i) constitutes beneficial use of that water, consistent with Water Code section 1243;
- (ii) does not constitute non-use of the water;
- (iii) is not abandoned water available for appropriation; and
- (iv) will be protected from unauthorized diversions without being backstopped by the SWP, CVP, or both.

B. Consistent with Global Agreement Exhibit A, the Parties prepared and submitted to the State Water Board procedures to assure that such flows are Additional Contributions, including methods for identifying when and where the flows are in the system. As part of that submission, the Parties identified methods for protecting flows that are Additional Contributions, to the furthest downstream location that can be supported by the methodology.

C. Before final action on the 2024 Bay-Delta Plan Update, the State Water Board consulted with the Parties to incorporate flow protection measures into this Program of Implementation. The enforcement mechanisms against unauthorized diversion of flows that are Additional Contributions, depend on the protection methods identified, and include, but are not limited to:

- (i) new permit conditions on junior water rights;
- (ii) enforcement against Parties pursuant to Enforcement Agreements, including where applicable Government Code section 11415.60 agreements or memoranda of understanding;
- (iii) new regulations, and
- (iv) the exercise of other, existing State Water Board enforcement authorities.”

4. **Procedures to Address Redirected Impacts.** The Parties support Final Action that amends the Bay-Delta Plan, Chapter IV, Program of Implementation to include the



procedures to address redirected impacts of flow measures as stated in Implementation Agreements.

**5. Procedures to Assure that Flows are Additional Contributions.** The Parties support Final Action that amends the Bay-Delta Plan Chapter IV, Program of Implementation, to include the procedures stated in Implementation Agreements to assure that flows are Additional Contributions.

**6. Procedures to Assure Implementation of Commitments by Federal and State Agencies (To the Extent Not Addressed in Enforcement Agreements).** The Parties support Final Action that amends the Bay-Delta Plan Chapter IV, Program of Implementation, to include the following procedures related to enforcement of VA obligations.

“The State Board will consider approval of Government Code section 11415.60 agreements, in lieu of an adjudicative water right proceeding, to implement flow, habitat, and other commitments of parties to the Healthy Rivers and Landscapes Program. To the extent that USBR water right permits or licenses are modified to implement measures therein, the State Water Board will use its ordinary enforcement procedures under the California Water Code, consistent with Section 8 of the Reclamation Act. To the extent commitments of other federal or state agency Parties are not otherwise memorialized in a Government Code section 11415.60 agreement, the State Water Board will incorporate such commitments in memoranda of understanding.”

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# **Exhibit B.**

## **Implementing Agreements**

**Exhibit B.**  
**IMPLEMENTING AGREEMENTS**

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# **Exhibit B1. American River**

# **IMPLEMENTATION AGREEMENT FOR THE HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE AMERICAN RIVER**

**April 5, 2024 Draft**

This “Implementation Agreement for the Healthy Rivers and Landscapes Program in the American River” is entered into by the California Department of Water Resources and the American River Water Providers listed in Appendix 2 for the purpose of specifying responsibilities for implementation of the flow, habitat restoration, and other measures stated in Appendix 1 hereto.

## **RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency

in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. The American River Water Providers intend that they will implement the flow, habitat restoration and other measures as specified in Appendix 1.

### **TERMS OF AGREEMENT**

1. **Purpose.** This Implementation Agreement states the specific responsibilities of the American River Water Providers for implementation of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for the American River, as specified in Appendix 1.

1.1. **Settlement of Disputed Issues.** This Agreement resolves disputed issues related to the Bay-Delta Plan and, specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

1.2. **Timeliness.** The Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

1.3. **Intended Implementation of Terms.** The American River Water Providers intend to implement this Agreement’s terms in cooperation with Reclamation, which will release water to the LAR to benefit environmental resources in the LAR and the Bay-Delta consistent with Flow Contributions 1 through 4.

2. **Definitions.** The Global Agreement states definitions applicable to all Voluntary Agreements. This Implementation Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

2.1. **2019 Planning Agreement** means: the February 27, 2019 *Planning Agreement Proposing Project Description and Procedures for the Finalization Of Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan*.

**2.2. Agreement** means: this Implementation Agreement for the Healthy Rivers and Landscapes Program.

**2.3. American River Group or ARG** means: the group of agencies that was established in 1996 and includes Reclamation, CDFW, NMFS, the U.S. Fish & Wildlife Service and the Water Forum, which the City-County Office of Metropolitan Water Planning of the City of Sacramento.

**2.4. American River Water Providers** means: those water suppliers listed in Appendix 2.

**2.5. Applicable Law** means: state or federal law that (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Parties contemplated by this Agreement.

**2.6. Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018 as amended by [date Final Action]).

**2.7. CDFW** means: the California Department of Fish and Wildlife.

**2.8. Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.9. Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in the applicable Enforcement Agreement.

**2.10. Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as defined below.

**2.11. Draft Strategic Plan** means: the Strategic Plan that is Exhibit D to the Global Agreement.

**2.12. DWR or CDWR** means: the California Department of Water Resources.

**2.13. Enforcement Agreement** means: the agreements signed by non-federal Parties pursuant to Government Code section 11415.60, or with respect to federal Parties,

a Government Code section 11415.60 agreement to implement any HR&L Program-related modifications to water rights held by a federal entity and a memorandum of understanding to implement other federal HR&L Program commitments, and approved by the State Water Board, to provide regulatory authority for enforcement of flow, habitat restoration and other measures in the HR&L Program.

**2.14. Flow Contributions 1 through 4** means: the four different types of flow contributions to the HR&L Program that the American River Water Providers will make, as defined in Sections 1.6.1 through 1.6.3 of Appendix 1.

**2.15. Funding Agreement** means: the *Funding Agreement Between the State of California (Department of Water Resources) and the Regional Water Authority – Voluntary Agreement Early Implementation for the American River, July 21, 2023*.

**2.16. Global Agreement** means: the “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” The Global Agreement states the overall structure and content of the HR&L Program, along with the obligations of the Parties to support implementation of the HR&L Program.

**2.17. Habitat Team** means: the group of agencies and the Water Forum described in Section 4.2.2 of Appendix 1.

**2.18. Healthy Rivers and Landscapes Program, HR&LP or HR&L Program** (also known as the Voluntary Agreements Program or VA Program) means: the Voluntary Agreement Program as defined in Section 2.40, below.

**2.19. Healthy Rivers and Landscapes Agreements or HR&L Agreements** (also known as the Voluntary Agreements or VAs) means: the Voluntary Agreements as defined in Section 2.31, below.

**2.20. Implementation Agreements** means: this and other agreements specific to water sources, committing to implement flow, habitat restoration, and other measures in the HR&L Program. This Implementation Agreement states the measures for the HR&L Program in the American River.

**2.21. Implementing Entities** means: American River Water Providers and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementation Agreements.

**2.22. LAR** means: the American River downstream of Nimbus Dam and upstream of the American River’s confluence with the Sacramento River.



**2.23. Modified Flow Management Standard or MFMS** means; the Modified Flow Management Standard concerning management of the LAR developed by the Water Forum in 2017 and as included in the applicable Record of Decision issued by Reclamation accepting any biological opinions for the long-term operation of the Central Valley Project and State Water Project, and through the March 29, 2021 *Memorandum of Understanding between the United States of America Department of the Interior, Bureau of Reclamation and Sacramento Water Forum for Coordination of Communication and Information-Sharing Activities Related to Lower American River Operations*.

**2.24. North American Subbasin** means: the groundwater subbasin bearing the DWR Bulletin 118 basin number 5-021.64.

**2.25. NMFS** means: the National Marine Fisheries Service.

**2.26. Parties** means, for purposes of the body of this Implementation Agreement: signatories to the Global Agreement. Parties who sign an Implementation Agreement are called Implementing Entities in this context. Parties who sign an Enforcement Agreement are called Responsible Parties in that context.

**2.27. Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, have amended this program to authorize implementation of the HR&L Program.

**2.28. Reclamation** means: the United States Bureau of Reclamation.

**2.29. Regional Water Authority** means: the joint powers authority that encompasses public water suppliers in the Sacramento metropolitan region and in which many of the American River Water Providers are members.

**2.30. Responsible Parties** means: the Parties who sign Enforcement Agreements. Such Parties who are Implementing Entities for a given water source are called “Responsible Parties” for that water source.

**2.31. Sacramento Regional Water Bank or SRWB** means: a currently proposed operation involving the Regional Water Authority and certain American River Water Providers in which those agencies would store, actively or in lieu, for later use water in the aquifers within the North and South American Subbasin.

**2.32. South American Subbasin** means: the groundwater subbasin bearing the DWR Bulletin 118 basin number 5-021.65.

**2.33. State Water Board or SWRCB** means: the State Water Resources Control Board.

**2.34. State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by DWR, for water supply, power, flood control and other purposes.

**2.35. Structural Habitat and Science Fund** means: the fund with this name established under the Global Agreement.

**2.36. TAF** means: thousand acre-feet.

**2.37. USFWS** means: the United States Fish and Wildlife Service.

**2.38. VA Memorandum of Understanding and Term Sheet or VA MOU or 2022 MOU** means: the March 29, 2022, Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions, between VA Parties' signatories thereto, and the attached Term Sheet, including subsequent amendments.

**2.39. Voluntary Agreement Program** (also known as the Healthy Rivers and Landscapes Program or HR&L Program) means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – G. This Implementation Agreement is Exhibit B.\_\_\_\_ thereto.

**2.40. Voluntary Agreements or VAs** (also known as the Healthy Rivers and Landscapes Agreements or HR&L Agreements) means: the Global Agreement, the Implementation Agreements, and the Enforcement Agreements.

**2.41. Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

**2.42. Water Year Type or WYT** means: the water year type based on the Sacramento Valley Index as published in DWR Bulletin 120.

### **3. Responsibilities of American River Implementing Entities.**

**3.1. Implementation.** Each of the Parties, including each of the American River Water Providers, will implement the obligations assigned to it in Appendix 1.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein.

- B. If an obligation is assigned to multiple Implementing Entities under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Implementing Entity, other such entities will not be responsible for performance.
- C. This Agreement does not create any remedy for non-performance by an Implementing Entity. The corresponding American River Enforcement Agreement, Exhibit C.1, creates and specifies the remedies that run solely to Responsible Parties.

**3.2. Progress Reports and Inspections.** The American River Water Providers, or their designee (which may be the Water Forum), will prepare Annual and Triennial Reports with respect to implementation. The reports will be provided to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

**4. Governance.** The American River Water Providers agree to the governance structure for the American River as stated in Appendix 1 hereto. The American River Water Providers will undertake its responsibilities for implementation, reporting, and other decision-making as stated in Appendix 1 and Governance Program, Exhibit D section 1.2.3.

**5. Decision-making and Dispute Resolution Procedures.** The American River Water Providers agree to the decision-making procedures stated in Appendix 1 and Governance Program, Exhibit D section 1.2.3, for the purpose of implementing this Agreement.

**6. Effective Date and Term.**

**6.1.** This Agreement takes effect when signed by the American River Water Providers and will be binding when signed.

**6.2.** The term of the Agreement will be concurrent with the term of the Global Agreement. As to any American River Water Provider, this Agreement will terminate upon that Provider's withdrawal from the Global Agreement.

**7. No Admission of Liability.** The Parties enter into this Agreement voluntarily. The Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement, other than for purposes of enforcing this Agreement. The American River Water Providers do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or public trust doctrine, for the purpose of providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit

that the enforcement authorities provided in the corresponding American River Enforcement Agreement would be available against it with respect to the Covered Water Quality Objectives.

**8. Compliance with Applicable Laws.** Each Party represents that it believes that this Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

**9. Reservations.**

**9.1. Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement will be interpreted to require any Party to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

**9.2. Availability of Funding.** Funding by DWR is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by DWR except as otherwise permitted by Applicable Law.

**9.3. Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement, including the execution of this Agreement.

**10. Notices.** Any Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of the American River Water Providers' authorized representatives as of the Effective Date is attached as Appendix 3 hereto. Each such entity will provide to Regional Water Authority Notice of any change in the authorized representatives designated in Appendix 3. Regional Water Authority will maintain the current distribution list of such representatives and will provide prompt notice of any changes in that distribution list to the entity that manages the HR&L Program's list of involved entities.

**11. Attorney's Fees and Costs.** Each Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Agreement.

12. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

13. **Construction and Interpretation.** This Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Agreement.

14. **Amendment.** This Agreement may only be amended in writing by all Parties still in existence, including any successors or assigns. A Party may provide Notice of a proposed amendment at any time. The Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

15. **Addition of New Parties.** An entity may become a Party by signing an amendment to this Agreement, signed by all current Parties hereto, and the other HR&L Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

16. **Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

17. **No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto or Covered Entities specified in Appendix 2, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

18. **Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

19. **Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, the Parties agree that the remainder of the Agreement will not be affected thereby. The Parties hereto will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and

enforceable and carries out the Parties' intention to the greatest lawful extent under this Agreement.

**20. Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**21. Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**[Signature blocks for DWR and American River Water Providers]**

**IMPLEMENTATION AGREEMENT FOR HEALTHY RIVERS AND LANDSCAPES  
(HR&LP) PROGRAM BETWEEN THE CALIFORNIA DEPARTMENT OF WATER  
RESOURCES AND AMERICAN RIVER WATER PROVIDERS**

**APRIL 5, 2024**

**APPENDICES**

- 1. AMERICAN RIVER HR&LP**
  - a. American River HR&LP Flow Contribution
  - b. American River HR&LP Non-Flow Contribution
  - c. American River HR&LP Funding
  - d. American River HR&LP Science, Governance, and Adaptive Management
- 2. IMPLEMENTING PARTIES**
- 3. CONTACT INFORMATION**
- 4. FUNDING AGREEMENT BETWEEN REGIONAL WATER  
AUTHORITY AND STATE OF CALIFORNIA**

## APPENDIX 1

### AMERICAN RIVER HR&LP

#### 1. American River HR&LP Flow Contribution

##### Implementing Agencies: American River Water Providers

**1.1** The entities listed in Appendix 2 are the parties to this Implementing Agreement (American River Water Providers), who are contributing environmental flows through the components set forth in this Appendix. The American River HR&LP reflects the American River Water Providers' proposal based on the February 27, 2019 *Planning Agreement Proposing Project Description and Procedures for the Finalization Of Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan* (2019 Planning Agreement) as well as the March 29, 2022 *Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions* (2022 MOU). Reclamation will, through a separate agreement with the American River Water Providers, operate Folsom Reservoir in accordance with the timing of flows discussed in Section 1.6. Reclamation will also provide support, where appropriate, to restoration actions in the Lower American River.

**1.1.1** The 2022 MOU, *Appendix 1 - Flow Tables* provides *Table 1a: New Contributions to Tributary Flow and Delta Outflows in Thousand Acre Feet*. A condensed version of this table, specific to the American River, is provided here. The flow contributions provided in this table will be met through the terms provided in Section 1 of this Implementing Agreement.

Source	C (15%)	D (22%)	BN (17%)	AN (14%)	W (32%)
<b>Sacramento River Basin</b>					
American <sup>8</sup>	30	40	10	10	0
<b>Year 1 New Outflow Above Baseline</b>	<b>30</b>	<b>40</b>	<b>10</b>	<b>10</b>	<b>0</b>

<sup>8</sup> Contingent on funding groundwater substitution infrastructure to be completed by a subsequent year. These flows are included in the Year 1 subtotal.

Subject to Section 4 of this agreement, and per the *Funding Agreement Between the State of California (Department of Water Resources) and the Regional Water Authority – Voluntary Agreement Early Implementation for the American River, July 21, 2023* (Appendix 4), the Dry (D) and Critical (C) year contributions of 30 TAF would be provided as soon as the year following adoption of the HR&LP by the State Water Resources Control Board (SWRCB). If the SWRCB does not approve or accept the HR&LP until after May 1, 2025, then the American River Water Providers providing groundwater replenishment shall start doing so as soon as January 1 following the SWRCB's approval or acceptance of the HR&LP. Upstream reservoir operation replenishment of HR&LP flows will be made available after adoption of the HR&LP by the SWRCB, or if approved in January, as soon as that year. If flows are made available in one or more years as provided through the funding agreement discussed in Section 3.2 below, those flows will be credited toward the American River Water Providers' flow contributions under the HR&LP. That credit will be applied per year, and based on the



number of years flows are provided under that funding agreement until such time as the SWRCB adopts the program.

In general, and subject to all other terms of this Agreement, the American River Water Providers will make the flow contributions summarized in the above table as follows: (A) Flow Contribution 1 defined in Section 1.6.1 below will be 10 TAF from reservoir reoperation in up to a combined total of three Below Normal (BN) and Above Normal (AN) years; (B) Flow Contribution 2 defined in Section 1.6.2 below will be 10 TAF from groundwater substitution in up to a combined total of three C and D years; (C) Flow Contribution 3 defined in Section 1.6.3 below will be 20 TAF from groundwater substitution associated with the Sacramento Regional Water Bank in up to a combined total of three C and D years; and (D) In addition to Flow Contributions 1 through 3, Flow Contribution 4 defined in Section 1.6.4 below will be 10 TAF from reservoir reoperation or groundwater substitution in three D years. Depending on the resulting water year types over the eight-year term of the HRLP, there could be six call years. (Consistent with historical averages, two years of the 8-year program period are assumed to be W years; the American River Water Providers have not committed to provide increased flows in W years.)

The American River Water Providers have committed to providing flows (as set forth above) in three C or D years during the eight-year term of the HRLP. This three-year limit was determined based on the American River Water Providers' experience with hydrologic conditions in the watershed and the thresholds for groundwater and reservoir depletion. Should additional D or C years occur during the eight-year term of the HRLP (after the American River Water Providers have provided flows in three C or D years), the American River Water Providers will meet and confer with the California Department of Water Resources (DWR) and Reclamation in good faith to consider whether and to what extent any flows in additional D or C years over the HR&LP term could be made available, subject to principles including, but not limited to, the following:

- In agreeing to meet and confer, DWR, Reclamation, and the American River Water Providers do not commit to any particular outcome, obligation, or condition. DWR, Reclamation, and the American River Water Providers shall consider relevant circumstances at the time of the meet and confer;
- The American River Water Providers shall not be obligated to make any additional groundwater-based flow contribution in a D or C year immediately following three consecutive D or C years in which flows were provided;
- No additional groundwater-based flow contribution will be considered unless the applicable groundwater sustainability agency has determined that the additional groundwater pumping will be consistent with the terms of the applicable groundwater sustainability plan, as demonstrated through the reference operation identified for the flow accounting procedures;
- Quantities of potential groundwater provided to support outflow shall be determined based on then-current capabilities as provided by the American River Water Providers;
- No additional groundwater-based flow contribution will be considered if the flow contribution would substantially deplete cold water pool storage at

- Folsom Reservoir or have substantial impacts on native fish species or require Reclamation to alter substantially its intended operations of Folsom Reservoir;
- No American River Water Provider will be required to consider an additional groundwater-based flow contribution if that entity determines that such contribution would interfere with its ability to meet demands within its service area consistent with its adopted water shortage contingency plan, excluding demand reduction actions;
  - If, after the meet and confer session, the American River Water Providers, in coordination with DWR and Reclamation, determine that an additional D or C year groundwater-based flow contribution is feasible, such contribution is contingent on funding provided to the American River Water Providers for the actual costs of water production; and
  - No American River Water Provider shall be excluded from the meet and confer or any negotiations relating to the American River Water Provider's potential flow contribution.

**1.2** Each year, as further defined in *Section 4 – American River HRHR&LP Science, Governance, and Adaptive Management*, the American River Water Providers, in coordination with Reclamation will review the hydrologic conditions and make corresponding operational recommendations to the American River Group (ARG) as to whether flows could be made available in that particular water year<sup>1</sup>. If the American River Water Providers, in coordination with Reclamation, recommend that flows could be made available, then this recommendation will carry forward to the ARG who will meet and consider the flexibility of flow shaping and timing. options that will provide biological benefits additive to baseline conditions. The ARG will consider an assessment of biological benefits associated with a range of flow proposals prepared through feedback from the California Department of Fish and Wildlife (CDFW) and National Marine Fisheries Service (NMFS). Water will then be released by Reclamation in the March through May period, or within flexibility brackets identified in Table 1, or through recommendations provided by the ARG for moving flow to another time of year, from Folsom Reservoir to the Lower American River (LAR). The American River Water Providers then will replenish this water as further described in Section 1.6 below.

**1.3** As provided in Section 4, the biological benefits feedback provided by CDFW, NMFS, and the American River Group (ARG) will assist the American River Water Providers in determining the anticipated biological benefits and trade-offs from the shaping and timing of releases to the LAR as part of the HR&LP. The ARG was established in 1996 and is comprised of Reclamation, CDFW, NMFS, the U.S. Fish & Wildlife Service and the Water Forum<sup>2</sup>. The ARG meets at least monthly and more

<sup>1</sup> Water years are determined by the Sacramento River Index.

<sup>2</sup> Water Forum, the City County Office of Metropolitan Water Planning, is an administrative division of the City of Sacramento and the County of Sacramento. The Water Forum's work is implemented in accordance with the Water Forum Agreement (2000) and funded through local water purveyors and local government entities, as well as other local, state, and federal grants.

frequently as needed and is open to interested stakeholders. The ARG's functions are described in NMFS's *2019 Biological Opinion on the Coordinated Long-Term Operations of the Central Valley Project and State Water Project* (LTO BiOp).

**1.4** Notwithstanding the HR&LP, it is contemplated that Reclamation will continue to operate Folsom and Nimbus Dams to release flows to the LAR as specified by the; Modified Flow Management Standard (Water Forum, 2017) and as included in the applicable Record of Decision issued by Reclamation accepting any biological opinions for the long-term operation of the Central Valley Project and State Water Project, and through the March 29, 2021 Memorandum of Understanding between the United States of America Department of the Interior, Bureau of Reclamation and Sacramento Water Forum for Coordination of Communication and Information-Sharing Activities Related to Lower American River Operations<sup>3</sup> (Water Forum-Reclamation MOU). The stream flows required by the Minimum Release Requirements (MRR) range from 500 to 2,000 cubic feet-per-second (cfs), based on time of year and annual hydrology and will be adopted and implemented in all water years. As described in more detail below, as part of the HR&LP, the American River Water Providers will further add to the flows released from Folsom Reservoir in certain water year types through groundwater substitution, reservoir reoperation and groundwater banking. This water will be for the purpose of augmenting flows to the LAR in the March through May period of a year determined to need, and be eligible for, the release of flow from Folsom Reservoir, or a different period determined to be biologically preferable as outlined in Section 4.

**1.5** The American River Water Providers anticipate that Reclamation will continue to meet existing regulatory requirements as set forth in the 2019 LTO BiOps, or currently-governing regulatory requirements, including the need to meet water temperature targets.

**1.6** Subject to the process defined in Section 4, Reclamation will release water from Folsom Reservoir in the March through May period for outflow to the LAR, of a year in which flows are made available, which the American River Water Providers' Flow Contributions will later replenish, unless a different period is determined to be biologically preferable, as recommended by the ARG. Based on the American River Water Providers' decades of experience with the Lower American River, the flow assets being provided are likely to contribute to Reclamation's temperature management. These releases are subject to the following:

**1.6.1** Subject to funding from the HR&LP water purchase revolving fund (Water Fund) or public funding, and subject to the process identified in Section 4, American River Water Providers with reservoirs upstream of Folsom Reservoir will reoperate their reservoirs to collectively contribute a total of 10 TAF per year to augment LAR flows in Above Normal (AN) and Below Normal (BN) water years. Calls for this water, called Flow Contribution 1, may be made in a total of three AN

<sup>3</sup> The Water Forum-Reclamation MOU is in effect through March 2026 and will automatically renew for five years, unless terminated in writing by either party.

and BN water years during the eight-year term of the HR&LP. Reclamation will augment LAR flows in March-May by the amount of Flow Contribution 1 of applicable call years and reoperation by upstream reservoir operators will occur between March and September of the applicable call year to replenish water that Reclamation releases from Folsom Reservoir. Reclamation will release the volume of Flow Contribution 1 outside of the March-May period if such releases are determined to be biologically preferable through coordination with the American River Water Providers and recommendations from the ARG. [The American River Water Providers plan to discuss with state and federal agencies whether and to what extent refill criteria are appropriate for the in-basin uses contemplated by the HR&LP.]

**1.6.2** Subject to the process identified in Section 4, American River Water Providers who can pump groundwater, or arrange such pumping, will support Reclamation's augmentation of March-May LAR flows through the use of 10 TAF of groundwater substitution replenishment water in Critical (C) or Dry (D) water years as described in this section. This 10-TAF contribution is the American River Water Providers' Flow Contribution 2. Reclamation will release the volume of Flow Contribution 2 outside of the March-May period if such releases are determined to be biologically preferable through coordination with the American River Water Providers and recommendations from the ARG. The pertinent American River Water Providers will pump groundwater: (1) as early as March and be completed within 12 months following the date on which the call for water is made, to replenish water released from Folsom Reservoir by Reclamation; (2) from the North American or the South American Subbasin; and (3) consistent with the applicable groundwater sustainability plan. Calls for this water may be made in three C or D water years during the eight-year term of the HR&LP. The depletion rates, if any, will be determined by Reclamation and the DWR, in consultation with the American River Water Providers, based on local conditions and data developed by those American River Water Providers, or, absent a determination, based on technical conclusions. The total amount of Flow Contribution 2 will be 10 TAF regardless of calculated depletion, if any.

**1.6.3** Subject to the process identified in Section 4, American River Water Providers who can pump groundwater, or arrange such pumping, will support augmentation of March-May LAR flows up to an additional 20 TAF in C or D water years through groundwater substitution replenishment made possible through the Sacramento Regional Water Bank (SRWB). This is Flow Contribution 3. Reclamation may release the water in a different period from the March-May period if such releases are determined to be biologically preferable through coordination with the American River Water Providers and recommendations from ARG. The groundwater will be pumped: (1) as early as March and be completed within 12 months following that period to replenish water released from Folsom Reservoir by Reclamation; (2) from the North American or South American Subbasin; and (3) pursuant to the applicable groundwater sustainability plan. Calls for Flow Contribution 3 may be made in three C or D water years during the eight-year term of the HR&LP. The depletion rates, if any, will be determined by Reclamation and

DWR, in consultation with the American River Water Providers, based on local conditions and data developed by the American River Water Providers, or, absent a determination, based on technical conclusions. The total amount of Flow Contribution 3 will be 20 TAF regardless of calculated depletion, if any. The storage management and recharge of water in the SRWB is anticipated to result in minimal to no depletion.

**1.6.4** Subject to funding from the Water Fund or public funding, the American River Water Providers will support augmentation of LAR flows in the March-May period of up to an additional 10 TAF in up to three D years from: (1) upstream reservoir reoperation; (2) groundwater substitution replenishment by American River Water Providers who can pump groundwater or arrange such pumping; or (3) a combination of those sources. This is Flow Contribution 4. Reclamation may release the water in a different period than the March-May period if such releases are determined to be biologically preferable through coordination with the American River Water Providers and recommendations from the ARG. The sources of Flow Contribution 4 will depend on hydrology and related operations in immediately preceding water years. American River Water Providers' reservoir reoperations to support Flow Contribution 4 will be subject to the same terms as for reservoir reoperations associated with Flow Contribution 1 described above. Groundwater substitution replenishment to support this flow contribution will be subject to the same terms as for Flow Contributions 2 and 3 described above.

**1.7** As a default plan, and consistent with the Draft Strategic Plan, in call years, Reclamation will release water associated with the American River Water Providers' various Flow Contributions on the following schedule, in consideration of a range of flexibility, discussed in Table 1. This default plan shall maintain maximum flexibility to further intended biological benefits related to flow shape and timing, as recommended by the ARG and regulatory agencies.

**1.7.1** In AN, BN years: 5 TAF released in March and 5 TAF released in April. These releases will be replenished through Flow Contribution 1.

**1.7.2** In D years: 10 TAF released in March, 10 TAF released in April, and 10 TAF in May. These releases will be replenished from Flow Contributions 2 and 3.

**1.7.3** In D years: An additional 3.3 TAF released in March, 3.3 TAF released in April, and 3.3 TAF in May. These releases will be replenished through Flow Contribution 4, namely from upstream storage, groundwater substitution, or a combination of sources. As described in Section 4, if a D year is anticipated by the American River Water Providers in coordination with Reclamation, a determination of the source of replenishment water will be determined before Reclamation releases HR&LP flow.

**1.7.4** In C years: 15 TAF released in March and 15 TAF released in April. These releases will be replenished from Flow Contributions 2 and 3.

**1.8** Table 1 provides the default plan and flexibility bracket for the American River HR&LP flow measures:

**Table 1: Timing of HR&LP Flow Measures from American River water source.** *(Bolded numbers represent the default plan for HR&LP flow measures and numbers in parentheses represent the flexibility bracket for any given year. The American River does not have HR&LP flow measures in wet years.)*

<b>Water Year</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>
<b>Above Normal and Below Normal</b>	<b>50%</b> (33-66%)	<b>50%</b> (33-66%)	<b>0%</b> (0-33%)
<b>Dry</b>	<b>33.3%</b> (20-40%)	<b>33.3%</b> (20-40%)	<b>33.3%</b> (20-40%)
<b>Critical</b>	<b>50%</b> (33-66%)	<b>50%</b> (33-66%)	<b>0%</b> (0-33%)

**1.9** The default plan and flexibility bracket are consistent with science gathered on the American River and knowledge of suitable flow for outmigrating fish.

**1.10** Flow pulses for the HR&LP will potentially complement flows made consistent with the Modified Flow Management Standard (MFMS), which provides protections against redd dewatering via a minimum release requirement. Additionally, HR&LP flows could complement the MFMS's spring pulse flows from March 15 to April 15 to help provide an emigration cue before lower flow conditions and thermal warming later in the spring.

**1.11** In D and C years, there may be advantages to fish in shifting the timing of deployment of HR&LP flow measures from the March-May period to other seasons, such as holding water in Folsom Reservoir for cold water pool formation and maintenance and deploying water in fall for adult migration; or holding water in Folsom Reservoir through the following winter for temperature control. Keeping water in Folsom Reservoir over the winter will build a larger pool of cold water for the spring and following summer, particularly if there are consecutive dry years.

**1.12** Any deployment of water made available for any or all of Flow Contributions 1 through 4 outside of the flexibility bracket defined in Table 1 will be subject to SWRCB approval annually and will be considered on a case-by-case basis in coordination with the American River Water Providers, in coordination with Reclamation, and ARG, and in consideration of flows made through the MFMS.

## **2. American River HR&LP Non-Flow Contribution**

**Implementing Agencies: American River Water Providers, including Sacramento Water Forum**

**2.1** Subject to sufficient funding and the issuance of necessary permits, and following the process in Section 4, Reclamation and the American River Water Providers will, through funding, permitting support, technical expertise, or other means, work to implement an additional 25 acres of anadromous fish spawning habitat, and an additional 75 acres of rearing habitat, is created in the LAR at the most beneficial locations. To achieve the habitat enhancement commitments, American River Water Providers will, in cooperation and coordination with other American River Water Providers, pursue all available funding sources including State, federal, and grant sources and the issuance of all necessary permits and approvals. If the State of California secures public funding for the rearing contribution, the American River Water Providers will ensure its implementation, subject to any necessary participation by Reclamation and any necessary permitting. The baseline for this additional habitat is the physical conditions and regulatory requirements existing as of December 2018.

**2.2** Following execution of the March 1, 2019 Planning Agreement, and prior to the January 1, 2024 conclusion of the HR&LP Early Implementation Project period, the Water Forum's activities will have fulfilled a significant portion of the American River Water Providers' HR&LP habitat commitments by constructing 25 acres of spawning habitat and 26 acres of in-stream rearing habitat, which will be credited to the American River Water Providers' obligations under the HR&LP. These actions have been taken in good faith and are consistent with the understanding that implementing this additional habitat as soon as possible is critical to maximize its biological value. Funding for the early implementation actions has been through federal appropriations and State Proposition 68 early implementation funding sources.

**2.3** The Water Forum has a track record of successfully implementing habitat projects on the LAR as a result of federal and state support and the implementation of the Water Forum Agreement (2000). It is anticipated that the American River Water Providers will continue to rely on the Water Forum's ability to deliver habitat projects for the purposes of HR&LP implementation. The Water Forum's currently permitted combination spawning/rearing program sites consist of 10 separate implementation areas concentrated in the upper portion of the LAR. These spawning/rearing sites and their ongoing implementation and maintenance are planned to be used to fulfill a portion of the HR&LP habitat requirements.

**2.4** Design, permitting, and implementation of additional rearing-only sites in the LAR will be advanced during the HR&LP term and will be used to fulfill the remainder of the HR&LP habitat requirements. Habitat planned to be implemented or maintained during the HR&LP term includes spawning habitat and in-stream rearing habitat (side channels/grading/plantings).

**2.5** Table 2 presents the default implementation schedule for the American River Water Providers' habitat enhancement measures:

**Table 2: Default implementation schedule for non-flow measures on the Lower American River**

Description of Measures	Early Implementation (Dec 2018 -2024)	Years 1-3 <sup>1</sup> (2025 – 2027)	Years 4-6 <sup>1</sup> (2028 – 2031)	Years 7-8 <sup>1</sup> (2032-2033)	Total Acres for HR&LP <sup>2</sup>
Spawning <sup>3</sup>	25 [Additional acres have been constructed in these years above HR&LP requirements and are not included in the total quantities here]	[Additional acres will be constructed in these years above HR&LP requirements and are not included in the total quantities here]			25
Rearing: In-Channel <sup>4</sup>	26 (as of January 1, 2024)	13	23	13 [Additional acres will be constructed in these years above HR&LP requirements and are not included in the total quantities here]	75

<sup>1</sup> Assumes adequate funding exists at the time of implementation.

<sup>2</sup> Table includes all likely feasible acreage planned for implementation and/or maintenance under existing and ongoing habitat program, based on the current implementation cadence. More habitat may be constructed during the HR&LP timeframe above that required. The HR&LP commitment includes 75 acres of rearing and 25 acres of spawning habitat. Any acreages created during the HR&LP term above those obligations will not be subject to HR&LP governance or State Water Resources Control Board oversight.

<sup>3</sup> Includes implementation of current programmatically permitted and designed spawning/rearing combination sites and ongoing maintenance of spawning sites, to ensure continued habitat function at early implementation program (EIP) funded sites through the period of performance for the Voluntary Agreements.

<sup>4</sup> Includes implementation of current programmatically permitted rearing and spawning combination habitat sites and implementation of new rearing-only sites that have not yet been permitted and for which designs are currently at the conceptual level.



**2.6** Habitat projects in the LAR will be consistent with the Sacramento Water Forum's historic practices, which will be included in and subject to the habitat accounting procedures and methodology developed for the HR&LP.

**2.7** By the end of the HR&LP term and subject to appropriations, it is contemplated that Reclamation will make physical and operational improvements to the Nimbus fish hatchery to ensure sufficient production of healthy anadromous fish to meet Reclamation's mitigation spawning requirements associated with Folsom Dam and Reservoir.

### **3. American River HR&LP Funding**

#### **Implementing Agencies: American River Water Providers**

**3.1 Compensation to American River Water Providers.** Subject to Section 3.2, the American River Water Providers will be compensated for their Flow Contributions above as follows:

**3.1.1** For Flow Contributions 1 and 4, by payment from the Water Fund or another source for \$290 per acre-foot of contribution.

**3.1.2** For Flow Contribution 2, by funding of \$15 million from a public source for investments in groundwater supply infrastructure.

**3.1.3** For Flow Contribution 3, by funding \$40 million from a public source for SRWB enhancements.

**3.2** Through the *Funding Agreement Between the State of California (Department of Water Resources) and the Regional Water Authority – Voluntary Agreement Early Implementation for the American River, July 21, 2023*, the American River Water Providers acknowledge that Flow Contributions 2 and 3 are compensated for eight years from the date of approval of the HR&LP by the State Water Resources Control Board or beginning January 1, 2025, whichever is the earlier date. If the HR&LP extends beyond the anticipated eight-year term, additional public funding contributions would be needed for all of the American River Water Providers' continued Flow Contributions 1 through 4.

#### **3.3 Contributions from American River American River Water Providers.**

**3.3.1** Other than pre-1914 water-right water delivered under a Warren Act contract, the American River Water Providers will contribute, to the Water Fund or equivalent funding mechanism, \$5 per acre-foot (AF) for all water that Reclamation actually delivers to them under a CVP water-service contract, a CVP repayment contract or a Warren Act contract.

**3.3.2** In recognition of the American River Water Providers' longstanding and on-going financial commitments to regional water facilities to reduce reliance on the American River, the American River Water Providers may

make the \$5 per AF contribution described in Section 3.3.1 above by instead legally obligating themselves to make a contribution to support additional regional self-reliance. This fund is created to offset anticipated financial liabilities beyond those offset by public funding for HR&LP implementation. Regional self-reliance includes projects such as planning, permitting, studies, and the development of infrastructure to improve connections, improve regional flexibility between water agencies in the American River region, or other projects to further the region's resilience. This funding is anticipated to be dedicated within the eight-year time frame of the HR&LP and spent on self-reliance projects within three years following the conclusion of year eight. Disbursements from that fund will not be subject to federal or state budget processes or appropriations. The fund may be used for any legal purpose of the American River Water Providers. The American River Water Providers will annually account for all locally-collected and locally-disbursed funds, through the Regional Water Authority and provide an accounting to the HR&LP statewide governance program or appropriate entity.

**3.3.3** Under the 2019 Planning Agreement and the 2022 MOU, other than pre-1914 water-right water delivered under a Warren Act contract, the American River Water Providers will contribute, to the Water Fund or equivalent funding mechanism, an additional \$3 per acre-foot (AF) for all water that Reclamation actually delivers to them under a CVP water-service contract, a CVP repayment contract or a Warren Act contract for water that Reclamation delivers to them under their water-service and repayment contracts. The American River Water Providers collectively will pay this fee based on the total annual amount of actual deliveries under CVP water-service and repayment contracts. The American River Water Providers will allocate this total payment obligation among themselves by a separate agreement or other instrument.

**3.3.4** Contributions will be made in the amount of \$2 per AF for all surface water diverted for consumptive use in the service areas of the American River Water Providers to the Structural Habitat and Science Fund, or an equivalent funding mechanism that the American River Water Providers establish to fund habitat and science programs under the HR&LP program. To continue to support the Water Forum's efforts in the LAR, \$1.75 in benefits for each \$2 contribution by the American River Water Providers will stay within the American River region for the purpose of funding local science and habitat by the Regional Water Authority, with the remaining \$0.25 being directed to statewide science and habitat efforts. The American River Water Providers, through the Regional Water Authority, will account for all locally-collected and locally-disbursed funds. The Water Forum has, for many years, worked with regulatory agencies such as CDFW, NMFS, and Reclamation to build habitat, collect data, and monitor riverine conditions. Funding received from the HR&LP will continue these efforts and ongoing coordination with appropriate state and federal agencies.

**3.3.5** The American River Water Providers, in coordination with Reclamation, will seek federal funding for habitat contributions, though the American

River Water Providers understand that Reclamation's ability to commit funds is subject to applicable legal requirements including appropriations. The American River Water Providers and Reclamation may seek, and will support the acquisition of, other sources of public funding. American River Water Providers will continue to expend funding set aside for science and habitat actions for the Lower American River, as provided in Section 3.3.4, regardless of state, federal, or grant funding.

**3.3.6** The American River Water Providers' habitat contributions will be funded from the Structural Habitat Science Fund, from public or private sources, or from a combination of these sources and are contingent on that additional funding.

#### **4. American River HR&LP Science, Governance, and Adaptive Management**

**4.1** In addition to existing science, governance, and adaptive management processes already occurring at a tributary level, the American River Water Providers will consult with various state, local, and federal experts to make recommendations based on current and anticipated conditions.

**4.1.1** By mid-February of each year of the HR&LP term, the American River Water Providers, in coordination with Reclamation, will evaluate various potential scenarios for the forthcoming water year, which will include the review of current information and forecasts, and discussion of potential risks that could cause changes to planned flow releases or replenishment.

**4.1.2** If, by February 10, it appears to be an AN, BN, C, or D year type, the American River Water Providers, in coordination with Reclamation, will discuss whether one or more of Flow Contributions 1 through 4 could be made in that year. Depending on current conditions, whether calls of a certain year type were made in prior years, whether future potential years may have more favorable conditions for flow releases, initial Central Valley Project allocations, or other varying factors, the American River Water Providers, in coordination with Reclamation, may recommend calling one or more of Flow Contributions 1 through 4 that year or to hold off on providing such a call until a future year.

**4.1.3** The American River Water Providers will, within three business days of making a determination on whether flows will be made available, provide in writing to CDFW and NMFS their recommendations. CDFW and NMFS may provide, if desired, written feedback to the American River Water Providers within three business days of receipt of the recommendations. that provides an assessment of biological benefits associated with the American River Water Providers' recommendations. This feedback may inform but will not supersede or override the American River Water Providers' recommendations.

**4.1.4** If the American River Water Providers, in coordination with Reclamation, recommend that one or more of Flow Contributions 1 through 4 should be provided, then a general flow release schedule will be provided by

Reclamation, and the American River Water Providers will develop a replenishment schedule. These recommendations will be provided to the ARG to assess biological conditions in the LAR to determine optimum timing and volumes of releases, preferably within the default schedule. The ARG shall have one week in which to provide recommendations, in writing, for flow shape and timing to the American River Water Providers and to Reclamation.

**4.1.5** After the ARG meeting, CDFW and NMFS may provide their own written feedback, if desired, to the American River Water Providers and to Reclamation on flow shape and timing. and its biological benefits over a range of flow proposals. The American River Water Providers and Reclamation may use this feedback to inform their recommendations.

**4.1.6** By February 22, the American River Water Providers and Reclamation will then provide recommendations for the year's actions, from both the operational discussions and the ARG, to the statewide HR&LP Governance Program for informational purposes and discussion.

**4.2** In cooperation with state and federal agencies, the American River Water Providers and the Water Forum have implemented multiple science, governance and adaptive management measures for many years. These measures will continue during the HR&LP term in order to ensure appropriate management of American River flows, temperatures and habitat. These processes are as follows:

**4.2.1** The ARG will provide input on biological conditions if one or more of Flow Contributions 1 through 4 are called in a year. Subject to Reclamation's operational discretion and any applicable biological opinion terms, the ARG generally operates collaboratively and makes recommendations regarding, among other things, potential cold water management alternatives.

**4.2.2** The Habitat Team (formerly known as the Gravel Team) was formed in about 2006 and consists of: (a) the Water Forum, which convenes the group; (b) Reclamation; (c) CDFW; (d) National Marine Fisheries Service (NMFS); (e) U.S. Fish and Wildlife Service (USFWS); (f) the Sacramento Area Flood Control Agency (SAFCA); and (g) the Sacramento County Regional Parks Department. This team informs selection of habitat enhancement sites for gravel augmentation projects and consults on details of project designs and monitoring. Decisions are made by consensus and informed by recent monitoring information and best-available science. This team meets quarterly and will be involved in the selection of projects to implement Lower American River habitat contributions discussed above. This team uses existing bodies for public outreach, including the Lower American River Task Force and the Sacramento County Regional Parks and Recreation Commission but also conducts targeted outreach to specific stakeholder groups.

**4.2.3** The Water Forum and their technical team of hydrologists, fishery biologists and other experts provides technical support to all of the American River science and adaptive management groups through existing funding arrangements, primarily among the American River Water Providers.

## **APPENDIX 2**

### **IMPLEMENTING PARTIES**

The signatories to this agreement will be the American River Water Providers responsible for implementing the HR&LP. This Implementing Agreement is intended to provide regulatory coverage to all of the American River Water Providers listed in this appendix, as well as the holders of all water rights identified in the applicable exhibit or appendix of the HR&LP Enforcement Agreement.

The Parties, subject to their respective governing boards' approval, are anticipated to be the following entities:

Carmichael Water District  
Citrus Heights Water District  
City of Folsom  
City of Roseville  
City of Sacramento  
El Dorado Irrigation District  
Fair Oaks Water District  
Foresthill Public Utility District  
Georgetown Divide Public Utility District  
Golden State Water Company  
Orangevale Water Company  
Placer County Water Agency  
Sacramento County Water Agency  
Sacramento Suburban Water District  
San Juan Water District

**APPENDIX 3**

**CONTACT INFORMATION**

**APPENDIX 4**

**FUNDING AGREEMENT BETWEEN THE STATE OF CALIFORNIA (DEPARTMENT  
OF WATER RESOURCES) AND THE REGIONAL WATER AUTHORITY -  
VOLUNTARY AGREEMENT EARLY IMPLEMENTATION FOR THE AMERICAN  
RIVER**

**JULY 21, 2023**



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**Exhibit B2.**  
**Delta (CVP/SWP Export Reduction) and**  
**CCWD Contributions**

**IMPLEMENTATION AGREEMENT FOR THE HEALTHY RIVERS AND  
LANDSCAPES PROGRAM IN THE DELTA BY THE CALIFORNIA DEPARTMENT  
OF WATER RESOURCES, THE UNITED STATES BUREAU OF RECLAMATION  
AND CONTRA COSTA WATER DISTRICT**

**March 29, 2024 Draft**

This “Implementation Agreement for the Healthy Rivers and Landscapes Program in the Delta” is entered into by and between the California Department of Water Resources, the United States Bureau of Reclamation and Contra Costa Water District for the purpose of specifying responsibilities for implementation of the flow, habitat restoration, and other measures stated in Appendix 1 hereto.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-

wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. The Parties who sign this Implementation Agreement intend that they will implement the flow, habitat restoration and other measures as specified in Appendix 1.

## **TERMS OF AGREEMENT**

**1. Purpose.** This Implementation Agreement states the specific responsibilities of Implementing Entities for implementation of flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program for the Delta, as specified in Appendix 1.

**1.1. Settlement of Disputed Issues.** This Agreement resolves disputes issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

**1.2. Timeliness.** The Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscapes Agreements. This Implementation Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. 2023 BA** means: the Biological Assessment for the Long-Term Operation of the Central Valley Project and State Water Project, dated November 7, 2023.

**2.2. 2023 ITP Application** means: the Incidental Take Permit Application for Long-Term Operations of the State Water Project (2081-2023-054-00), dated December 1, 2023.

**2.3. Agreement** means: this Implementation Agreement for the Healthy Rivers and Landscapes Program.

**2.4. Applicable Law** means: state or federal law that (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Parties contemplated by this Agreement.

**2.5. Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018 as amended by [date Final Action]).

**2.6. CESA** means: the California Endangered Species Act.

- 2.7. CDFW** means: the California Department of Fish and Wildlife.
- 2.8. Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.
- 2.9. CCWD** means: the Contra Costa Water District.
- 2.10. Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in the applicable Enforcement Agreement.
- 2.11. Covered Water Quality Objectives** means: the objectives that the VA Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as defined below.
- 2.12. Dispute Resolution MOU** means: the Memorandum of Understanding between the California State Water Resources Control Board and Reclamation to establish “dispute resolution and other procedures.” (Insert date when signed/effective)
- 2.13. DWR** means: the California Department of Water Resources.
- 2.14. Enforcement Agreement** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any VA-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscape Program.
- 2.15. ESA** means: the Endangered Species Act as Amended by Public Law 97-304.
- 2.16. Global Agreement** means: the “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” The Global Agreement states the overall structure and content of the HR&L Program, along with the obligations of the Parties to support implementation of the HR&L Program.
- 2.17. Healthy Rivers and Landscapes Program or HR&L Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Implementation Agreement is Exhibit B.2 thereto.

**2.18. Implementation Agreements** means: this and other agreements specific to water sources, committing to implement flow, habitat restoration, and other measures in the HR&L Program. This Implementation Agreement states the measures for the HR&L Program in the Delta.

**2.19. Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementation Agreements. In this Agreement, the term refers to DWR, Reclamation and CCWD.

**2.20. LTO** means: the coordinated long term operations of the CVP and SWP.

**2.21. LTO BiOps** means: the Biological Opinions governing the long term operations of the CVP and SWP issued under the ESA by the National Oceanic and Atmospheric Administration's National Marine Fisheries Service and the United States Fish and Wildlife Service. (Date and identification numbers to be inserted upon completion of consultations related to the 2023 BA.)

**2.22. LTO ITP or ITP** means: the Incidental Take Permit governing the long term operation of the SWP issued by the California Department of Fish and Wildlife. (Date and permit number to be inserted upon completion of the consultation related to the 2023 ITP Application)

**2.23. Material Modification** means: a change in Applicable Law, or a new or amended regulatory action similar in character to pending actions described in Section 12.6(A), that imposes additional constraints on water supply operations, increases contributions of water for instream flow or Delta outflow, increases required habitat restoration, or increases contributions of funds, to an extent that materially impairs the bargained-for benefits of this Agreement. Section 14.2(A) establishes the criteria and procedures for response to a potential Material Modification.

**2.24. NMFS** means: the National Marine Fisheries Service.

**2.25. Parties** means: signatories to the Global Agreement. Parties who sign an Implementation Agreement are called Implementing Entities in this context. Parties who sign an Enforcement Agreement are called Responsible Parties in that context. For purposes of this Agreement, Parties means DWR, Reclamation and Contra Costa Water District.

**2.26. Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, have amended this program to authorize implementation of the HR&L Program.

**2.27. Reclamation** means: the United States Bureau of Reclamation.

**2.28. Record of Decision or ROD** means: Reclamation's final agency action to implement the long term operations of the CVP and SWP based on Reclamation's Final

Environmental Impact Statement. (Date to be inserted when LTO BiOps related to the 2023 BA and ROD have issued.)

**2.29. Responsible Parties** means: the Parties who sign Enforcement Agreements. Such Parties who are Implementing Entities for a given water source are called “Responsible Parties” for that water source.

**2.30. State Water Board** means: the State Water Resources Control Board.

**2.31. State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by DWR, for water supply, power, flood control and other purposes.

**2.32. TAF** means: thousand acre-feet.

**2.33. USFWS** means: the United States Fish and Wildlife Service.

**2.34. VA Memorandum of Understanding and Term Sheet** means: the March 29, 2022, Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions, between VA Party signatories thereto, and the attached Term Sheet, including subsequent amendments.

**2.35. Year means:** time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

**2.36. Water Year Type or WYT** means: the water year type based on the Sacramento Valley Index as published in DWR Bulletin 120.

### **3. Responsibilities of Delta Implementing Entities.**

**3.1. Implementation.** Each Party will implement the obligations assigned to that entity in Appendix 1, including cooperation with non-Parties who are Implementing Entities.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein.
- B. If an obligation is assigned to multiple Implementing Entities under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Implementing Entity, other such entities will not be responsible for performance.
- C. This Agreement does not create any remedy for non-performance by an Implementing Entity. The corresponding Dispute Resolution MOU as to Reclamation, and applicable Enforcement Agreements as to DWR and

CCWD, Exhibits C.2.A and C.2.B, respectively, create and specify the remedies that run solely to Responsible Parties.

**3.2. Progress Reports and Inspections.** DWR, Reclamation and CCWD will cooperate and coordinate to prepare Annual and Triennial Reports with respect to implementation. They will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

**4. Governance.** DWR, Reclamation and CCWD agree to the governance structure for the Delta as stated in Appendix 1 hereto and will participate in their responsibilities for implementation, reporting, and other decision-making as stated in Appendix 1 and Governance Program, Exhibit D section 1.2.3.

**5. Decision-making and Dispute Resolution Procedures.** DWR, Reclamation and CCWD agree to the decision-making and dispute resolution procedures stated in Appendix 1 and Governance Program, Exhibit D section 1.2.3, for the purpose of implementing this Agreement.

**6. Effective Date and Term.**

**6.1.** This Agreement takes effect when signed by DWR, Reclamation and CCWD and will be binding as to such Parties when signed.

**6.2.** The term of the Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Agreement will terminate upon that Party's withdrawal from the Global Agreement.

**7. No Admission of Liability.** The Parties enter into this Agreement voluntarily. The Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the parties, other than for purposes of enforcing this Agreement. The Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section of the California Constitution, or public trust doctrine, for the purpose of providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in the corresponding Dispute Resolution MOU and Enforcement Agreements would be available against them with respect to the Covered Water Quality Objectives.

**8. Compliance with Applicable Laws.** Each Party represents that it believes that this Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

**9. Reservations.**

**9.1. Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement will be interpreted to require any public agency to implement any action which is not authorized by

Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

**9.2. Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law.

**9.3. Federal Appropriations.** All actions required of any federal Party are subject to appropriations by Congress. Nothing in this Agreement will be interpreted as or constitute a commitment or requirement that any federal Responsible Party obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Agreement.

**9.4. Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement, including the execution of this Agreement.

**10. Notices.** Any Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice transmitted via email or other electronic means will be effective upon acknowledgment of receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. A Party may notify the other Parties in writing of a change in its designated representatives, without requiring an amendment to this Agreement. Notices will be provided as follows:

To DWR:

To Reclamation:

To CCDW:

**11. Attorney's Fees and Costs.** Each Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

**13. Construction and Interpretation.** This Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Agreement.



The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Agreement.

**14. Amendment.** This Agreement may only be amended in writing by all Parties still in existence, including any successors or assigns. A Party may provide Notice of a proposed amendment at any time. The Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**15. Addition of New Parties.** An entity may become a Party by signing the Agreement and the other Healthy Rivers and Landscapes Program Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

**16. Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

**17. No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto or Covered Entities specified in Appendix 2, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

**18. Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

**19. Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, the Parties agree that the remainder of the Agreement will not be affected thereby. The Parties hereto will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Agreement.

**20. Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**21. Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**[Signature blocks]**

## APPENDIX 1

### I. Responsibilities for Implementation in the Delta (Flow and Non-Flow Measures)

CCWD, DWR, and Reclamation are the Implementing Entities to this Implementation Agreement. DWR and Reclamation will manage and supplement environmental flows through several components and implement other non-flow measures, and Contra Costa will contribute funding, as specified below. The Delta Healthy Rivers and Landscapes Program reflects the Implementing Entities' commitments based on the *Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions*.

#### A. CVP and SWP Flow Measures (Export Reductions)

1. **Export Reductions: Volumes, Timing and Flexibility.** For the term of this Agreement, and consistent with the Record of Decision on the coordinated long term operations of the CVP and SWP and the ITP for the Long-Term Operation of the SWP, the CVP and SWP will forego exports<sup>1</sup> to provide flow contributions of 175 TAF in Above Normal water year types and 125 TAF in Dry and Below Normal water year types, as reflected in Table I.A.1, based on the process described in the [Delta accounting reference]. Bold percentages in Table I.A.2 represent the default plan and the percentage range in the parentheses represent the flexibility bracket for potential CVP and SWP Export Reductions for each month and water year type. The CVP and SWP Export Reductions will be implemented as provided in the default plan unless a different flow contribution schedule, consistent with the flexibility bracket, is decided through the Delta Implementation Agreement Governance process described in Section II, below.

Table I.A.1 – CVP and SWP Export Reductions (TAF)

Water Year	C	D	BN	AN	W
<b>Export Reduction</b>	0	125	125	175	0

Table I.A.2 – Timing and Flexibility Bracket

Water Year	Mar	Apr	May	Jun
<b>Above Normal</b>	<b>0%</b> (0-40%)	<b>50%</b> (30-70%)	<b>50%</b> (30-70%)	<b>0%</b> (0-30%)
<b>Below Normal and Dry</b>	<b>33%</b> (20-80%)	<b>33%</b> (20-80%)	<b>33%</b> (0-50%)	<b>0%</b> (0-30%)

2. **Health and Safety Off-Ramp:** The CVP and/or SWP shall be authorized to maintain a minimum export flow rate of up to 1,500 cfs if needed to ensure minimum M&I Public Health and Safety supplies. The CVP and/or SWP shall have no

<sup>1</sup> CVP and SWP exports are the combined diversions at CVP Jones Pumping Plant and SWP Banks Pumping Plant.

obligation to meet the Export Reduction water volumes specified in Section I.A.1 and Table I.A.1, with the timing specified in Table I.A.2, if doing so would preclude ensuring minimum M&I Public Health and Safety supplies. Notwithstanding any such reduction in the volume of flow contributions otherwise required pursuant to Section I.A.1 and Table I.A.1, neither the CVP nor the SWP will be required to provide any additional water volumes outside of the timing and flexibility specified in Table I.A.2, and neither the CVP nor the SWP will be required to provide any additional HR&L Program flow measures in subsequent years to offset such reductions.

3. **Flow Accounting.** The CVP and SWP Export Reduction are provided in addition to the baseline described in the VA MOU Term Sheet section 4.1. Flows made available through foregone exports will be subject to the accounting procedures adopted and approved as a part of the LTO ITP, the LTO ROD and [Placeholder for Accounting Reference] and all flows will be verified as a contribution above baseline using these accounting procedures.

4. **Allocation of Responsibility.** Reclamation and DWR shall split the total responsibility for the CVP/SWP Export Reductions, shown in Table I.A.1, by a ratio of 50:50.

## B. PWA Fixed Price Water Purchase Program

1. **Export Reductions: Volumes, Timing and Flexibility.** For the duration of this Agreement, and consistent with the LTO ROD for the CVP and SWP, and LTO ITP for the SWP, the CVP and SWP will forego exports of purchased water under the PWA Fixed Price Water Purchase Program. The PWA Fixed Price Water Purchase Program specifies Fixed Price water purchases in Table I.B.1 below. The CVP and SWP shall coordinate and cooperate to forego exports associated with the purchased water. The volumes specified in Table I.B.1 will be deployed with the timing and flexibility shown in Table I.A.2.

Table I.B.1 – Fixed Price Water Purchases – Export Reductions (TAF)

Water Year	C	D	BN	AN	W
<b>CVP SOD</b>	0	12.5	24.5	35	0
<b>WWD SOD</b>	3	6	15	19.5	27
<b>Add CVP SOD</b>	0	5	5	5	0
<b>SWP SOD</b>	0	30	30	30	0

## C. Delta Habitat Restoration

During the term of this Agreement and consistent with Applicable Law and the VA MOU Term Sheet, including the provision for Early Implementation of habitat projects, the Delta Habitat Restoration action identifies restoration of 5,227.5 acres of tidal wetland and associated floodplain habitats in the North Delta Arc and Suisun Marsh, 50 acres of instream habitat and 100 acres of floodplain habitat for juvenile Chinook salmon rearing. DWR and Reclamation, subject to appropriations, will design and construct habitat features to contribute toward

achieving the Covered Water Quality Objectives, consistent with the best available science and applicable environmental requirements. To achieve the habitat enhancement commitments, DWR and Reclamation will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals. As part of Early Implementation, Reclamation and DWR have already implemented several habitat projects, as identified below, crediting XXXX acres. [Placeholder for reference to completed habitat projects at time of agreement signing]

#### **D. CVP and SWP Funding Component**

DWR and Reclamation will provide all applicable funds received or budgeted by them to support implementation of the HR&L Program during the term of this Agreement, consistent with the VA MOU, the Dispute Resolution MOU and the Healthy Rivers and Landscapes Strategic Plan, and authorizing authorities.

All commitments made by Reclamation are subject to the availability of appropriated funds, as specified in Section 9 “Reservations,” and budget priorities. Nothing in this Implementation Agreement obligates Reclamation to expend appropriations or to incur other financial obligations.

#### **E. Conditions**

1. During the term of this Agreement, DWR’s and Reclamation’s individual commitments specified herein above will be subject to suspension or termination if the State Water Board takes action to require additional commitments as a requirement of Bay-Delta Plan implementation that constitute a Material Modification of the commitments specified herein above. Prior to any such suspension or termination, DWR and/or Reclamation will seek to meet and confer with the State Water Board and undertake the dispute resolution process specified in the Dispute Resolution MOU and/or the DWR Delta Enforcement Agreement, as applicable.

2. During the term of this Agreement, DWR’s and Reclamation’s commitments to implement the PWA Fixed Price Water Purchase Program measures specified in Section I.B are subject to funding being provided from the [VA Funding Entity] to DWR and/or such funding being provided, with the concurrence of DWR and Reclamation, to specific CVP and/or SWP contractors participating in the Fixed Price Water Purchase Program.

3. Nothing herein shall be interpreted to modify, change or otherwise obviate any legal requirement for DWR to fully implement minimization and mitigation measures specified in the LTO ITP.

### **II. Delta Implementation Agreement Governance**

#### **A. Delta Implementing Entities and Regulatory Assurances.**

CCWD, Reclamation and DWR are the Implementing Entities for this Agreement and CCWD, Reclamation, DWR, and their Covered Entities, specified in Appendix 2, are the only entities

that are intended to receive regulatory assurances for implementation of the measures described herein.

## **B. Obligations of Reclamation and DWR**

### **1. CVP and SWP Export Reduction Flow Measures Governance.**

Consistent with the LTO ROD for the CVP and SWP, and LTO ITP for the SWP, Reclamation and DWR will implement the CVP and SWP Export Reductions as described in Section I.A, above, and will consider the recommendations of the Systemwide Governance Committee related to flow contribution volumes and timing. Except as provided in subsections II.B.3 and II.B.4, below, for flow contributions relied upon for ESA or CESA compliance, Reclamation and DWR will retain sole discretion over the volumes specified in Tables I.A.1 and I.B.1 and timing of flow contributions within the flexibility bracket specified in Table I.A.2, subject to operation and maintenance activities to protect CVP and SWP facilities as determined by Reclamation and DWR, respectively.

**2. Coordination.** Starting each January, Reclamation and DWR, through the Water Operations Management Team, as described in the LTO BiOps and LTO ITP, will review the hydrologic conditions and develop schedules for the timing and volume of water resulting from the CVP and SWP Export Reductions and PWA Fixed Price Water Purchase Program.

Reclamation and DWR will coordinate operations to implement the CVP/SWP Export Reductions and PWA Fixed Price Water Purchase Program volumes and will ensure that CVP and SWP operations do not result in the export of any volumes of water produced through HR&L Program implementation.

### **3. Implementation Measures and Other Regulatory Proceedings.**

Consistent with VA MOU Term Sheet section 11, CVP and SWP flow and non-flow measures are intended to be recognized in other regulatory proceedings, to the maximum extent allowable under law, including in the LTO ITP and LTO BiOps. The timing and mechanism of deployment of CVP and SWP Export Reductions within the flexibility brackets specified in Section I.A.2, above, and of flows generated from fees collected from CVP and SWP contractors, shall be subject to ESA and CESA, as applicable, permit requirements governing decisions related to planning, deployment and accounting. Nothing in this agreement shall be construed as subjecting Reclamation to CESA permit requirements.

**4. Spring Outflow and ITP for Long Term Operations of SWP.** SWP Export Reductions and diversion fees collected from SWP contractors used for fixed price water purchases are expected to result in increased Delta outflow during the spring period in comparison to the baseline described in the VA MOU Term Sheet section 4.1. Delta outflow provided through the SWP Export Reductions and SWP SOD fixed price water purchases are intended, in part, to achieve DWR's compliance with Spring Outflow requirements under the LTO ITP. DWR and CDFW will confer, beginning no later than January 15 of each year, to develop a plan for deployment of the SWP Export Reductions and flows generated from SWP diversion fees required by the ITP, including mechanisms and timing. To ensure consistency

between HR&L Program and LTO ITP flow deployment decision making each year, CDFW and DWR will coordinate with NMFS, USFWS, and Reclamation on plan development. The plan is subject to CDFW approval and may be revised, with CDFW concurrence, to account for updated hydrologic conditions.

**C. Obligations of and Related to Contra Costa Water District**

**1. [Placeholder for protection of CVP and SWP Export Reductions, other flows generated through HR&L Program implementation, and CCWD's Permitted Diversions]**

**2. Contribution to HR&L Program.** CCWD will contribute funding to the HRLP, as set forth in [cross references to funding agreement and any other appropriate documents], for the total volume of water CCWD receives under its repayment contract with Reclamation, Contract I75r-3401A-LTR1-P, as well as the amount of water it diverts under the following appropriative water rights: Application 5941 (Permit 3167, License 10514), Application 20245 (Permit 20749), and Application 27893 (Permit 19856).

**III. Delta Science Program**

[The Delta Science Program components are still under development.

The HR&L Science Plan will provide the framework and specific approach for evaluating the outcomes of the Flow and Non-flow Measures and ultimately to inform the State Water Board's assessment in Year 8 of the HR&L Program as described in Exhibit A to the Global Agreement, "Supported Amendments to the Bay-Delta Plan". The Delta Implementing Entities will contribute to syntheses of the data produced through the HR&L Science Program in Annual Reports, Triennial Reports for Years 3 and 6 of HR&L Program implementation, and an ecological outcomes report prior to Year 7, as described in Section 9.4 of the Global Agreement. Information collected by the HR&L Science Program will serve to track and report progress relative to metrics identified in the HR&L Science Plan and will inform the biological and ecological outcomes of the HR&L actions.

To achieve the comprehensive HR&L Science Program described in Section 10 of the Global Agreement, the Delta Implementing Entities will participate in the HR&L Science Committee to advance consistency and coordination across Governance Area Entity activities. The Parties will conduct science activities to inform the Science Plan hypotheses to produce results that inform recommendations to the Systemwide Governance Committee regarding adaptive management of Flow and Non-flow Measures, and priorities for further investment in the Science Program. Additionally, coordinated by the HR&L Science Committee, the Delta Implementing Entities will develop detailed assessment protocols tailored to the specific measures implemented in the Delta. The results of the assessments will be provided in HR&L Program reports as described in Section 9.4 of the Global Agreement as well as the ecological outcomes analysis to be provided prior to Year 7 of the HR&L Program, as described in Section 10.1 of the Global Agreement.]

## **Appendix 2.**

### **Delta Covered Entities**

[This appendix will further define the Delta Covered Entities, including, as applicable, specific water rights holders and/or geographic regions receiving regulatory assurances hereunder and intended to be Covered Entities under the Dispute Resolution MOU and applicable DWR and CCWD Enforcement Agreements]



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## **Exhibit B3. Feather River**

**IMPLEMENTATION AGREEMENT FOR THE HEALTHY RIVERS AND  
LANDSCAPES PROGRAM IN THE FEATHER RIVER BY THE CALIFORNIA  
DEPARTMENT OF WATER RESOURCES**

**March 29, 2024 Draft**

This “Implementation Agreement for the Healthy Rivers and Landscapes Program in the Feather River” is entered into by the California Department of Water Resources for the purpose of specifying responsibilities for implementation of the flow, habitat restoration, and other measures stated in Appendix 1 hereto.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-

Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. DWR intends that it will implement the flow, habitat restoration and other measures as specified in Appendix 1.

## **TERMS OF AGREEMENT**

**1. Purpose.** This Implementation Agreement states the specific responsibilities of DWR for implementation of flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program for the Feather River, as specified in Appendix 1.

**1.1. Timeliness.** DWR agrees to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscapes Agreements. This Implementation Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. Agreement** means: this Implementation Agreement for the Healthy Rivers and Landscapes Program.

**2.2. Applicable Law** means: state or federal law that (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Parties contemplated by this Agreement.

**2.3. Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018 as amended by [date Final Action]).

**2.4. CESA** means: the California Endangered Species Act.

**2.5. CDFW** means: the California Department of Fish and Wildlife.

**2.6. Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.7. Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in the applicable Enforcement Agreement.

**2.8. Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality

objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as defined below.

**2.9. DWR** means: the California Department of Water Resources.

**2.10. Enforcement Agreement** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any VA-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscape Program.

**2.11. Feather River Agencies or FRA** means: the Feather River entities that signed the attached Feather River Water Transfer Agreement, attached as Exhibit A hereto.

**2.12. Global Agreement** means: the “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” The Global Agreement states the overall structure and content of the HR&L Program, along with the obligations of the Parties to support implementation of the HR&L Program.

**2.13. Healthy Rivers and Landscapes Program or HR&L Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Implementation Agreement is Exhibit B.3 thereto.

**2.14. Implementation Agreements** means: this and other agreements specific to water sources, committing to implement flow, habitat restoration, and other measures in the HR&L Program. This Implementation Agreement states the measures for the HR&L Program in the Feather River.

**2.15. Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementation Agreements. In this Agreement, the term refers to DWR.

**2.16. LTO ITP or ITP** means: the Incidental Take Permit governing the long term operations of the SWP issued by the California Department of Fish and Wildlife. (Date and permit number to be inserted upon completion of the consultation related to the 2023 ITP Application)

**2.17. Material Modification** means: a change in Applicable Law, or a new or amended regulatory action similar in character to pending actions described in Section 12.6(A), that imposes additional constraints on water supply operations, increases contributions of water for instream

flow or Delta outflow, increases required habitat restoration, or increases contributions of funds, to an extent that materially impairs the bargained-for benefits of this Agreement. Section 14.2(A) establishes the criteria and procedures for response to a potential Material Modification.

**2.18. NMFS** means: the National Marine Fisheries Service.

**2.19. Oroville Complex** means: Oroville Dam and related facilities that may be used for Feather River flow deployments, including the Fish Barrier Dam, Fish Hatchery and Thermalito Afterbay River Outlet.

**2.20. Parties** means: signatories to the Global Agreement. Parties who sign an Implementation Agreement are called Implementing Entities in this context. Parties who sign an Enforcement Agreement are called Responsible Parties in that context. For purposes of this Agreement, DWR is the only Party.

**2.21. Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, have amended this program to authorize implementation of the HR&L Program.

**2.22. Reclamation** means: the United States Bureau of Reclamation.

**2.23. Responsible Parties** means: the Parties who sign Enforcement Agreements. Such Parties who are Implementing Entities for a given water source are called “Responsible Parties” for that water source. For purposes of this Agreement, DWR is the only Responsible Party.

**2.24. State Water Board** means: the State Water Resources Control Board.

**2.25. State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by DWR, for water supply, power, flood control and other purposes.

**2.26. TAF** means: thousand acre-feet.

**2.27. USFWS** means: the United States Fish and Wildlife Service.

**2.28. VA Memorandum of Understanding and Term Sheet or VA MOU** means: the March 29, 2022, Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions, between VA Parties’ signatories thereto, and the attached Term Sheet, including subsequent amendments.

**2.29. Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

**2.30. Water Year Type or WYT** means: the water year type based on the Sacramento Valley Index as published in DWR Bulletin 120.

**3. Responsibilities of Feather River Implementing Entities.**

**3.1. Implementation.** DWR will implement the obligations assigned to it in Appendix 1.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein.
- B. This Agreement does not create any remedy for non-performance by DWR. The corresponding Feather River Enforcement Agreement, Exhibit C.3, creates and specifies the remedies that run solely to DWR.

**3.2. Progress Reports and Inspections.** The DWR will prepare Annual and Triennial Reports with respect to implementation. The reports will be provided to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

**4. Governance.** To the extent any authorization pursuant to the California Endangered Species Act (CESA) for DWR's State Water Project relies upon assets identified herein as avoidance, minimization or mitigation measures pursuant to CESA, those measures' terms will apply as to how the water identified herein will be deployed within the flow flexibility brackets described in Appendix 1; otherwise, DWR agrees to the governance structure for the Feather River as stated in Appendix 1 hereto. DWR will undertake its responsibilities for implementation, reporting, and other decision-making as stated in Appendix 1 and Governance Program, Exhibit D section 1.2.3.

**5. Decision-making and Dispute Resolution Procedures.** To the extent any authorization pursuant to the California Endangered Species Act (CESA) for DWR's State Water Project relies upon assets identified herein as avoidance, minimization or mitigation measures pursuant to CESA, those measures' terms will apply as to how the water identified herein will be deployed within the flow flexibility brackets described in Appendix 1; otherwise DWR agrees to the decision-making procedures stated in Appendix 1 and Governance Program, Exhibit D section 1.2.3, for the purpose of implementing this Agreement.

**6. Effective Date and Term.**

**6.1.** This Agreement takes effect when signed by DWR and will be binding when signed.

**6.2.** The term of the Agreement will be concurrent with the term of the Global Agreement. This Agreement will terminate upon DWR's withdrawal from the Global Agreement.

7. **No Admission of Liability.** DWR enters into this Agreement voluntarily. DWR agrees that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement, other than for purposes of enforcing this Agreement. DWR does not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section of the California Constitution, or public trust doctrine, for the purpose of providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in the corresponding Feather River Enforcement Agreement would be available against it with respect to the Covered Water Quality Objectives.

8. **Compliance with Applicable Laws.** DWR represents that it believes that this Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

9. **Reservations.**

9.1. **Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of DWR to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement will be interpreted to require DWR to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. DWR expressly reserves all rights not granted, recognized, or relinquished in this Agreement.

9.2. **Availability of Funding.** Funding by DWR is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by DWR except as otherwise permitted by Applicable Law.

9.3. **Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement, including the execution of this Agreement.

10. **Entire Agreement.** This Agreement contains the entire agreement of DWR with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

11. **Addition of New Parties.** An entity may become a Party by signing an amendment to this Agreement, signed by all current Parties hereto, and the other Healthy Rivers and Landscapes Program Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

12. **Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of DWR and its successors and assigns, unless otherwise specified in this Agreement.

13. **No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are

not Parties hereto or Covered Entities specified in Appendix 2, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of DWR with respect to third parties will remain as imposed under Applicable Law.

**14. Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

**15. Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, DWR agrees that the remainder of the Agreement will not be affected thereby.

**16. Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**17. Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**[Signature block]**



## Appendix 1.

### I. Responsibilities for Implementation on Feather River (Flow and Non-Flow Measures) and Supporting Actions

#### A. Feather River Flow Measures

DWR will implement the below described flow measures to provide flow contributions in the Feather River downstream of the Oroville Complex in order to increase survival of emigrating juvenile salmonids by providing increased Delta outflow, increased cover from predators, reduced pathogen transmission, decreased energetic expenditure during migration, and increased rearing habitat.

1. **Feather River HR&L Program Flow Deployment: Volumes, Timing and Flexibility.** DWR will deploy 60 TAF of flow contributions during March through May in Dry, Below Normal and Above Normal WYTs, as specified in Table I.A.1, below. Bold percentages in Table I.A.2 represent the default deployment plan and the percentage range in the parentheses represent the flexibility bracket for potential Feather River flow contributions. The flow contribution will be implemented as provided in the default plan unless a different flow contribution schedule, consistent with the flexibility bracket, is decided through the Feather River Implementation Agreement Governance process described in Section II, below.

Table I.A.1

Water Year	C	D	BN	AN	W
<b>Flow Contributions</b>	0	60	60	60	0

Table I.A.2

Water Year	Mar	Apr	May
<b>Above Normal</b>	<b>50%</b> (0-50%)	<b>25%</b> (0-75%)	<b>25%</b> (0-75%)
<b>Below Normal</b>	<b>25%</b> (0-75%)	<b>50%</b> (0-75%)	<b>25%</b> (0-50%)
<b>Dry</b>	<b>33.3%</b> (0-100%)	<b>33.3%</b> (0-50%)	<b>33.3%</b> (0-75%)

2. **Flow Accounting.** The Oroville Complex Feather River flow releases are additive to the baseline described in Section 4.4.A of the Global Agreement. Flows deployed through the Oroville Complex will be subject to the accounting procedures described in [Placeholder for Accounting Reference] and all flows will be verified as a contribution above baseline using these accounting procedures. DWR commits to not divert any of the 60 TAF of Feather River flow contribution after release below the Oroville Complex.

3. **Feather River Agencies' Supporting Actions.** The Feather River Agencies will support DWR's State Water Project and its implementation of the Feather River flow contribution specified in Section I.A.1, above, through a water transfer agreement with DWR with a term coterminous with this agreement (See "Feather River Water Transfer Agreement" [Water Transfer Agreement], attached hereto as Exhibit A.) In Dry, Below Normal and Above Normal WYT, the FRA will deliver water to the Oroville Complex as specified in the Water Transfer Agreement during the water transfer period (May 1 – December 31), as more specifically described in Exhibit A. The Water Transfer Agreement is expected to result in 60 TAF of water delivered to Oroville Complex in support of Feather River flow contributions through a combination of land fallowing (with limited groundwater substitution), with reduced water deliveries for agricultural use within FRA service areas, and reservoir reoperation.<sup>1</sup> The FRA commit to not divert any of the 60 TAF of Feather River flow contribution by DWR after release below the Oroville Complex, as specified in Exhibit A. Except as specified in the Water Transfer Agreement, the FRAs will have no other responsibilities for (i) making water available for Feather River flow contributions; (ii) contributing to the Feather River habitat restoration component; and (iii) for funding the HR&L Program.

#### **B. Feather River Habitat Restoration Component**

During the term of this Agreement and consistent with the Appendix 2 to the Global Agreement, DWR will design and construct 15 acres of spawning habitat, 5.25 acres of instream habitat and 1,655 acres of floodplain habitat (consisting of added instream habitat complexity and side-channel improvements). DWR will, subject to appropriations, design and construct such habitat features consistent with best available science and applicable environmental requirements. To achieve these habitat commitments, DWR will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals.

#### **C. Feather River Funding Component**

1. **Compensation for Flow Contribution.** During the term of this Agreement, payments to FRA for their supporting actions, will be made or arranged by DWR or the [HR&L Funding Entity], as further specified in the Water Transfer Agreement.

**Science and Habitat Fund Contribution.** Each year during the term of this Agreement, \$1.0 per acre-foot of surface water diverted by FRA for beneficial use within their service areas will be contributed on behalf of the FRA to the HR&L Structural Science and Habitat Fund, as further specified in the Water Transfer Agreement.

<sup>1</sup> Real Water Verification procedures for the FRA's supporting actions are set forth in the attached Water Transfer Agreement.

**D. Conditions**

1. During the term of this Agreement, DWR's commitments and FRA's commitments in the Water Transfer Agreement, as specified therein, will be subject to suspension or termination if the State Water Board takes action to require additional commitments as a requirement of Bay-Delta Plan implementation that constitute a Material Modification of the commitments specified herein above. Prior to any such suspension or termination, DWR will seek to meet and confer with the State Water Board and will undertake the dispute resolution procedure required under the Feather River Enforcement Agreement, as applicable.
2. Nothing herein shall be interpreted to modify, change or otherwise obviate any legal requirement for DWR to fully implement minimization and mitigation measures specified in the LTO ITP.

**II. Feather River Implementation Agreement Governance**

**A. Feather River Implementing Entities and Regulatory Assurances.** DWR is the only entity with direct responsibilities for HR&L Program implementation actions under this Agreement. While not Responsible Parties or Implementing Entities, FRA will support DWR's responsibilities as set forth in the Water Transfer Agreement. This Agreement is intended to provide regulatory assurances for DWR, FRA, and other Covered Entities as further specified in Appendix 2.

**B. Feather River Flow and Non-Flow Measures Governance.**

1. DWR will implement the Feather River flow and non-flow measures, as described above, and will consider the recommendations of the Systemwide Governance Committee and local system biologists related to flow contributions and timing. Except as provided in subsections C and D, below, for flow contributions relied upon for CESA compliance, DWR will retain sole discretion over the volumes specified in Table I.A.1 and the timing of flow contributions within the flexibility bracket specified in Table I.A.2.
2. DWR will seek prior approval from the State Water Board and concurrence from the FRA before implementing any proposed flow contribution schedule that exceeds the flexibility bracket limits.
3. DWR will determine the timing and WYT for Feather River HR&L Program deployment actions for purposes of implementing the flow measures specified in Section I.A.1, above, through development of the Spring Outflow plan prepared pursuant to Section II.D, below. Plan development and any subsequent revisions will be based on factors

including but not limited to the following:

- a. Hydrologic and precipitation data, including the DWR Bulletin 120 March 1<sup>st</sup> 90% exceedance forecast; DWR Bulletin 120 April 1<sup>st</sup> 75% exceedance forecast; and DWR Bulletin 120 May 1<sup>st</sup> exceedance forecast.
- b. Uncertainties of hydrologic conditions.
- c. Deployment mechanisms and timing.

C. **Implementation Measures and Other Regulatory Proceedings.** Consistent with VA MOU Term Sheet section 11, Feather River flow and non-flow measures are intended to be recognized in other regulatory proceedings, to the maximum extent allowable under law, including in the LTO ITP. The timing and mechanism of Oroville Complex deployments to provide Feather River flow contributions specified in Table I.A.1 within the flexibility brackets specified in Table I.A.2, above, shall be subject to CESA permit requirements governing decisions related to planning, deployment and accounting.

D. **Spring Outflow and ITP for Long Term Operations of SWP.** Diversion fees collected from SWP contractors for implementation of the HR&L Program will be used, in part, to fund payments to the FRA under the Water Transfer Agreement, resulting in water available in Oroville Dam. The Feather River flow contributions are expected to result in increased Delta outflow during the spring period. This increased Delta outflow is intended to contribute to DWR's compliance with Spring Outflow requirements under the SWP LTO ITP. DWR and CDFW will confer, beginning no later than January 15 of each year, to develop a plan for deployment of the Feather River flow contributions required by the ITP, including mechanisms and timing. To ensure consistency between HR&L and ITP flow deployment decision making each year, CDFW and DWR will coordinate with NMFS, USFWS, and Reclamation on plan development. The plan is subject to CDFW approval and may be revised, with CDFW concurrence, to account for updated hydrologic conditions.

### III. **Feather River Science Program**

[The Feather River Science Program components are still under development.

The HR&L Science Plan will provide the framework and specific approach for evaluating the outcomes of the Flow and Non-flow Measures and ultimately to inform the State Water Board's assessment in Year 8 of the HR&L Program as described in the Exhibit A to the Global Agreement, "Supported Amendments to the Bay-Delta Plan". DWR will contribute to syntheses of the data produced through the HR&L Science Program in Annual Reports, Triennial Reports for Years 3 and 6 of HR&L Program implementation, and an ecological outcomes report prior to Year 7, as described in Section 9.4 of the Global Agreement. Information collected by the HR&L Science Program will serve to track and report progress relative to metrics identified in the

HR&L Science Plan and will inform the biological and ecological outcomes of the HR&L actions.

To achieve the comprehensive HR&L Science Program described in Section 10 of the Global Agreement, DWR will participate in the HR&L Science Committee to advance consistency and coordination across Governance Area Entity activities. DWR will conduct science activities to inform the Science Plan hypotheses to produce results that inform recommendations to the Systemwide Governance Committee regarding adaptive management of Flow and Non-flow Measures, and priorities for further investment in the Science Program. Additionally, coordinated by the HR&L Science Committee, DWR will develop detailed assessment protocols tailored to the specific measures implemented in the Feather River. The results of the assessments will be provided in HR&L Program reports as described in Section 9.4 of the Global Agreement as well as the ecological outcomes analysis to be provided prior to Year 7 of the HR&L Program, as described in Section 10.1 of the Global Agreement.]

## **Appendix 2.**

### **Feather River Covered Entities**

[This appendix will further define the Feather River Covered Entities, including the FRA and, as applicable, other specific water rights holders and/or geographic regions receiving regulatory assurances hereunder and intended to be Covered Entities under the Feather River Enforcement Agreement]

### **Exhibit A**

[Placeholder for Feather River Water Transfer Agreement]

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# **Exhibit B4.**

## **Friant**

**IMPLEMENTING AGREEMENT RELATED TO HEALTHY RIVERS AND  
LANDSCAPES PROGRAM IN THE SAN JOAQUIN RIVER (FRIANT)**

**March 29, 2024**

This “Implementing Agreement related to Healthy Rivers and Landscapes Program in the San Joaquin River (Friant)” or “Friant Implementing Agreement” is entered into by and between the California State Water Resources Control Board and Friant Water Authority (FWA) for the purpose of providing for regulatory Implementing of those flow, habitat restoration and other measures stated in Appendix 1 hereto. Defined terms are set forth in Section 2 of this Agreement.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital G.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of Implementing to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of Implementing for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial

uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. FWA has been formed under California law pursuant to a Joint Powers Agreement for operation and maintenance of the Friant-Kern Canal and other related purposes. FWA does not hold a water supply contract from the Bureau of Reclamation for the Friant Division of the Central Valley Project. FWA is identified as one of the “Friant Parties” in the Stipulation of Settlement (Settlement) in *NRDC v Rodgers* and facilitates the recapture of Restoration Flows on behalf of Friant Division long-term contractors.

G. The San Joaquin River Restoration Program is the vehicle by which the Settlement is being implemented. Authorized by Congress in P.L 111-11, the Restoration Program is being implemented in the San Joaquin River from Friant Dam to the confluence of the Merced River. The Friant Parties to the Settlement have agreed to provide both water and financial resources in furtherance of the purposes of the Settlement.

H. Under the terms of Paragraph 16 of the Settlement, the Secretary of the Interior, acting through the Bureau of Reclamation, must consult with the Friant Parties on the potential recapture of Restoration Flows from Friant Dam. As part of the overall Global Agreement, as specified in the *Implementing Agreement for the Healthy Rivers and Landscapes Program in the San Joaquin River (Friant)*, and as specified in Appendix 1, for purposes of this Agreement, Reclamation may forgo the recapture of Restoration Flows that would otherwise be available to Friant Division long-term contractors under certain conditions to increase flows in the Delta as described in Appendix 1.

## TERMS OF IMPLEMENTING AGREEMENT

**1. Purpose.** This Implementing Agreement states the specific obligations of FWA on behalf of the Friant Division long-term contractors for flow, habitat restoration and other measures for the San Joaquin River as specified in Appendix 1. This Agreement states the remedies for the implementation of such obligations under authority of Government Code section 11415.60 with respect to Friant Water Authority. The Parties intend that Appendix 1 include all of FWA and the Friant Parties’ commitments to contribute to the Program of Implementation.

**1.1. Settlement of Disputed Issues.** This Implementing Agreement resolves disputed issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

**1.2. Timeliness.** The Parties agree to the terms stated herein in order to expedite Implementing of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.



**2. Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscapes Agreements. This Implementing Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. Applicable Law** means: state or federal law that: (a) exists independently of this Implementing Agreement, including a Constitution, statute, regulation, court decision, or common law; and (b) applies to obligations or activities of the State Water Board and FWA contemplated by this Agreement.

**2.2. AF** means acre-feet.

**2.3. Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

**2.4. CDFW** means: the California Department of Fish and Wildlife.

**2.5. CDWR** means: the California Department of Water Resources.

**2.6. CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.7. Covered Entities** means: entities who hold water rights or contracts for water supplies from the Bay-Delta watershed and are identified as Covered Entities in Section 5 of this Implementing Agreement, including all Friant Division Contractors.

**2.8. Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as stated in Exhibit A section 1 in the Global Agreement.

**2.9. Friant Division Long-Term Contractors** means: agencies/entities that hold long-term water service or repayment contracts that provide water service from the Friant Division of the Central Valley Project.

**2.10. Friant Implementing Agreement** means: this Implementing Agreement Related to the Healthy Rivers and Landscapes Program in the San Joaquin River (Friant).

**2.11. Implementing Agreements** means: the agreements signed by non-federal Parties pursuant to Government Code section 11415.60, or with respect to federal Parties, a Government Code section 11415.60 agreement to implement any Healthy Rivers and Landscapes Agreements-related modifications to water rights held by a federal entity and a memorandum of understanding to implement other federal Healthy Rivers and Landscapes Program commitments, and approved by the State Water Board, to provide regulatory authority for Implementing of flow, habitat restoration and other measures in the Healthy Rivers and Landscapes Program.

**2.12. Friant or FWA** means: Friant Water Authority, a public agency formed by its members under California law to operate and maintain the Friant-Kern Canal and to represent its members in federal or state policy, political, and operational decisions that could affect the water supply of the Central Valley Project's Friant Division. For purposes of this Agreement, Friant is representing the Covered Entities.

**2.13. Friant Parties** means: the Arvin-Edison Water Storage District, Chowchilla Water District, Delano-Earlimart Irrigation District, Exeter Irrigation District, Friant Water Authority, Ivanhoe Irrigation District, Lindmore Irrigation District, Lindsay-Strathmore Irrigation District, Madera Irrigation District, Orange Cove Irrigation District, Porterville Irrigation District, Saucelito Irrigation District, Shafter-Wasco Irrigation District, Southern San Joaquin Irrigation Municipal Utility District, Stone Corral Irrigation District, Teapot Dome Water District, Terra-Bella Irrigation District, and Tulare Irrigation District, as defined in the Settlement.

**2.14. Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” The Global Agreement states the overall structure and content of the Healthy Rivers and Landscapes Program, along with the obligations of the Parties to support Implementing of the Healthy Rivers and Landscapes Program.

**2.15. Implementing Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration and other measures in the Tributaries and Delta. In this Implementing Agreement, the term refers to Friant’s Implementing Agreement for the San Joaquin River. Contemporaneously with the execution of this Implementing Agreement, Friant has entered into Friant’s Enforcement Agreement with SWRCB.

**2.16. Material Modification** means: (a) a Regulatory Approval; or (b) an action or inaction with respect to a Party’s ability to perform its obligations under this Implementing Agreement, that increases the obligations or other costs, reduces assurances or otherwise impairs bargained-for benefits of a Party to a significant extent, in that Party’s reasonable determination. Such conditions may arise from subsequent actions by the State Water Board, FERC, other regulatory agencies or courts, or from other changes in Applicable Law. Sections 8 (Dispute Resolution) and 9 (Remedies) establishes the procedures under this Implementing Agreement for a response to a potential Material Modification.

**2.17. Member Units** means those members of Friant Water Authority. As of execution of this Agreement, those members include: Arvin Edison Water Storage District, Chowchilla Water District, City of Fresno, Delano-Earlimart Irrigation District, Fresno Irrigation District, Hills Valley Irrigation District, Kaweah Delta Water Conservation District, Kern-Tulare Water District, Lindmore Irrigation District, Lindsay-Strathmore Irrigation District, Lower Tule Irrigation District, Orange Cove Irrigation District, Madera Irrigation District, Pixely Irrigation District, Porterville Irrigation District, Saucelito Irrigation District, Shafter-Wasco Irrigation District, Tea Pot Dome Water District District, Terra Bella Irrigation District, and Tulare Irrigation District.

**2.18. Memorandum of Understanding** means that Agreement between the California State Water Resources Control Board and the Bureau of Reclamation executed concurrently with the Global Agreement to facilitate the Implementing of certain Implementing Agreements.

**2.19. Parties** means: signatories to the Global Agreement. Parties who sign an Implementing Agreement are called Implementing Entities in this context. Parties who sign an Enforcement Agreement are called Responsible Parties in that context.

**2.20. Program of Implementing** means: the program of measures, schedule and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242, including measures provided under this Implementing Agreement. The Supported Amendments, as approved, amend this Program of Implementing to authorize Implementing of the Healthy Rivers and Landscapes Program.

**2.21. Regulatory Approval** whether in singular or plural, means any approval required under Applicable Laws for Implementing of the FWA Healthy Rivers and Landscapes Program.

**2.22. San Joaquin River Restoration Program** means: Implementing of the San Joaquin River Restoration Settlement Act, Tit X, P.L. 111-11.

**2.23. Secretary** means: the Secretary of the Interior.

**2.24. Stipulation of Settlement or Settlement** means: Notice of Lodgment of Stipulation of Settlement in *NRDC v. Rodgers* (CIV S-88-1658 LKK/GGH E.D. Ca) (9/13/2006).

**2.25. State Water Board** means: the State Water Resources Control Board.

**2.26. SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

**2.27. USBR** means: the United States Bureau of Reclamation.

**2.28. Healthy Rivers and Landscapes Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – G. This Implementing Agreement is Exhibit C.X thereto.

**2.29. Healthy Rivers and Landscapes Agreements** means: the Global Agreement, the Implementing Agreements and the Implementing Agreements.

**2.30. Year means:** time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### **3. Obligations of FWA.**

**3.1 Implementing.** FWA will implement the obligations identified to FWA in Appendix 1 in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance of these obligations will be subject to Sections 8 (Dispute Resolution) and 9 (Remedies), which establish the procedures under this Implementing Agreement.

**3.2 Progress Reports and Inspections.** FWA, in consultation with the Bureau of Reclamation, will prepare Annual and Triennial Reports with respect to Implementing of Friant's Healthy Rivers and Landscapes Program. FWA will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D of the Global Agreement, section 1.5).

#### **4. Guiding Principles for the Administration, Interpretation and Extension of this Implementing Agreement.**

**4.1** The following principles will guide the Parties in the administration, interpretation and potential extension of the term of this Implementing Agreement:

**A.** FWA and Friant Division long-term contractors will provide the Supplemental Flow Contribution as described in Appendix 1 during the term of this Agreement in order to advance the overall objectives of the Healthy Rivers and Landscapes Program, and not as a comparable and proportionate share of contributions to Delta inflow.

#### **5. Covered Entities.**

**5.1** This Implementing Agreement covers the contribution of FWA and Friant Division Long-Term Contractors to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation; including points of re-diversion authorized under the Settlement for the benefit of Friant Division Long-Term Contractors.

**5.2** This Implementing Agreement does not cover the contribution of other water users in, or diverters of water from, the San Joaquin River Watershed to achieving the water quality objectives in the Bay-Delta Plan.

**5.3** Nothing in this Implementing Agreement will require or be construed to require FWA, its Member Units, or any Friant Division long-term contractor to provide flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than FWA, its Member Units, or any Friant Division long-term contractor.

#### **6. Dispute Resolution.**

**6.1** All disputes among the Parties regarding a potential Material Modification, a Party's performance or compliance with the provisions of this Implementing Agreement or other dispute regarding interpretation or administration of this Implementing Agreement will be subject to the dispute resolution process stated herein. Each such dispute will be

brought and addressed in a timely manner. Resolution of a dispute will require unanimous consent of the Parties.

**6.2** The Parties may agree to additional or alternative dispute resolution procedures. The Parties will consider, but will not be required to agree to, reasonable alternatives for resolving a dispute, such as providing an opportunity to cure a deficiency in performance of a Party's obligation under this Implementing Agreement.

**6.3** This dispute resolution process does not preclude a Party from filing and pursuing an action for administrative or judicial relief to enforce an obligation under this Implementing Agreement. A Party may bring a judicial or other action without exhausting these dispute resolution procedures.

**6.4** The Parties will devote such resources as are needed and as can be reasonably provided to resolve the dispute expeditiously. The Parties will cooperate in good faith to promptly schedule, attend and participate in the dispute resolution process. Unless otherwise agreed to, each Party will bear its own costs for its participation in the dispute resolution process. Time limits specified in this section may be shortened or extended upon agreement of the Parties.

**6.5** A Party claiming a dispute will issue notice of the dispute to the other Party within 7 days of becoming aware of the dispute. Such notice will describe: (a) the matter(s) in dispute; and (b) the specific relief sought.

**6.6** Following issuance of notice of a dispute, each Party will designate a representative to participate in an informal process to resolve the dispute. The informal process will include at least 2 meetings commencing within 20 days after the dispute initiation notice, and concluding within 45 days after the dispute initiation notice. If the representatives of the Parties determine that they are unable to resolve the dispute, then at least one meeting will be held within 20 days after such determination by management-level representatives of the Parties.

**6.7** If the dispute is not resolved in the informal meetings referred to in Section 8.6, then the Parties will decide within 45 days after the dispute initiation notice whether to use a neutral mediator to assist in resolving the dispute. If the Parties decide to use a mediator, then the Parties will select the mediator and determine how to allocate costs of the mediation among the Parties. The mediation process will be concluded within 75 days after the dispute initiation notice.

**6.8** The Party who provided notice of the dispute will provide a report of the results of the dispute resolution process including: (a) describing the dispute; (b) summarizing the approach to resolving the dispute, including alternatives considered; (c) stating whether the dispute was resolved; and (d) if the dispute was resolved, stating the resolution and specific relief granted.

## **7. Remedies.**

**7.1** A Party may terminate this Implementing Agreement only if the Party has first complied with the dispute resolution procedures set forth in Section 8, and the Parties have not reached agreement on resolving the dispute.

**7.2** FWA may terminate this Implementing Agreement, and specify the effective date of such termination, if FWA has reasonably determined that there has been a Material Modification, including without limitation, with respect to any of the following:

**7.2.1** There has been an amendment, repeal, or modification, including, but not limited to, changes in flows from those established in Exhibit B, of the Settlement and/or, any changes in flows resulting from implementation of Paragraph 20.

**7.2.2** Implementing of the Global Agreement or any part thereof causes the Bureau of Reclamation to curtail or otherwise limit deliveries to the Friant Division in order to deliver San Joaquin River water to the Exchange Contractors.

**7.2.3.** Any other State Water Board water-quality or water-right action that would affect FWA or the Implementing of the Settlement beyond the actions described in Friant Healthy Rivers and Landscapes Program, or any other actions that would increase any of FWA's commitments (water, financial, or otherwise) to contribute to the Implementing of any of the Bay-Delta Plan's water-quality objectives.

**8. Force Majeure.** No Party will be liable for any failure of, or delay in, the performance of duties under this Implementing Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any final determination by a court of competent jurisdiction that renders the performance of any duty under this Implementing Agreement unlawful.

## **9. Effective Date and Term.**

**9.1** This Implementing Agreement takes effect when signed by the Parties and will be binding as to such Parties when signed.

**9.2** Unless otherwise terminated according to its terms, the term of this Implementing Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Implementing Agreement will terminate upon that Party's withdrawal from the Global Agreement. The term of this Implementing Agreement is subject to extension from time to time on terms approved by the Parties.

**10. No Admission of Liability.** The Parties enter into this Implementing Agreement voluntarily. Nothing contained in this Implementing Agreement is to be construed as an admission of liability, responsibility or procedural requirement as to any of the parties, other than for purposes of enforcing this Implementing Agreement. FWA does not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or the public trust doctrine, for providing the flows, habitat restoration and other measures stated in Appendix 1, or otherwise admit that the Implementing authorities provided in Section 5 would be available against FWA with respect

to the Covered Water Quality Objectives or the Program of Implementing. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

**11. Compliance with Applicable Laws.** The Parties represent that they believe that this Implementing Agreement is consistent with their respective statutory, regulatory or other legal obligations for conservation, use or management of affected resources.

**12. Reservations.**

**12.1 Generally.** Nothing in this Implementing Agreement is intended or will be construed to affect or limit the authority or obligation of the Parties to fulfill their respective constitutional, statutory and regulatory responsibilities or comply with any judicial decision. Nothing in this Implementing Agreement will be interpreted to require any public agency to implement any action that is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized or relinquished in this Implementing Agreement.

**12.2 Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Implementing Agreement is intended or will be construed to require the obligation, appropriation reprogramming or expenditure of any funds by any such public agency Party except as otherwise permitted by Applicable Law; provided that the Parties recognize that timely and sufficient funding is necessary to implement the Healthy Rivers and Landscapes Program.

**12.3 Federal Appropriations.** Nothing in this Implementing Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Implementing Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Implementing Agreement.

**12.4 Environmental Review.** Nothing in this Implementing Agreement is intended or will be construed to modify the application of the National Environmental Policy Act, California Environmental Quality Act, or other Applicable Law, to the environmental review of any action under this Implementing Agreement.

**13. Notices.** Any Notice required by this Implementing Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 2. Each Party will provide Notice of any change in the authorized representatives designated in Appendix 2, and [administrative entity] will maintain the current distribution list of such representatives.

**14. Attorney's Fees and Costs.** The Parties will bear their own attorney's fees and costs with respect to the negotiation, adoption, and Implementing of this Implementing Agreement.

**15. Entire Agreement.** This Implementing Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements between them, whether written or oral.

**16. Construction and Interpretation.** This Implementing Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Implementing Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Implementing Agreement.

**17. Amendment.** This Implementing Agreement may only be amended in writing by the Parties, including any successors or assigns. The Parties may provide Notice of a proposed amendment at any time. The Parties will meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**18. Additional Parties.** Subject to the consent of the Parties, and an appropriate amendment of this Implementing Agreement, a non-covered entity may become a party by signing this Implementing Agreement and the other Healthy Rivers and Landscapes Agreements, subject to the Parties' approval of the entity's proposed contribution under Appendix 1 hereto.

**19. Successors and Assigns.** This Implementing Agreement will apply to, be binding on, and inure to the benefit of the Parties and their respective successors and assigns, unless otherwise specified in this Implementing Agreement. No assignment may take effect without the express written approval of the Parties, which approval will not be unreasonably withheld.

**20. No Third-Party Beneficiaries.** This Implementing Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Implementing Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

**21. Elected Officials Not to Benefit.** No elected official will personally benefit from this Implementing Agreement or from any benefit that may arise from it.

**22. Severability.** This Implementing Agreement is made on the understanding that each term is a necessary part of the entire Implementing Agreement. However, if any term or other part of this Implementing Agreement is held to be unlawful, invalid or unenforceable, the Parties will undertake to assure that the remainder of the Implementing Agreement will



not be affected thereby. The Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid and enforceable and carries out the intention of this Implementing Agreement to the greatest lawful extent.

**23. Authority to Bind.** Each signatory to this Implementing Agreement certifies that he or she is authorized to execute this Implementing Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**24. Counterpart Signatures; Facsimile and Electronic Signature.** This Implementing Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Implementing Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**The foregoing is approved by the Parties.**

State of California  
State Water Resources Control Board

\_\_\_\_\_  
By:

\_\_\_\_\_  
Dated

Friant Water Authority

\_\_\_\_\_  
By:

\_\_\_\_\_  
Dated

## **APPENDICES**

1. RESPONSIBILITIES FOR IMPLEMENTING SAN JOAQUIN  
HEALTHY RIVERS AND LANDSCAPES AGREEMENT

2. AUTHORIZED REPRESENTATIVES OF PARTIES

## **Appendix 1**

### **San Joaquin River (Friant) Implementing Agreement**

#### **RESPONSIBILITIES FOR IMPLEMENTING SAN JOAQUIN RIVER HEALTHY RIVERS AND LANDSCAPES AGREEMENT**

##### **Friant Healthy Rivers and Landscapes Agreement Flow Component (Implementing Agencies: Reclamation and FWA)**

The Secretary of Interior, pursuant to section 10004(a)(4)(C) of the San Joaquin River Settlement Act (P.L. 111-11), will manage San Joaquin River Restoration Flows (Restoration Flows) that are otherwise capable of being recaptured and recirculated for the purpose of achieving the Water Management Goal<sup>1</sup> under the Stipulation of Settlement in NRDC, et al. v. Kirk Rodgers, et al. (San Joaquin River Restoration Settlement [Settlement]) and San Joaquin River permits 11885, 11886, and 11887 and License 1986.

Except for those years determined to be Critical-High or Critical-Low under the Settlement, Reclamation, in coordination with Friant Water Authority (FWA), will reduce the recapture of Restoration Flows to the extent necessary to achieve a goal of contributing 50,000 acre-feet toward Delta outflows derived from Friant Dam releases during the February through May period (Delta Outflow Goal), subject to the following:

- Reclamation will recapture, protect and manage Restoration Flows for the purpose of reducing or avoiding impacts to water deliveries to Friant Division long-term contractors caused by Restoration Flows except when, during the months of February through May, reducing recapture diversions as part of this agreement is necessary to contribute to the Delta Outflow Goal above.
- The maximum amount of reduced recapture in any month during the period of February through May will be up to 50% of the total recapturable Restoration Flows for such month.
- It is understood and allowed that in some years there would not be sufficient Restoration Flows to meet the Delta Outflow Goal due certain conditions which may include, but are not limited to, channel constraints, construction, schedule of Restoration Flows, and/or deliveries to satisfy the Exchange Contract. In such years, Reclamation will still reduce recapture of San Joaquin Restoration Flows by 50% of the existing flows, but the Delta Outflow Goal would not be reached, and Reclamation will not be required to take other actions or make other releases of water.
- Consistent with law, Reclamation will not reduce contract water allocations to other CVP Contractors in order to achieve the Delta Outflow Goal.
- All flows released below the Friant Dam from February through May, including those flows released and/or bypassed by Friant Dam necessary to address flood management conditions, will count towards satisfying the Delta Outflow Goal. Accretions and tributary inflows below Friant Dam will not be incorporated into this total.

Consistent with existing water rights permits requirements, Reclamation will provide daily accounting of Friant releases and Restoration Flows through the San Joaquin River and Sacramento-San Joaquin River Delta (Delta), including key gaging stations, and points of rediversion.

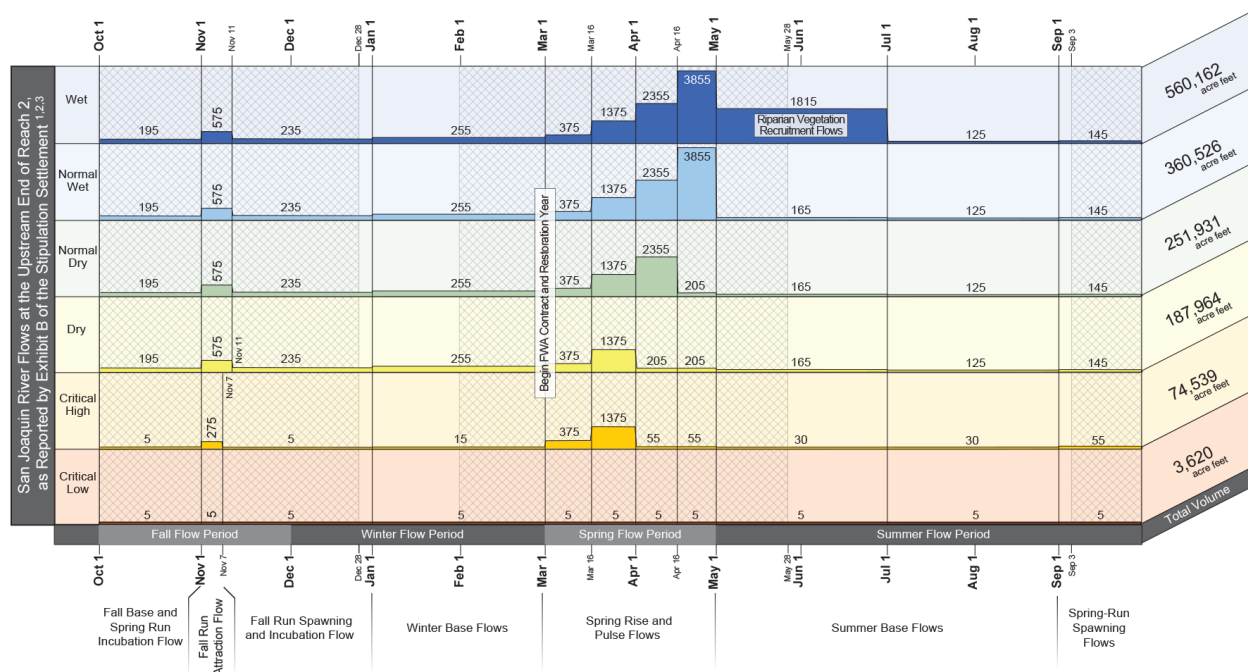
<sup>1</sup> The Water Management Goal is to reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows provided for in the Settlement. Restoration Flows recaptured are done so in the name of Friant Division contractors and allocated to them pursuant to the Settlement and Restoration Flow Guidelines.

# GOVERNANCE PROCEDURES

## 1.1 Restoration Flow Guidelines

Reclamation's Restoration Flow Guidelines describe the process to quantify, release, and monitor Restoration Flows to comply with the Settlement. The Unimpaired Runoff on the San Joaquin River at Friant Dam over the course of the Water Year (October through September) sets the Restoration Year Type, allocation of water volume available to the Restoration Administrator and the default Restoration Flow releases for each Restoration Year (March through February). When Reclamation sets the Initial Restoration Allocation, the issuance will be accompanied by a Default Flow Schedule. The Default Flow Schedule is derived from the Settlement Exhibit B Base Flow Hydrographs adjusted for the precise Unimpaired Runoff (figure below). Default Flow Schedules prepared by Reclamation provide an initial daily distribution of the annual Restoration Allocation and a starting point for the Restoration Administrator to develop a specific flow schedule. An approved Restoration Administrator's Restoration Flow Schedule Recommendation supersedes any Default Flow Schedule for the purposes of scheduling and releasing Restoration Flows.

San Joaquin River Flows at the Upstream End of Reach 2,  
as Reported by Exhibit B of the Stipulation of Settlement<sup>1,2,3</sup>



1 - NRDC v Rodgers, Stipulation of Settlement, CIV NO. S-88-1658 - LKK/GGH, Exhibit B, September 13, 2006  
2 - Hydrographs reflect assumptions about seepage losses and tributary inflows which are specified in the settlement  
3 - Restoration Flow volumes @ Gravelly Ford can be calculated by subtracting 3,620 acre-feet (5 cfs per day) from each Restoration Year Type

 Spring and Fall Flow Flexibility for the Restoration Administrator

**Figure 1: SJRRP Exhibit B Default Flows at Gravelly Ford. Spring and Fall Flexible Flow Periods are shown as cross-hatched areas.**

Reclamation will discuss forecasts and operations with the Restoration Administrator before issuance of a Restoration Allocation and Default Flow Schedule. Reclamation will indicate the likely allocation for planning purposes, whether a new allocation is warranted, discuss the forecasts being used to generate the allocation, discuss Unreleased Restoration Flow management, discuss channel conveyance capacity constraints, and provide updates to flow operations and flow accounting.

## **1.2 Restoration Administrator and Technical Advisory Committee**

The Restoration Administrator (RA) is an individual selected by the non-Federal Settling Parties to help administer and implement the Restoration Goal of the Settlement, including annual and seasonal development of Restoration Flow Recommendations. The RA makes recommendations to the Secretary concerning the manner in which the hydrographs shall be implemented and when the Buffer Flows are needed to help in meeting the Restoration Goal. The RA's general duties are set forth in Paragraphs 9 and Paragraphs 11 through 19 of the Settlement.

The Technical Advisory Committee (TAC) contains six members selected by the Friant Water Authority and the Natural Resources Defense Council that advise the Restoration Administrator regarding technical topic areas outlined in the Settlement Exhibit D, including information needed to inform Flow Recommendations. There are two State of California liaisons to the TAC (DWR and DFW) and three Federal agency liaisons (Reclamation, NMFS, USFWS) to the RA and TAC to ensure coordination and information-sharing with the Implementing Agencies.

## **1.3 Restoration Flow Schedule**

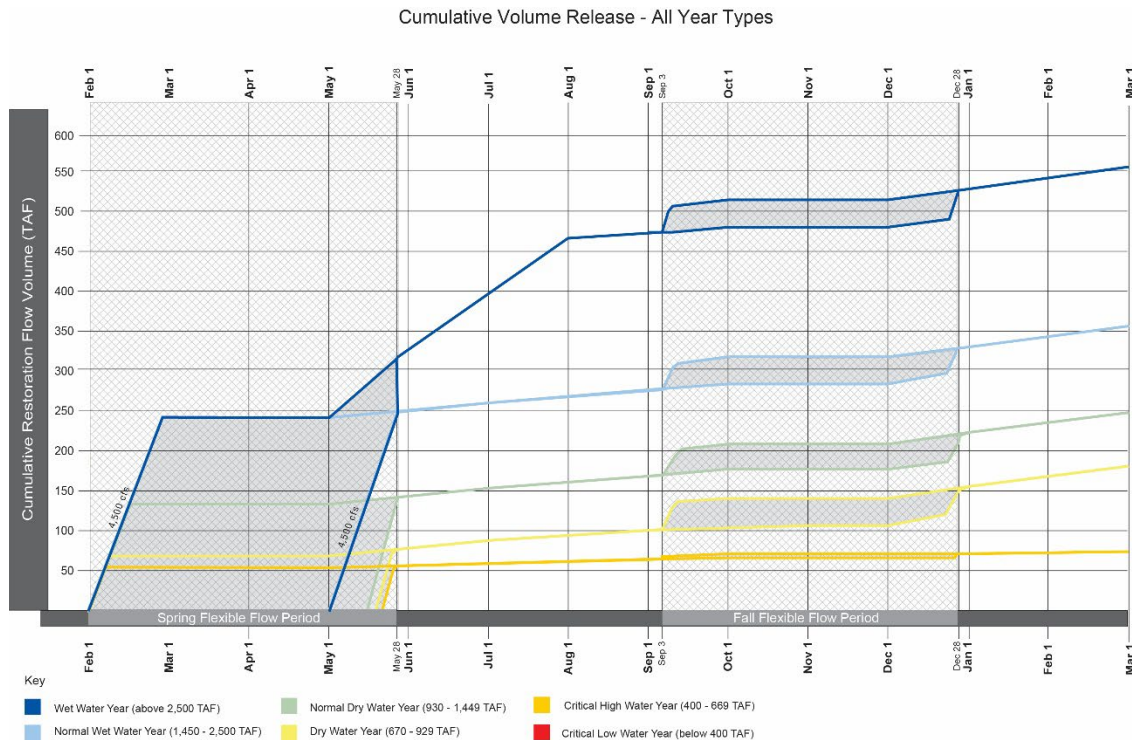
The Restoration Administrator will provide an initial flow recommendation to Reclamation by January 31 of each year following the receipt of Reclamation's initial Restoration Allocation and Default Flow Schedule. When Reclamation provides a subsequently updated allocation, the Restoration Administrator will provide an updated recommendation. In addition, the Restoration Administrator may submit a new Restoration Flow Schedule or revise an existing schedule at any time or Reclamation may request an updated recommendation to help manage operational issues or rapidly changing hydrologic conditions.

Reclamation will release the Restoration Flow Schedule at Friant Dam or otherwise make releases from Friant Dam to meet the Restoration Administrator's flow targets at Gravelly Ford, Friant Dam, or other specified locations. It is recognized that fluctuations in Holding Contract demand in Reach 1, and any channel losses for Restoration Flows, may necessitate that Reclamation adjust releases at Friant Dam in order to meet the recommended flow targets at Gravelly Ford and other specified locations. Reclamation will also coordinate with San Joaquin River facility operators downstream of Gravelly Ford to meet the Restoration Administrator's recommended flow targets at downstream locations.

## **1.4 Flexible Flow Provisions**

The Settlement outlines specific flexibilities that are available to the Restoration Administrator, including ability to:

- Flexibly schedule Restoration Flows within the Spring Flexible Flow Period and Fall Flexible Flow Period, so long as the total volume of flows during that period of the year is not changed. The volume of flows depicted in the Exhibit B Base Flow Hydrograph during the Spring Period (March 1– April 30) and Fall Period (October 1–November 30) may be shifted up to four weeks earlier or later. This includes shifting Spring Flows into the winter of the proceeding Restoration Year. Flushing Flows also fall within this flexibility. These Flexible Flow Periods are depicted in figure below.
- Schedule Buffer Flows needed to meet the Restoration Goal based on daily flow rates or within the flexible provisions.
- Release Riparian Recruitment Flows to promote the establishment of riparian vegetation at appropriate elevations in the channel.



**Figure 2: Flexed Default Flow Schedule depicted as a cumulative volume release. The area within the shaded parallelograms is the potential range of release patterns for the spring and fall flexible flow periods. The dashed line is the default release pattern for the Riparian Recruitment Flow Account.**

The Settlement outlines additional flexibilities that are only available to the Restoration Administrator with a determination that there are no increases in water delivery reduction to Friant Division Long-term Contractors as compared to the hydrographs and provisions of Settlement Exhibit B. These include:

- Shifts within the summer or winter flow accounts pursuant to Exhibit B 4(d). The volume within the summer or winter flow period remains the same, but the distribution of that volume across the flow period is different on a monthly or daily basis as compared to the Default Flow Schedule. This is referred to as “shifting flows”.
- Transfers between flow accounts pursuant to Exhibit B 4(d). This is referred to as “transferring flows.”

### 1.5 Recapture of Restoration Flows

Consistent with existing water rights permits requirements, Reclamation recaptures Restoration Flows at downstream points of rediversion in the Delta, lower San Joaquin River, and Mendota Pool for the purpose of achieving the Water Management Goal. Reclamation provides periodic forecasts of available recapture to FWA, downstream diverters, and State Board, and updates as conditions change. Downstream diverters confirm ability to recapture and will notify Reclamation and FWA, which is then reported to State Board by Reclamation.

Flows that contribute to the Friant Healthy Rivers and Landscapes Agreement include any flows released from Friant measured entering the Delta at Vernalis except for recapture of Restoration Flows occurring below Vernalis. Accounting for these flows is described in the Quantitative Healthy Rivers and Landscapes Flow Accounting Procedures for San Joaquin River (Friant), and will be reported to the State Board and Systemwide Governance Committee (SWGC).

### **Friant Healthy Rivers and Landscapes Agreement Governance Responsibilities**

Reclamation and FWA will be responsible for adding the following primary responsibilities to its existing Settlement requirements:

**Implementing and Decision-Making:** Reclamation in coordination with FWA, will reduce downstream recapture of Restoration Flows when flows from Friant Dam are projected to not meet the Delta Outflow Goal from February to May consistent with Appendix 1. Reclamation and FWA will also consult with the SWGC on preferred timing on when to forego recapture.

**Reporting:** Provide daily accounting to the SWGC and directly to the State Water Board as required and described in the Quantitative Healthy Rivers and Landscapes Flow Accounting Procedures for San Joaquin River (Friant).

### **Friant Healthy Rivers and Landscapes Agreement Governance Implementing**

Reclamation and FWA will provide tributary governance over deployment of the following: (1) pre-existing flow obligations established by the Settlement, and (2) Friant Healthy Rivers and Landscapes Agreement flow obligations. The Healthy Rivers and Landscapes Agreement-related governance obligations will include the following:

- (1) Making a rolling Friant Healthy Rivers and Landscapes Agreement year type determination in the manner described in the Friant Healthy Rivers and Landscapes Implementing Appendix 1 and Restoration Flow Guidelines, which will determine the quantity of Healthy Rivers and Landscapes flow assets to be provided during the Restoration Year; and,
- (2) Making decisions regarding the reduction of recaptured Restoration Flows when flows from Friant Dam are projected to not meet the Delta Outflow Goal from February to May consistent with Appendix 1.

## **Appendix 2**

### **AUTHORIZED REPRESENTATIVES**



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## **Exhibit B5. Mokelumne River**

# **IMPLEMENTATION AGREEMENT FOR THE HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE MOKELUMNE RIVER WATERSHED**

**March 29, 2024 Draft**

This “Implementation Agreement for the Healthy Rivers and Landscapes Program in the Mokelumne River Watershed” (“Implementation Agreement”) is entered into by and between the signatories hereto for the purpose of specifying responsibilities for implementation of the flow, habitat restoration, and other measures stated in Appendix 1 hereto.

## **RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses

no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. The Parties who sign this Implementation Agreement intend that they will implement the flow, habitat restoration and other measures as specified in Appendix 1.

## **TERMS OF AGREEMENT**

**1. Purpose.** This Implementation Agreement states the specific responsibilities of Implementing Entities for implementation of flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program for Mokelumne River watershed, as specified in Appendix 1.

**1.1. Settlement of Disputed Issues.** The Global Agreement, of which this Implementation Agreement is a part, resolves disputes issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

**1.2. Timeliness.** The Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all HRL Program Agreements. This Implementation Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. Applicable Law** means: state or federal law that (a) exists independently of this Implementation Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Parties contemplated by this Implementation Agreement.

**2.2. Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

**2.3. CDFW** means: the California Department of Fish and Wildlife.

**2.4. CDWR** means: the California Department of Water Resources.

2.5. **Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

2.6. **Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in the Enforcement Agreement for the water source which is the basis for their diversion or use as appropriate. Covered Entities within the Mokelumne River watershed are identified in Exhibit C.5 section 2.6.

2.7. **Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as stated in Exhibit A section 1.

2.8. **Enforcement Agreement** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any HRL Program-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscapes Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscapes Program.

2.9. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers and Landscapes Program, along with the obligations of the Parties to support implementation.

2.10. **Healthy Rivers and Landscapes Program or HRL Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Implementation Agreement is Exhibit B5 thereto.

2.11. **Healthy Rivers and Landscapes Program Agreements or HRL Program Agreements** means: the Global Agreement, the Implementation Agreements, and the Enforcement Agreements.

2.12. **Mokelumne River Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures for the water source as specified in Appendix 1. The Mokelumne River Governance Entity is the Lower Mokelumne River Partnership, acting through its Mokelumne River Technical Advisory Committee, Partnership Coordinating Committee, and Partnership Steering Committee.

2.13. **Healthy Rivers and Landscapes Program** or **HRLP** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Implementation Agreement is Exhibit B5 thereto.

2.14. **Implementation Agreements** means: this and other agreements specific to water sources, committing to implement flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program. This Implementation Agreement states the measures for the Mokelumne River watershed.

2.15. **Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementation Agreements. In this Implementation Agreement, the term refers to the Implementing Entities for measures in the Mokelumne River watershed.

2.16. **Mokelumne River Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures for the water source as specified in Appendix 1.

2.17. **Parties** means: signatories to the Global Agreement. Parties who sign an Implementation Agreement are called Implementing Entities in this context. Parties who sign an Enforcement Agreement are called Responsible Parties in that context.

2.18. **Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, have amended this program to authorize implementation of the Healthy Rivers and Landscapes Program.

2.19. **Responsible Parties** means: the Parties who sign Enforcement Agreements. Such Parties who are Implementing Entities for a given water source are called “Responsible Parties” for that water source.

2.20. **State Water Board** means: the State Water Resources Control Board.

2.21. **USBR** means: the United States Bureau of Reclamation.

2.22. **Year means:** time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### **3. Responsibilities of Mokelumne River Implementing Entities.**

3.1. **Implementation.** Each Party will implement the obligations assigned to that entity in Appendix 1, including cooperation with non-Parties who are Implementing Entities.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein.
- B. If an obligation is assigned to multiple Implementing Entities under this Implementation Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Implementing Entity, other such entities will not be responsible for performance.
- C. This Implementation Agreement does not create any remedy for non-performance by an Implementing Entity. The corresponding Enforcement Agreement, Exhibit C.5, creates and specifies the remedies that run solely to Responsible Parties.

3.2. **Progress Reports and Inspections.** The Mokelumne River Governance Entity will prepare Annual and Triennial Reports with respect to implementation. The entity will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

4. **Governance.** The Parties who are Mokelumne River Implementing Entities agree to the governance structure for the Mokelumne River watershed as stated in Appendix 2 hereto. They have established the Mokelumne River Governance Entity and will participate in its responsibilities for implementation, reporting, and other decision-making as stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3.

5. **Decision-making and Dispute Resolution Procedures.** The Parties who are Mokelumne River Implementing Entities agree to the decision-making and dispute resolution procedures stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3, for the purpose of implementing this Implementation Agreement.

### **6. Effective Date and Term.**

6.1. This Implementation Agreement takes effect when signed by the Parties who are Mokelumne River Implementing Entities and will be binding as to such Parties when signed.

6.2. The term of this Implementation Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Implementation Agreement will terminate upon that Party's withdrawal from the Global Agreement.

7. **No Admission of Liability.** The Parties enter into this Implementation Agreement voluntarily. The Parties agree that nothing contained in this Implementation Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the parties, other than for purposes of enforcing this Implementation Agreement. The Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or public trust doctrine, for the purpose of providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in the corresponding Enforcement Agreement would be available against them with respect to the Covered Water Quality Objectives.

8. **Compliance with Applicable Laws.** Each Party represents that it believes that this Implementation Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

9. **Reservations.**

9.1. **Generally.** Nothing in this Implementation Agreement is intended or will be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Implementation Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Implementation Agreement.

9.2. **Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Implementation Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law.

9.3. Omitted.

9.4. **Environmental Review.** Nothing in this Implementation Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Implementation Agreement.

**10. Notices.** Any Notice required by this Implementation Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 5 hereto. Each such entity will provide Notice of any change in the authorized representatives designated in Appendix 5, and the State Water Board will maintain the current distribution list of such representatives.

**11. Attorney's Fees and Costs.** Each Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Implementation Agreement.

**12. Entire Agreement.** The Global Agreement, of which this Implementation Agreement is a part, contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

**13. Construction and Interpretation.** This Implementation Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of this Implementation Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Implementation Agreement.

**14. Amendment.** This Implementation Agreement may only be amended in writing by all Implementing Entities still in existence, including any successors or assigns. An Implementing Entity may provide Notice of a proposed amendment at any time. The Implementing Entities agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**15. Addition of New Parties.** An entity may become an Implementing Entity by signing this Implementation Agreement and the other HRL Program Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

**16. Successors and Assigns.** This Implementation Agreement will apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Implementation Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

**17. No Third Party Beneficiaries.** This Implementation Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any



persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Implementation Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

**18. Elected Officials Not to Benefit.** No elected official will personally benefit from this Implementation Agreement or from any benefit that may arise from it.

**19. Severability.** This Implementation Agreement is made on the understanding that each term is a necessary part of the entire Implementation Agreement. However, if any term or other part of this Implementation Agreement is held to be unlawful, invalid, or unenforceable, the Parties agree that the remainder of the Implementation Agreement will not be affected thereby. The Parties hereto will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Implementation Agreement.

**20. Authority to Bind.** Each signatory to this Implementation Agreement certifies that he or she is authorized to execute this Implementation Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**21. Counterpart Signatures; Facsimile and Electronic Signature.** This Implementation Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Implementation Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**[Signature blocks]**

## **Exhibit B5 – Mokelumne River Implementation Agreement**

- Appendix 1 Responsibilities for Implementation of the Mokelumne River Healthy Rivers and Landscapes Program
- Appendix 2 Governance Procedures for the Mokelumne River
- Appendix 3 Mokelumne River Science Program
- Appendix 4 Flow Accounting for Mokelumne River Healthy Rivers and Landscapes Flow Measures
- Appendix 5 Contact Information for Implementing Entities

**Exhibit B5  
Appendix 1**

**RESPONSIBILITIES FOR IMPLEMENTATION OF THE  
MOKELUMNE RIVER HEALTHY RIVERS AND LANDSCAPES PROGRAM**

**Table of Contents**

<b>Section</b>	<b>Implementing Measure</b>	<b>Implementing Entity(ies)</b>	<b>Sequence and Conditions for Performance</b>
I.	Flow <sup>(V1)</sup>	EBMUD AWA NSJWCD SJC	See Section I and <u>Tables 1</u> through <u>6</u> .
II.	Habitat Restoration	EBMUD	See Section II and <u>Table 7</u> .
III.	Funding	EBMUD JVID	See Section III and <u>Table 8</u> .
IV.	Conditions for Performance	Applies to all Implementing Entities where specified in Section IV.	See Section IV for conditions applicable to obligations described in Sections I, II, and III.

<sup>(V1)</sup> The Mokelumne Flow assets will be governed by the Lower Mokelumne River Joint Settlement Agreement Partnership Coordinating Committee (PCC), which will review and consider any requests from the Systemwide Governance Committee. See Appendix 2 (Governance Procedures).

AWA = Amador Water Agency

EBMUD = East Bay Municipal Utility District

JVID = Jackson Valley Irrigation District

NSJWCD = North San Joaquin Water Conservation District

SJC = San Joaquin County

JVID = Jackson Valley Irrigation District

[[[ ]]] = Placeholder for Others

## **I. Mokelumne River Flow Measures**

### **A. Overview of Flow Measure Commitments**

#### ***1. New Healthy Rivers and Landscapes (HRL) Flows Are Additive to Existing Flow Requirements.***

The Mokelumne River HRL flow contributions described in this Implementation Agreement will supplement the existing minimum flow requirements for the Lower Mokelumne River. The existing minimum flow requirements are described in Section I.A.2. They consist of existing regulatory flows, plus any additional flows necessary to satisfy senior downstream rights while maintaining the regulatory flows. Under the HRL Program, additional flows (above the existing minimum flows) will be made available below Camanche Dam. Tables 1, 2, 3, and 4 specify the new minimum flow schedule for the Mokelumne River. Each table concerns a different year type. The tables specify the existing regulatory flow requirements and the new additional flow contribution required by this HRL Program, which together with any additional flows needed for senior downstream users, constitute the new minimum flow requirement under the HRL Program.

#### ***2. Existing Flow Requirements***

EBMUD is currently obligated to provide sufficient flows for two distinct purposes.

First, EBMUD must provide the minimum regulatory flows specified in the 1998 Joint Settlement Agreement between EBMUD, the California Department of Fish and Wildlife (CDFW), and U.S. Fish and Wildlife Service (USFWS). This Appendix refers to the 1998 agreement as the “JSA.” The State Water Resources Control Board (SWRCB) has amended EBMUD’s Mokelumne River water rights to require it to provide the JSA flow requirements. (Revised Water Rights Decision 1641, March 15, 2000 (D-1641), pp. 170-177.) The JSA/D-1641 flow requirements are incorporated into this Appendix without change within Tables 1, 2, 3, and 4 under the column heading of “Existing Flow Requirements (JSA / D-1641 Component).” EBMUD must also provide additional regulatory flows required by its Permit 10478. Permit 10478, as amended August 3, 2016, contains Term 20 which requires EBMUD to implement Mitigation Measure FISH-1. That mitigation measure requires EBMUD to release from Camanche Dam up to a total of 2,000 AF of additional water above other required releases during the September through February period in Below Normal and Dry water years to facilitate adult salmonid fish passage below Woodbridge Dam.

Second, while EBMUD maintains the minimum regulatory flows required by the JSA and D-1641 and Permit 10478, EBMUD must also simultaneously ensure sufficient flows are available to meet senior downstream water rights. EBMUD releases additional flows from Camanche Dam for senior downstream diversions when and to the extent such additional releases are necessary to maintain the minimum regulatory flows at the compliance points designated in the JSA and D-1641.

This Implementation Agreement uses the term “Existing Flow Requirements” to refer to the minimum flows necessary to simultaneously supply sufficient water for both of those purposes. Specifically, “Existing Flow Requirements” are the sum of the following: (1) the minimum regulatory flows specified by the JSA and D-1641 and Permit 10478, plus (2) any additional flows necessary to meet senior downstream water rights while simultaneously maintaining the minimum required regulatory flows. The Existing Flow Requirements are the baseline for measuring the Mokelumne River HRL Flow Contribution. Appendix 4 (Flow Accounting) explains how Existing Flow Requirements are calculated and illustrates how senior downstream water rights affect the calculation in several scenarios.

The Existing Flow Requirements vary by year type according to an existing “JSA Year Type” index. That index is defined in the JSA and incorporated into D-1641. The JSA Year Type definition is incorporated into this Appendix as Table 5. As shown in that table, there are seasonal differences in how the JSA Year Type is determined: (1) during October through March it is determined by combined storage in Pardee and Camanche Reservoirs, and (2) during April through September it is determined by forecasted unimpaired runoff into Pardee Reservoir. The JSA Year Type determination is made by the Lower Mokelumne River Partnership Coordinating Committee (PCC) in the manner described in Appendix 2 (Governance Procedures).

During the HRL Program implementation period, EBMUD will continue to operate Camanche Dam to maintain the Existing Flow Requirements in the Lower Mokelumne River, in the manner required by the JSA and D-1641 and Permit 10478.

### **3. HRL Flow Contribution; Flow Obligation of EBMUD**

#### ***(a) Year Type and Quantity***

Those Mokelumne River Implementing Entities responsible for providing flow measures will provide immediately below Camanche Dam, above and beyond the Existing Flow Requirements, the HRL Flow Contribution. As used in this Implementation Agreement, “HRL Flow Contribution” means the additional flow contribution specified under the column heading of “HRL Flow Contribution” within Tables 1, 2, 3, or 4 corresponding at any given time to the Mokelumne HRL Year Type in effect at that time. Each table concerns a different year type.

During HRL Program implementation, EBMUD will operate Camanche Dam to provide the following: (1) the Existing Flow Requirements, plus (2) the HRL Flow Contribution. The PCC will determine the required HRL Flow Contribution by applying the “Mokelumne HRL Year Type” index. The Mokelumne HRL Year Type index is defined in Table 6 of this Appendix. It is a modified version of the JSA Year Type index. The Mokelumne HRL Year Type index defines the same four classifications as the JSA Year Type index: “Normal and Above,” “Below Normal,” “Dry,” and “Critically Dry,” although in certain conditions, the criteria for each classification may differ between the two indices as specified in Tables 5 and 6.

The PCC will make the Mokelumne HRL Year Type determination in the manner described in Appendix 2 (Governance Procedures). Based on that determination, EBMUD will release the HRL Flow Contribution specified on the flow requirements table applicable to the year type determined (i.e., Tables 1 through 4). Those tables require flows immediately below Camanche Dam of 10 thousand acre-feet (TAF), 20 TAF, and 45 TAF in “Dry,” “Below Normal” (BN), and “Normal and Above” (AN) Mokelumne HRL Year Types, respectively. The HRL flow assets will be provided in two ways: (1) reservoir reoperation as needed to ensure a sufficient volume of releases above Existing Flow Requirements are made to provide the HRL Flow Contribution on the schedule required by the HRL Program, and (2) if and to the extent necessary, also from forgoing diversions to storage or direct diversion that could otherwise be lawfully made under existing water rights.

#### ***(b) Rate and Timing of Release***

The HRL Flow Contribution is expressed in Tables 1 through 4 as a block volume of water in TAF units. The PCC will distribute the block quantities listed in the table for the applicable water year type into a daily release schedule, expressed in cubic feet per second (cfs), to include both of the following: (1) the regulatory component of the Existing Flow Requirements (i.e., the minimum flows required by the JSA and D-1641 and Permit 10478), plus (2) an additional increment of flow expressed in cfs that is calculated to provide the full required quantity of HRL Flow Contribution within the time period specified in the

“Flexible Range of Block Releases from Camanche Dam” set forth in Tables 1 through 4. The PCC’s daily release schedule may shape the flows within the “Flexible Range” stated in those tables, and it may take into consideration current ecological conditions, consultation with the SWGC and Science Team, and other operational requirements.

While this Implementation Agreement is in effect, EBMUD will be obliged to operate Camanche Dam to supply both Existing Flow Requirements and the HRL Flow Contribution, and EBMUD will be deemed to be in compliance with that obligation during any given time period (e.g., March-May; October; or full year) when it demonstrates under the flow accounting methodology described in Appendix 4 (Flow Accounting) that it released from Camanche Dam the full volume of the HRL Flow Contribution required during that time period plus the full volume of the Existing Flow Requirements applicable during the same time period. For purposes of demonstrating compliance in a given year type at a given time, “the full volume of the HRL Flow Contribution,” as used in the prior sentence, means the following: (1) with respect to measuring compliance during a single season (March-May or October), it means the minimum volume within the flexible range of block releases specified for that season after accounting for any adaptive management approved by the SWRCB, and (2) with respect to measuring compliance during a full year (March-May and October, inclusive), it means the full volume of HRL Flow Contribution required in the given year type. See Appendix 4 (Flow Accounting) for complete methodology and illustrations.

As necessary or appropriate, EBMUD’s actual releases from Camanche Dam may include flows which exceed, in rate or volume, the sum of the Existing Flow Requirements plus the HRL Flow Contribution.

The SWGC, or a similar or successor body with systemwide governance responsibility for the HRL Program implementation, may consider a request in unusual or exigent circumstances to release a quantity outside the specified flexible range of block releases during a given season subject to SWRCB approval.

#### ***(c) AWA Flow Contribution***

The 10 TAF HRL Flow Contribution required in the “Dry” year type includes 2,000 AF provided by Amador Water Agency (AWA), which is a portion of the contractual water supply entitlement made available to AWA by Pacific Gas & Electric Company (PG&E) under the Stipulation and Agreement between AWA and PG&E dated March 13, 1985 as subsequently amended. Accordingly, while this Implementation Agreement remains in effect, and subject to the condition set forth in Section IV, AWA will dedicate and provide 2,000 AF of its PG&E entitlement to EBMUD during “Dry” years as defined in Table 6 (Mokelumne HRL Year Type Determination) which EBMUD shall use exclusively towards satisfying its obligation to release the 10 TAF annual HRL Flow Contribution required by Table 3.

#### ***(d) NSJWCD Flow Contribution***

North San Joaquin Water Conservation District (NSJWCD) has the right to divert flows from the Mokelumne River under the conditions described in its Permit 10477 from authorized points of diversion to storage and/or direct diversion on the Mokelumne River at and downstream of Camanche Dam. Subject to the applicable conditions set forth in Section IV, NSJWCD will bypass the HRL Flow Contribution while this Implementation Agreement remains in effect.

#### ***(e) County of San Joaquin Flow Contribution***

The Mokelumne River Water and Power Authority, of which the County of San Joaquin (County) is a member, has filed amended Application 29835 with the SWRCB for a permit to appropriate up to 110 TAF per year from the Mokelumne River. The application remains pending. County fully supports the

goals of the HRL Program and the implementation measures described in this Mokelumne River Implementation Agreement. County will ensure that no part of the HRL Flow Contribution is diverted under any water right that may be obtained pursuant to Application 29835 while this Implementation Agreement remains in effect, and County will accept a condition to that effect in any permit issued on Application 29835.

#### **4. Additional Notes**

Reclamation and the Department of Water Resources may participate in the Mokelumne River Technical Advisory Committee (discussed in Appendix 2, Section 2.1) for purposes of operational coordination to reduce potential for any impacts to those entities which may result from this Implementation Agreement. [[[ Note: The Parties plan to discuss whether and to what extent any redirected adverse impacts should be addressed for the in-basin uses contemplated by the HRL Program. ]]]

The Existing Flow Requirements and the HRL Flow Contribution are designed to benefit native fish species in the Mokelumne River and provide additional flow to the Delta. Accordingly, Tables 1 through 4 cite the fall run Chinook salmon life stage that were the basis for the development of the regulatory component of the Existing Flow Requirements. The life stages are included for informational purposes and to maintain consistency with how flow requirements were presented in D-1641.

All obligations of the Mokelumne River Implementing Entities under this Implementation Agreement, including the flow obligations set forth in this Section I, are expressly subject to and contingent upon the Conditions stated in Section IV of this Appendix.

#### **B. Specification of Flow Measure Commitments**

The first four tables below (Tables 1 through 4) specify the regulatory component of the Existing Flow Requirements and the HRL Flow Contribution during specified times of year.

Each table includes content incorporated from D-1641 without modification: the columns labeled “Fall Run Chinook Salmon Life Stage,” “Period,” and “Existing Flow Requirements (JSA / D-1641 Component),” and the footnotes under the heading “D-1641 Notes.” Each table also includes new content: the columns labeled “HRL Flow Contribution,” and the footnotes under the heading “Healthy Rivers and Landscapes Program Notes.”

Each table corresponds to a stated water year type, and its flow requirements apply only in that year type. The water year type is determined according to Table 5 for the purpose of identifying the applicable Existing Flow Requirements at a given time. The water year type is determined according to Table 6 for the purpose of identifying the HRL Flow Contribution required at a given time. At any given time, the year types will usually be the same for both purposes, but not necessarily always (e.g., differences may occur in March when year-type criteria diverge).

*[Remainder of page intentionally left blank]*

**Table 1 – Mokelumne River Minimum Flow Schedule****“Normal and Above” Year Type (Defined in Tables 5 and 6)**

FALL RUN CHINOOK SALMON LIFE STAGE	PERIOD	Existing Flow Requirements (JSA / D-1641 Component) <sup>(1)</sup>	HRL Flow Contribution (Block Releases of 45,000 AF Annually) <sup>(V1)</sup>	
		RELEASE FROM CAMANCHE DAM  (CFS)	DEFAULT BLOCK RELEASED FROM CAMANCHE DAM  (AF) <sup>(V4)</sup>	FLEXIBLE RANGE OF BLOCK RELEASES FROM CAMANCHE DAM <sup>(V5)</sup>  (AF & Percent Range) <sup>(V4)</sup>
Adult Immigration	10/1-10/15	325 <sup>(2)</sup>	5,850 <sup>(V2,V3)</sup>	4,500 – 13,500 <sup>(V2,V3)</sup> <i>(10 - 30%)</i>
Spawn/Incubation	10/16-10/31	325 <sup>(2)</sup>		
	11/1-11/30	325 <sup>(3)</sup>	N/A <sup>(V4)</sup>	N/A <sup>(V4)</sup>
	12/1-12/31	325 <sup>(3)</sup>		
Incubation/Alevin	1/1-1/31 2/1-2/28	325 <sup>(3)</sup> 325 <sup>(3)</sup>		
Fry Rearing	3/1-3/31	325 <sup>(3)</sup>	3,600 <sup>(V2,V3)</sup>	31,500 – 40,500 <sup>(V2,V3)</sup> <i>(70 – 90%)</i>
	4/1-4/15 4/16-4/30	325 <sup>(4,5)</sup> 325 <sup>(4,5)</sup>	19,350 <sup>(V2,V3)</sup>	
	Fry Rearing/Juvenile Rearing	5/1-5/31	325 <sup>(5)</sup>	
Outmigration	6/1-6/30	325 <sup>(5)</sup>	N/A <sup>(V4)</sup>	
Oversummer	7/1-9/30	100	N/A <sup>(V4)</sup>	N/A <sup>(V4)</sup>

**D-1641 Notes:**

- <sup>(1)</sup> Due to changes in water conditions or to optimize fishery conditions, EBMUD may modify Flow Standards upon written concurrence of CDFW and USFWS, provided the total quantity of water released for fishery purposes in Normal and Above year types is not less than the quantity provided by this flow schedule.



- (2) During October, EBMUD will maintain minimum flows of 325 cfs below Camanche Dam and 100 cfs below Woodbridge Irrigation District (WID)'s dam in Normal and Above year types.
- (3) During the period when WID's dam boards are pulled out and Lodi Lake is empty (approximately November 1 through March 31), EBMUD shall make minimum releases of 325 cfs from Camanche Dam in Normal and Above year types. This release from Camanche Dam is expected to provide at least 100 cfs below WID's dam during this period. However, EBMUD shall not be obligated to increase releases above 325 cfs during this period in Normal and Above year types.
- (4) During April, EBMUD will maintain minimum flows of 325 cfs below Camanche Dam and 150 cfs below WID's dam in Normal and Above year types.
- (5) For the months of April, May, and June during Normal and Above year types, additional release of up to 200 cfs is required depending on combined Pardee and Camanche storage levels relative to the maximum allowable for the end of the prior month as follows:

Less than 10 thousand acre-feet (TAF) below maximum allowable storage (BMAS), additional release is 200 cfs for subsequent month.

10 TAF <= BMAS < 20 TAF, additional release is 150 cfs for subsequent month.

20 TAF <= BMAS < 30 TAF, additional release is 100 cfs for subsequent month.

30 TAF <= BMAS < 40 TAF, additional release is 50 cfs for subsequent month.

#### **Healthy Rivers and Landscapes Program Notes:**

- (V1) HRL block releases are assigned to either spring or fall months. EBMUD will make HRL releases from Camanche Dam in addition to all other minimum required releases to meet downstream requirements and obligations.
- (V2) The Lower Mokelumne River PCC will distribute the HRL block releases into a daily schedule. Daily schedules will include the applicable JSA/D-1641 required releases and HRL Flow Contribution. Additional water may be released above the minimum scheduled daily HRL flows on a given day as necessary or appropriate for flood control purposes.
- (V3) In years when EBMUD's March 1st median forecast of Total Combined Pardee and Camanche (P+C) storage by End-of-September is projected to be less than 350 thousand acre-feet, then no HRL Flow Contribution is required, but Existing Flow Requirements would continue to be provided.
- (V4) AF is an abbreviation for acre-feet and N/A for not applicable.
- (V5) Flexibility in flow releases is a part of adaptive management to enable a release schedule that optimizes and balances best use of the HRL block releases, including existing goals of cold water pool management and adequate fall pulses for adult fish attraction.

**Table 2 – Mokelumne River Minimum Flow Schedule****“Below Normal” Year Type (Defined in Tables 5 and 6)**

FALL RUN CHINOOK SALMON LIFE STAGE	PERIOD	Existing Flow Requirements (JSA / D-1641 Component) <sup>(1)</sup>	HRL Flow Contribution (Block Releases of 20,000 AF Annually) <sup>(V1)</sup>	
		RELEASE FROM CAMANCHE DAM  (CFS)	DEFAULT BLOCK RELEASED FROM CAMANCHE DAM  (AF) <sup>(V4)</sup>	FLEXIBLE RANGE OF BLOCK RELEASES FROM CAMANCHE DAM <sup>(V5)</sup>  (AF or Percent Range) <sup>(V4)</sup>
Adult Immigration	10/1-10/15	250 <sup>(2)</sup>	5,200 <sup>(V2,V3)</sup>	2,000 – 6,000 <sup>(V2,V3)</sup> <i>(10 – 30%)</i>
Spawn/Incubation	10/16-10/31	250 <sup>(2)</sup>		
	11/1-11/30	250 <sup>(3)</sup>	N/A <sup>(V4)</sup>	N/A <sup>(V4)</sup>
	12/1-12/31	250 <sup>(3)</sup>		
Incubation/Alevin	1/1-1/31	250 <sup>(3)</sup>		
	2/1-2/28	250 <sup>(3)</sup>		
Fry Rearing	3/1-3/31	250 <sup>(3)</sup>	3,400 <sup>(V2,V3)</sup>	14,000 – 18,000 <sup>(V2,V3)</sup> <i>(70 – 90%)</i>
	4/1-4/15	250 <sup>(4,5)</sup>	6,400 <sup>(V2,V3)</sup>	
	4/16-4/30	250 <sup>(4,5)</sup>		
Fry Rearing/Juvenile Rearing	5/1-5/31	250 <sup>(5)</sup>	5,000 <sup>(V2,V3)</sup>	
Outmigration	6/1-6/30	250 <sup>(5)</sup>	N/A <sup>(V4)</sup>	N/A <sup>(V4)</sup>
Oversummer	7/1-9/30	100	N/A <sup>(V4)</sup>	N/A <sup>(V4)</sup>

**D-1641 Notes:**

- <sup>(1)</sup> Due to changes in water conditions or to optimize fishery conditions, EBMUD may modify Flow Standards upon written concurrence of CDFW and USFWS, provided the total quantity of water released for fishery purposes in Below Normal year types is not less than the quantity provided by this flow schedule.

- (2) During October, EBMUD will maintain minimum flows of 250 cfs below Camanche Dam and 100 cfs below WID's dam in Below Normal year types.
- (3) During the period when WID's dam boards are pulled out and Lodi Lake is empty (approximately November 1 through March 31), EBMUD shall make minimum releases of 250 cfs from Camanche Dam in Below Normal year types. This release from Camanche Dam is expected to provide at least 100 cfs below WID's dam during this period. However, EBMUD shall not be obligated to increase releases above 250 cfs during this period in Below Normal year types.
- (4) During April, EBMUD will maintain minimum flows of 250 cfs below Camanche Dam and 150 cfs below WID's dam in Below Normal year types.
- (5) For the months of April, May, and June in Below Normal year types, additional release of up to 200 cfs is required depending on combined Pardee and Camanche storage levels relative to the maximum allowable for the end of the prior month as follows:

Less than 10 thousand acre-feet (TAF) below maximum allowable storage (BMAS), additional release is 200 cfs for subsequent month.

10 TAF  $\leq$  BMAS < 20 TAF, additional release is 150 cfs for subsequent month.

20 TAF  $\leq$  BMAS < 30 TAF, additional release is 100 cfs for subsequent month.

30 TAF  $\leq$  BMAS < 40 TAF, additional release is 50 cfs for subsequent month.

#### **Healthy Rivers and Landscapes Program Notes:**

- (V1) HRL block releases are assigned to either spring or fall months. EBMUD will make HRL releases from Camanche Dam in addition to all other minimum required releases to meet downstream requirements and obligations.
- (V2) The Lower Mokelumne River PCC will distribute the HRL block releases into a daily schedule. Daily schedules will include the applicable JSA/D-1641 required releases and HRL Flow Contribution. Additional water may be released above the minimum scheduled daily HRL flows on a given day as necessary or appropriate for flood control purposes.
- (V3) In years when EBMUD's March 1st median forecast of Total Combined Pardee and Camanche (P+C) storage by End-of-September is projected to be less than 350 thousand acre-feet, then no HRL Flow Contribution is required, but Existing Flow Requirements would continue to be provided.
- (V4) AF is an abbreviation for acre-feet and N/A for not applicable.
- (V5) Flexibility in flow releases is a part of adaptive management to enable a release schedule that optimizes and balances best use of the HRL block flows, including existing goals of cold water pool management and adequate fall pulses for adult fish attraction.

**Table 3 – Mokelumne River Minimum Flow Schedule****“Dry” Year Type (Defined in Tables 5 and 6)**

FALL RUN CHINOOK SALMON LIFE STAGE	PERIOD	Existing Flow Requirements (JSA / D-1641 Component) <sup>(1)</sup>	HRL Flow Contribution (Block Releases of 10,000 AF Annually) <sup>(V1), (V6)</sup>	
		RELEASE FROM CAMANCHE DAM (CFS)	DEFAULT BLOCK RELEASED FROM CAMANCHE DAM <sup>(V5)</sup> (AF) <sup>(V4)</sup>	FLEXIBLE RANGE OF BLOCK RELEASES FROM CAMANCHE DAM <sup>(V5)</sup> (AF or Percent Range) <sup>(V4)</sup>
Adult Immigration	10/1-10/15	220 <sup>(2)</sup>	2,500 <sup>(V2,V3)</sup>	1,000 – 3,000 <sup>(V2,V3)</sup> (10 – 30%)
Spawn/Incubation	10/16-10/31	220 <sup>(2)</sup>		
	11/1-11/30	220 <sup>(3)</sup>	N/A <sup>(V4)</sup>	N/A <sup>(V4)</sup>
	12/1-12/31	220 <sup>(3)</sup>		
Incubation/Alevin	1/1-1/31	220 <sup>(3)</sup>		
	2/1-2/28	220 <sup>(3)</sup>		
Fry Rearing	3/1-3/31	220 <sup>(3)</sup>	1,500 <sup>(V2,V3)</sup>	7,000 – 9,000 <sup>(V2,V3)</sup> (70 – 90%)
	4/1-4/15	220 <sup>(4)</sup>	3,400 <sup>(V2,V3)</sup>	
	4/16-4/30	220 <sup>(4)</sup>		
Fry Rearing/Juvenile Rearing	5/1-5/31	220	2,600 <sup>(V2,V3)</sup>	
Outmigration	6/1-6/30	100 <sup>(5)</sup>	N/A <sup>(V4)</sup>	N/A <sup>(V4)</sup>
Oversummer	7/1-9/30	100	N/A <sup>(V4)</sup>	N/A <sup>(V4)</sup>

**D-1641 Notes:**

- <sup>(1)</sup> Due to changes in water conditions or to optimize fishery conditions, EBMUD may modify Flow Standards upon written concurrence of CDFW and USFWS, provided the total quantity of water

released for fishery purposes in Dry year types is not less than the quantity provided by this flow schedule.

- (2) During October, EBMUD will maintain minimum flows of 220 cfs below Camanche Dam and 100 cfs below WID's dam in Dry year types.
- (3) During the period when WID's dam boards are pulled out and Lodi Lake is empty (approximately November 1 through March 31), EBMUD shall make minimum releases of 220 cfs from Camanche Dam in Dry year types. This release from Camanche Dam is expected to provide at least 80 cfs below WID's dam during this period. However, EBMUD shall not be obligated to increase releases above 220 cfs during this period in Dry year types.
- (4) During April, EBMUD will maintain minimum flows of 220 cfs below Camanche Dam and 150 cfs below WID's dam in Dry year types.
- (5) During June, outmigrating smolts will be trapped, tagged, and transported around the Delta in Dry year types.

#### **Healthy Rivers and Landscapes Program Notes:**

- (V1) HRL block releases are assigned to either spring or fall months. EBMUD will make HRL releases from Camanche Dam in addition to all other minimum required releases to meet downstream requirements and obligations.
- (V2) The Lower Mokelumne River PCC will distribute the HRL block releases into a daily schedule. Daily schedules will include the applicable JSA/D-1641 required releases and HRL Flow Contribution. Additional water may be released above the minimum scheduled daily HRL flows on a given day as necessary or appropriate for flood control purposes.
- (V3) In years when EBMUD's March 1st median forecast of Total Combined Pardee and Camanche (P+C) storage by End-of-September is projected to be less than 350 thousand acre-feet, then no HRL Flow Contribution is required, but Existing Flow Requirements would continue to be provided.
- (V4) AF is an abbreviation for acre-feet and N/A for not applicable.
- (V5) Flexibility in flow releases is a part of adaptive management to enable a release schedule that optimizes and balances best use of the HRL block flows, including existing goals of cold water pool management and adequate fall pulses for adult fish attraction.
- (V6) The 10,000 AF HRL Flow Contribution required in the "Dry" year type includes 2,000 AF provided by Amador Water Agency from its contractual entitlement from Pacific Gas & Electric Company.

**Table 4 – Mokelumne River Minimum Flow Schedule****“Critically Dry” Year Type (Defined in Tables 5 and 6)**

FALL RUN CHINOOK SALMON LIFE STAGE	PERIOD	Existing Flow Requirements (JSA / D-1641 Component) <sup>(1)</sup>	HRL Flow Contribution (Block Releases) <sup>(V1)</sup>	
		RELEASE FROM CAMANCHE DAM (CFS)	DEFAULT BLOCK RELEASED FROM CAMANCHE DAM (AF) <sup>(V2)</sup>	FLEXIBLE RANGE OF BLOCK RELEASES FROM CAMANCHE DAM (AF or Percent Range) <sup>(V2)</sup>
Adult Immigration	10/1-10/15	100 <sup>(2)</sup>	N/A <sup>(V2)</sup>	N/A <sup>(V2)</sup>
Spawn/Incubation	10/16-10/31	130 <sup>(2)</sup>		
	11/1-11/30	130 <sup>(3)</sup>		
	12/1-12/31	130 <sup>(3)</sup>		
Incubation/Alevin	1/1-1/31	130 <sup>(3)</sup>		
	2/1-2/28	130 <sup>(3)</sup>		
Fry Rearing	3/1-3/31	130 <sup>(3)</sup>		
	4/1-4/15	130 <sup>(4)</sup>		
	4/16-4/30	130 <sup>(4)</sup>		
Fry Rearing/Juvenile Rearing	5/1-5/31	100 <sup>(5)</sup>		
	6/1-6/30	100 <sup>(5)</sup>		
Oversummer	7/1-8/31	100		
	9/1-9/30	100		

**D-1641 Notes:**

- (1) Due to changes in water conditions or to optimize fishery conditions, EBMUD may modify Flow Standards upon written concurrence of CDFW and USFWS, provided the total quantity of water released for fishery purposes in Critically Dry year types is not less than the quantity provided by this flow schedule.
- (2) During October, EBMUD will maintain minimum flows of 130 cfs below Camanche Dam and will maintain minimum flows of 15 cfs from Oct 1 - 15 and 75 cfs from Oct 16 - 31 below WID's dam in Critically Dry year types.

- (3) During the period when WID's dam boards are pulled out and Lodi Lake is empty (approximately November 1 through March 31), EBMUD shall make minimum releases of 130 cfs from Camanche Dam in Critically Dry year types. This release from Camanche Dam is expected to provide 75 cfs below WID's dam during this period. However, EBMUD shall not be obligated to increase releases above 130 cfs during this period in Critically Dry year types.
- (4) During April, EBMUD will maintain minimum flows of 130 cfs below Camanche Dam and 75 cfs below WID's dam in Critically Dry year types.
- (5) During May and June, outmigrating smolts will be trapped, tagged, and transported around the Delta in Critically Dry year types.

**Healthy Rivers and Landscapes Program Notes:**

- (V1) Mokelumne River Implementing Entities will not provide HRL Flow Contribution in water years designated "Critically Dry" under the year-type criteria defined in Table 6, but Mokelumne HRL block releases made in other year types are expected to result in additional flow to the Delta during certain years designated "Critical" under the Sacramento River Index.
- (V2) AF is an abbreviation for acre-feet and N/A for not applicable.

**Table 5 – JSA / D-1641 Water Year Type Determination – Mokelumne River**

This table and its notes define the JSA Year Type, which the PCC will continue to use to determine the regulatory component of the Existing Flow Requirements at any given time. It is unchanged from the JSA and D-1641.

Year Type	Normal/Above	Below Normal	Dry	Critically Dry
Oct – March <sup>(1)</sup> (Pardee/Camanche Storage)	Max Allowable <sup>(2)</sup>	Max Allowable to 400 TAF	399 TAF to 270 TAF	269 TAF or Less
April-Sept <sup>(3)</sup> (Unimpaired runoff)	890 TAF or More	889 TAF to 500 TAF	499 TAF to 300 TAF	299 TAF or Less <sup>(4)</sup>

**D-1641 Notes:**

- (1) October through March minimum flows are determined by total Pardee and Camanche storage on November 5<sup>th</sup>.
- (2) Maximum allowable storage on November 5<sup>th</sup>, shall be determined in accordance with the Army Corps of Engineer's Water Control Manual for Camanche Dam and Reservoir dated September 1981.
- (3) April through September minimum flows are determined by the water year unimpaired runoff into Pardee Reservoir as forecasted by the California Department of Water Resources (DWR) in the April 1<sup>st</sup> Bulletin 120 Report except when combined Pardee/Camanche November 5<sup>th</sup> storage is projected to be less than 200 TAF.
- (4) April through September minimum flows shall be critically dry whenever November 5<sup>th</sup> combined Pardee/Camanche storage is projected to be 200 TAF or less based on the runoff forecast in DWR Bulletin 120, beginning April 1<sup>st</sup>.



**Table 6 – Mokelumne HRL Year Type Determination**

This table and its notes define the Mokelumne HRL Year Type, which the PCC will use to determine the HRL Flow Contribution at any given time.

<b>Year Type</b>	<b>Normal/Above</b>	<b>Below Normal</b>	<b>Dry</b>	<b>Critically Dry<sup>(V1)</sup></b>
Unimpaired runoff (V2)	890 TAF or More	889 TAF to 500 TAF	499 TAF to 300 TAF	299 TAF or Less

**Healthy Rivers and Landscapes Program Notes:**

- (V1) Mokelumne River Implementing Entities will not provide HRL Flow Contribution in water years designated as Critically Dry under this year-type index.
- (V2) March through October HRL Flow Contribution is determined by the water year unimpaired runoff into Pardee Reservoir. Before March, the PCC will make an initial determination of the Mokelumne HRL Year Type based on the best available estimate of runoff. The PCC may update the Mokelumne HRL Year Type based on changing conditions. The final designation will be based on DWR's April 1<sup>st</sup> Bulletin 120 median unimpaired runoff forecast and would govern Mokelumne HRL release obligations through October.

**II. Mokelumne River HRL Habitat Restoration Commitments**

EBMUD and its partners on the Mokelumne River have a longstanding commitment to improving habitat on the Lower Mokelumne River. The HRL Program builds on this successful history. Based on the best available science regarding habitat needs on the river, the Mokelumne River HRL Program includes a commitment by EBMUD to develop one additional acre of in-channel rearing habitat and 25 acres of new floodplain habitat. In addition, EBMUD either has made, or is planning to make, further habitat improvements, beyond those required by the HRL Program, to benefit fish and other wildlife. This includes the completion of almost four acres of new spawning habitat and the installation of five screens on high-priority diversions.

Table 7 provides a planned implementation schedule for EBMUD's Mokelumne River habitat restoration projects. EBMUD has already identified potential sites, including willing landowners, for some of these projects. If any of the identified projects cannot be completed, EBMUD will work with its Mokelumne River partners, including the Mokelumne River Technical Advisory Committee, to identify other suitable sites. EBMUD is currently in consultation with local tribal entities and will work with them to incorporate traditional ecological knowledge into the design of the floodplain habitat.

As described in Section IV, completion of these projects is contingent on receiving the requisite permits from the appropriate state and federal agencies and on continued funding availability through the 8 year term of the funding agreement between EBMUD and DWR signed in January 2024. To achieve the habitat enhancement commitments, Mokelumne River parties will, in cooperation and coordination with other Parties, diligently pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals. EBMUD has committed \$1.5 million in funding for habitat improvements (including early implementation); additional funding from the State is required.

**Table 7 – Mokelumne River HRL Habitat Restoration**

Description of Measures	Acreage						
	Early Implementation <sup>(1)</sup> (Dec 2018 -2024)	Years 1-3 <sup>(2,3)</sup> (2025 – 2027)	Years 4-6 <sup>(3)</sup> (2028 – 2031)	Years 7-8 <sup>(3)</sup> (2032- 2033)	Total	Minimum Required in Global Agreement, Appx. 2	Additional Restoration Beyond Appx. 2 Requirements
Spawning	2.14	0.6	0.6	0.6	3.94	0	+3.94
Rearing: In-Channel	0.87	1.14	N/A	N/A	2.01	1	+1.01
Rearing: Tributary Floodplain	3.67	11	11	N/A	25.67	25	+0.67
Fish passage improvements (number of projects) <sup>(4)</sup>	3 Screens (0.87 acre of In-Channel rearing habitat)	2 Screens (1.14 acre of In-Channel rearing habitat)	N/A	N/A	5 Screens (2.01 acre of In-Channel rearing habitat)	0	+5 Screens (In-Channel rearing habitat balance in second row above)

**Notes:**

- (1) Early Implementation (Dec 2018 -2024) = 3 screens (Site #1 = 8.47 cfs; Site #2 = 4.46 cfs; Site #3 = 4.46 cfs; Total cfs = 17.39; Total acres = 0.87)
- (2) Years 1-3 (2025 – 2027) = 2 screens (Site #1 = 11.4 cfs; Site #2 = 11.4 cfs; Total cfs = 22.8; Total acres = 1.14)
- (3) Assumes adequate funding exists at the time of implementation.
- (4) Fish passage improvements: Screening projects are converted to acres of in-channel rearing habitat for juvenile salmonids habitat improvement based on FlowWest/USBR calculation (20 cfs screened = 1 acre; USBR 2021)

**III. Mokelumne River HRL Funding**

**A. Habitat Funding by EBMUD (with State contribution)**

The Mokelumne River program includes funding for habitat and contributions to the systemwide water purchase account. Table 8 summarizes these funding commitments. As discussed in Section II, EBMUD commits \$1.5 million to assist in the completion of Mokelumne River habitat improvements listed in Table 7 including projects completed under the “early implementation” program before this Implementation Agreement was executed, which commitment is contingent on, as described in Section IV, receipt of necessary permits, and continued availability through the 8 year term of funds through the funding agreement between EBMUD and DWR signed in January of 2024.

**B. Water Revolving Fund Contributions by EBMUD**

During the term of the Implementation Agreement, EBMUD will pay \$10.00 per acre-foot that is diverted from Pardee Reservoir through the Mokelumne Aqueducts to the East Bay, according to its annual water rights reports for License 11109 and Permit 10478, for the purpose of funding the HRL Program water revolving fund.

If the Healthy Rivers and Landscapes Program subjects the diversion of “Project Water” from the Central Valley Project (CVP) to a surcharge for the purpose of funding water purchases described in Appendix 1 to the Global Agreement, EBMUD will pay such surcharge on each acre-foot of Project Water it diverts, in the manner and amount specified by Reclamation in the rates and charges applicable to EBMUD.

### **C. Additional Funding for Water Purchase Program by EBMUD**

At the times specified in this Section III.C, EBMUD will make a financial contribution to the systemwide Public Water Agency (PWA) water purchase program during each year that is classified as “Below Normal” or “Above Normal” under the Sacramento River Index. Specifically, EBMUD will contribute \$191,000 during each “Below Normal” year, and \$256,000 during each “Above Normal” year. EBMUD will not make this contribution in other water year types. This contribution is in addition to the payment described in Section III.B.

The financial contribution is based on modeling which demonstrated the average long-term contributions to Delta inflow from the HRL Flow Contribution.<sup>1</sup> Appendix 1 to the Global Agreement states in effect that if the modeling indicated the HRL Flow Contribution is expected to result in increased Delta inflows, relative to the pre-HRL Program baseline, of at least 5 TAF, 5 TAF, and 7 TAF, in “dry,” “below normal,” and “above normal” years, respectively, determined by the Sacramento River Index, then EBMUD would have no additional funding obligation under this Section III.C. However, if that modeling indicates the HRL Flow Contribution would result in less than that additional quantity in any of those three year types, then EBMUD would be obligated to contribute funding towards the purchase of a quantity of water equal to the difference between the modeled result and the numbers stated above in this paragraph, as applicable to each Sacramento River Index year type. Such funding, if and when required, would be provided when the year-type in which the deficiency was modeled to occur occurs during the eight-year initial term of the HRL Program, in lieu of any requirement to make additional releases from Camanche Dam in excess of the requirements of Section I of this Appendix 1.

EBMUD will receive credit to offset this payment obligation to the extent the modeling results showed long-term average inflows for Sacramento River Index year types that are greater than those specified for the Mokelumne River in Appendix 1 of the Global Agreement. EBMUD’s payment obligation incorporates the credit in the manner described below.

EBMUD used its EBMUDSIM-RW modeling tool to develop long-term modeling of the average January-through-June increase in Delta inflow resulting from the HRL Flow Contribution, relative to a “no-action” scenario. The modeling showed an average increase in Delta inflows of 3 TAF, 7 TAF, 4 TAF, and 0 TAF during “Critically Dry,” “Dry,” “Below Normal,” and “Above Normal” year types, based on the Sacramento River Index, respectively.

EBMUD’s modeling indicated that, during “Critically Dry” years, the HRL Flow Contribution is expected to increase Delta inflows from the Mokelumne River by 3 TAF per year on a long-term average annual basis, relative to the pre-HRL Program baseline. This is 3 TAF greater than the 0 TAF specified in Appendix 1 of the Global Agreement.

Similarly, EBMUD’s modeling indicated that, in years classified as “Dry” under the Sacramento River Index, the HRL Flow Contribution is expected to increase Delta inflows from the Mokelumne River by 7 TAF per year on a long-term average annual basis, relative to the pre-HRL Program baseline. This is 2 TAF greater than the 5 TAF specified in Appendix 1 of the Global Agreement.

<sup>1</sup> See Global Agreement, Appendix 1, Table 1a, footnote 14.

During “Below Normal” years, the modeling results showed an average increase in Delta inflows of 4 TAF, which is less than the 5 TAF specified in Appendix 1 of the Global Agreement for “Below Normal” years. Similarly, the modeling results showed an average long-term increase in Delta inflows of 0 TAF during “Above Normal” years, which is less than the 7 TAF specified for that year type in Appendix 1 of the Global Agreement.

Based on these results, the excess 3 TAF in “Critically Dry” years and 2 TAF in “Dry” years partially offset the 7 TAF deficit in “Above Normal” years. EBMUD would therefore need to make a payment for 1 TAF in “Below Normal” years and 2 TAF during “Above Normal” years.

The payment amount shown in Table 8 is based on these modeling results and unit costs of water contained in existing long-term transfer agreements.

This payment obligation is given in lieu of any requirement to make additional releases from Camanche Dam in excess of the requirements of Section I.

EBMUD commits to coordinating and prioritizing possible water purchases from the Mokelumne River system to the extent feasible and practical and acceptable to EBMUD. The HRL Program’s governance program will be used to determine the use of available funding to provide additional outflow in “Above Normal,” “Below Normal,” and “Wet” years. If DWR is called upon to provide the water by forgoing SWP exports, such call will be handled through agreement between DWR and its contractors.

**Table 8 – Mokelumne River HRL Funding**

<b>Habitat on Mokelumne Funded by EBMUD<sup>(V1)</sup></b>	\$1.5 million over 8 years				
<b>Habitat on the Mokelumne Funded by DWR<sup>(V1)</sup></b>	\$7.5 million				
<b>Water Revolving Fund – EBMUD Contribution</b>	\$10 per acre-foot diverted <sup>(V2)</sup> plus any applicable surcharge on the quantity of “Project Water” diverted from the Central Valley Project by EBMUD				
<b>Additional Funding for Water Purchase Program<sup>(V3)</sup></b>	<b>Sacramento River Index<sup>(V4)</sup></b>				
	<b>C</b> N/A <sup>(V5)</sup>	<b>D</b> \$0	<b>BN</b> \$191,000	<b>AN</b> \$256,000	<b>W</b> N/A <sup>(V5)</sup>

**Healthy Rivers and Landscapes Program Notes**

- (V1) See [Table 7](#) for habitat improvements. Includes funds expended under early implementation actions.
- (V2) Only applies to diversions made from the Mokelumne River under License 11109 or Permit 10478 as described in Section III.B. EBMUD will pay this amount to the Systemwide Funding Entity no later than **[[[ MONTH/DAY ]]]** each year.
- (V3) No later than **[[[ MONTH/DAY ]]]** each year, EBMUD will pay to the Systemwide Funding Entity the sum listed in [Table 8](#) that corresponds to DWR’s April 1<sup>st</sup> Bulletin 120 for the Sacramento River Index year type. Payment is provided to fund market-price water purchases under the PWA Water Purchase Program.
- (V4) The Sacramento River Index refers to the sum of the unimpaired runoff in the water year as published in DWR’s April 1<sup>st</sup> Bulletin 120 for the following locations: Sacramento River above Bend Bridge, near Red Bluff; Feather River, total unimpaired inflow to Oroville Reservoir; Yuba River at Smartville; and American River, total unimpaired inflow to Folsom Reservoir.
- (V5) N/A is an abbreviation for not applicable.

**D. Contribution by JVID**

Jackson Valley Irrigation District (JVID) has the right to divert flows from the Mokelumne River under the conditions described in its Permit 12167 from an authorized point of diversion at the north spillway of Pardee Dam. When this Implementation Agreement becomes effective, JVID intends to facilitate implementation of the HRL Flow Contribution by constructing and operating a new water diversion method at Pardee Reservoir necessary for JVID to continue to divert water under Permit 12167.

**IV. Conditions for Performance**

The Implementing Entities’ obligation to implement the measures specified in the Implementation Agreement is contingent upon each of the following conditions. As used in this Section, “Implementing Entities” means signatories to this Implementation Agreement that have responsibilities to implement measures stated herein.

1. In any year when EBMUD's March 1st median forecast of End-of-September Total Combined Pardee and Camanche (P+C) storage is less than 350 thousand acre-feet, the Implementing Entities will be excused for the remainder of that year from all obligations to provide the HRL Flow Contribution, and in that event EBMUD will continue to provide the Existing Flow Requirements.

2. EBMUD's obligation to implement the habitat measures and to provide the associated funding described in Section II and Section III.A of this Appendix is contingent upon satisfaction of both of the following conditions:

- a. EBMUD has received all permits from state, federal, and local agencies necessary to complete the specified habitat commitments; and
- b. EBMUD has entered into a binding agreement with Department of Water Resources (DWR) to receive no less than \$7.5 million in funding from the State of California for habitat measures, and, provided EBMUD remains in substantial compliance with such agreement, DWR renews or extends such agreement if and when needed such that DWR remains bound for the expected duration of the funded work, not to exceed eight years.

3. AWA's obligations under Section I.A.3.c are contingent on AWA entering into a binding agreement with DWR to receive no less than \$3 million in funding from the State of California to fund AWA's implementation of water conservation projects within its service area. The funded projects are intended to make conserved water available to AWA, as partial mitigation to AWA in consideration of AWA's commitment to make 2,000 AF of its existing entitlement available for the HRL Flow Contribution.

4. North San Joaquin Water Conservation District's (NSJWCD)'s ability to divert water under Permit 10477 and its ability to conjunctively manage surface and groundwater supplies to correct conditions of groundwater overdraft in the Eastern San Joaquin Groundwater Basin will be reduced as a result of the HRL Program. NSJWCD's obligation under Section I.A.3.d to bypass the HRL Flow Contribution is contingent upon satisfaction of both of the following conditions:

- a. The SWRCB replaces Term 18 of Permit 10477 with a term requiring NSJCWD to make the bypass described in Section IA.3.d, such that NSJWCD will not have to further dedicate 1,000 acre-feet of available Permit 10477 supplies while the Implementation Agreement remains in effect.
- b. NSJWCD has entered into a binding agreement with DWR to receive no less than \$3 million in funding from the State of California for a project that will facilitate the diversion and use of surface water for groundwater recharge in NSJWCD.

5. During the term of this Implementation Agreement, the State Water Resources Control Board shall not impose or recommend in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows on an Implementing Entity which would have the effect of requiring that Implementing Entity to provide an "additional contribution" as defined in Section 4.2 of Exhibit C.5. If the State Water Resources Control Board imposes or recommends any such terms, regulations, or flows, then:

- a. the water right terms, regulations, or flows so imposed or recommended shall not be enforceable against that Implementing Entity to the extent they require an additional contribution; and

- b. that Implementing Entity shall continue to comply with any obligations it may have under this Implementation Agreement to provide, release, or bypass flows; and
- c. that Implementing Entity shall be excused from all obligations under this Implementation Agreement other than obligations to provide, release, or bypass flows.

## **Exhibit B5 Appendix 2**

### **GOVERNANCE PROCEDURES FOR THE MOKELUMNE RIVER**

#### **Mokelumne Healthy Rivers and Landscapes Governance Program**

The Mokelumne River Healthy Rivers and Landscapes - Governance Program (Mokelumne HRL Program) will be administered under the authority of the existing Lower Mokelumne River Partnership (Partnership), the collaborative, time-tested, accountable, and outcome-driven entity established to implement and adaptively manage the 1998 Lower Mokelumne River Joint Settlement Agreement (JSA).

The JSA was established in 1998. The Federal Energy Regulatory Commission's (FERC) November 27, 1998 Order, "Approving Settlement Agreement and Amending License for the East Bay Municipal Utility District's Lower Mokelumne River Project No. 2916," approved the Joint Settlement Agreement (JSA) entered into by East Bay Municipal Utility District (EBMUD), U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG). The JSA included flow and non-flow measures, and required EBMUD, USFWS, and CDFG to develop a Water Quality and Resource Management Program (WQRMP) for FERC approval. FERC approval for the WQRMP was attained in 2001. National Marine Fisheries Service (NMFS) has been an active participant providing technical assistance on JSA issues but is not a JSA signatory.

The Partnership has a three-tier structure: the Mokelumne River Technical Advisory Committee (MRTAC) consists of technical staff and conducts data sharing and monitoring responsibilities; the Partnership Coordinating Committee (PCC) consists of mid-manager level staff from the three organizations and implements annual decision making for monitoring, flow scheduling and research needs; the top tier is the Partnership Steering Committee (PSC), composed of Director and Senior Manager level staff from each agency, which provides signatory authority over decisions when needed (e.g., if a decision triggers a SWRCB Action or Approval). The Partnership Steering Committee, developed the WQRMP to define reasonable goals, measures, performance criteria and responsive actions associated with the implementation of the JSA.

The goals of the JSA are to:

- Provide, to the extent feasible, habitat quality and availability in the lower Mokelumne River to maintain fishery, wildlife, and riparian resources in good condition
- Contribute towards the state and federal fishery restoration goals as defined in the California Salmon, Steelhead Trout and Anadromous Fisheries Program Act and the Central Valley Project Improvement Act
- Sustain the long-term viability of the salmon and steelhead fishery while protecting the genetic diversity of naturally producing populations in the lower Mokelumne River

Governance of the Mokelumne HRL flow and non-flow commitments will expand the existing executive and technical responsibilities of the Partnership, using the governance structure established for the JSA. The Partnership will make decisions regarding the integration, implementation, and deployment of JSA and Mokelumne HRL flows, conduct assessments, develop strategic plans, provide reports to the SWRCB and SWGC, and actively participate in System-wide decision making, consistent with applicable provisions of the JSA and the Mokelumne HRL Program. Managing the Mokelumne HRL Program will



require the PCC to meet more frequently than it does currently. Coordination may be done with voting members of the PCC via email, teleconference, or in person to meet program guidelines.

In addition to EBMUD, CDFW, and USFWS, the Partnership includes representation from NMFS for technical assistance. Other Lower Mokelumne River Tributary stakeholders, including Mokelumne River water rights holders, non-governmental organizations, tribal interests, landowners, local business interests and public agencies are invited to participate in Partnership proceedings. EBMUD is currently consulting with local Tribal entities to invite their participation in the HRL governance process and to understand how they prefer to participate.

## Partnership Structure

For Mokelumne HRL Program decision making, the Partnership will follow the same structure used for JSA decision making. It is comprised of a three-tiered system for science-based technical collaboration, consensus based-decision making, and executive signatory authority, as shown in [Figure 1](#).



**Figure 1. Partnership Tier System Structure**

### **1.1 Tier 1 - Mokelumne River Technical Advisory Committee (MRTAC)**

The first tier is the MRTAC, comprised of staff from CDFW, USFWS, NMFS, Woodbridge Irrigation District (WID), and EBMUD. The role of MRTAC is to provide up-to-date scientific and technical data covering both operational and biological information, assessments, and studies to support Mokelumne HRL Program decision-making. MRTAC provides a forum for on-the-ground biologists to coordinate surveys and special studies, as well as share and discuss the results. Information from MRTAC will inform the input that the Partnership makes to the Systemwide Science Committee for their strategic plan, science program, and reporting. The MRTAC meets a minimum of twice annually, between the months of January and September, typically in February and June.

## **1.2 Tier 2 - Partnership Coordinating Committee (PCC)**

The second tier is the PCC, the technical body of the Partnership that is administered by a member representing each of the Partnership Agencies (CDFW, USFWS, NMFS, and EBMUD). Lower Mokelumne River Tributary stakeholders are invited to attend and participate in PCC committee meetings.

The PCC will be responsible for developing management and implementation plans informed by MRTAC, designating Mokelumne HRL Year Types in conformance with [Appendix 1](#), designing Mokelumne HRL block release schedules which meet fishery needs and comply with Mokelumne HRL Program requirements, evaluating implementation outcomes and forming adaptive management actions for the Mokelumne HRL Program. The PCC currently meets at a minimum twice annually (March/April and September/October). Meeting occurrence will need to increase to meet the decision making needs of the Mokelumne HRL Program.

## **1.3 Tier 3 - Partnership Steering Committee (PSC)**

The PSC is the highest tier and the executive body of the Partnership. It consists of a member representing each of the JSA-stipulated Partnership Agencies (CDFW, USFWS, and EBMUD). A representative of the NMFS is also invited to attend PSC meetings to provide technical assistance. The PSC has signing authority for proposed projects, adaptive management actions that require SWRCB approval, special studies, and financial transactions. The PSC will have final approval of the annual reports submitted to the SWGC. The PSC meets once annually (typically November/December). The PSC serves as the signatory level of responsibility under the Partnership and will be engaged when that signatory authority is necessary to implement an action.

## **Mokelumne HRL Program Governance Responsibilities**

The Partnership will be responsible for adding the following primary responsibilities to its existing 1998 JSA requirements:

- **Implementation:** Participate in data assessment to develop non-flow actions and monitoring plans and Mokelumne HRL block release scheduling to implement the Mokelumne-specific HRL plan annually, including contingencies and adaptive decision-making as necessary.
- **Reporting:** Provide reports annually and/or at designated project milestones to the SWGC and directly to the SWRCB as required for the HRL flow and non-flow implementation, commitments, and adaptive management requests.
- **Decision making:** Lead the tributary specific decision-making process to implement the Mokelumne HRL Program in a manner that meets the needs of the Mokelumne River, as described in both the JSA and Mokelumne HRL Program, and secondarily meets the needs of the SWGC.

## **1.4 Mokelumne HRL Program Governance Implementation**

The Partnership will provide tributary governance over deployment of the following: (1) pre-existing flow obligations established by the JSA when adaptive management actions are requested to the SWRCB, and (2) Mokelumne HRL block release obligations. The Partnership's HRL-related governance obligations will include the following:

- (1) Making a Mokelumne HRL Year Type determination in the manner described in [Appendix 1](#), which will determine the quantity of Mokelumne HRL flow assets to be provided during the water year;

- (2) Making decisions regarding the scheduling of Mokelumne River flow assets consistent with Mokelumne HRL flow flexibility brackets and [Appendix 1](#), and making contingency plans for changed conditions and/or year type conditions; and
- (3) Evaluating and responding to requests from the SWGC regarding the deployment of Mokelumne HRL assets.

Mokelumne HRL flow assets are available from the Mokelumne River in three Mokelumne HRL Year Types (*i.e.* “Dry”, “Below Normal”, and “Normal and Above”) defined in [Appendix 1](#).

Actual operations will be determined by the Partnership in conformance with the Mokelumne HRL seasonal flow flexibility brackets stated in [Appendix 1](#). The PCC will develop a planned daily flow schedule for release requirements under the JSA and the seasonal volume of the Mokelumne HRL block releases from Camanche Dam. The Mokelumne HRL block releases will be distributed on a daily schedule, subject to ramping rates in place and approved by the PCC. Contingency plans may also be included with the flow schedule, subject to periodic adjustments in projections, to provide guidance on revising and/or adapting the schedule based on changes in environmental and hydrologic conditions.

EBMUD will be the lead implementing agency for non-flow measures with input from the PCC. The implementation of Mokelumne HRL non-flow measures will be dependent on funding availability (see [Appendix 1](#), Section IV (Conditions)) and permitting support from the federal and state fisheries agencies (CDFW, USFWS, NMFS).

## **1.5 Mokelumne HRL Program Governance Reporting**

EBMUD through the Partnership will provide Annual Reports of the implementation of the Mokelumne HRL Program in the preceding year to the SWGC. Members from the Partnership will participate in the compilation and integration of annual and triennial Systemwide reports for submittal to the SWRCB.

The annual reports will:

- Inform adaptive management;
- Be technical in nature, identify actions taken, monitoring results, and milestones achieved;
- Document status and trends of native fish; and
- Document whether commitments for Mokelumne HRL flow and non-flow measures are being met.

### **1.5.1 Reporting for Flow Measures**

EBMUD through the Partnership will provide annual operations plans and summaries of adaptive management actions approved by the SWRCB and a summary of daily releases from Camanche Dam:

- Planned monthly schedule of the release requirements under D-1641/JSA and the volume of the Mokelumne HRL block releases from Camanche Dam; and
- Daily measurement and monitoring of total releases from Camanche Dam at USGS Gage # 113235500.

### **1.5.2 Reporting for Non-Flow Measures**

Goals and objectives as developed under the Science Plan for the HRL program will be reported to the SWGC and resource agencies, as prescribed by the Systemwide HRL Program guidelines.

## **1.6 Mokelumne HRL Program Governance Decision-making**

### **1.6.1 Mokelumne HRL Year Type Determination**

The PCC will plan Mokelumne HRL actions based on the water year type as defined in Table 6 in Appendix 1. The Mokelumne HRL Year Type will determine the Mokelumne HRL block release obligations for that year. The final designation of Mokelumne HRL Year Type will be based on DWR's April 1<sup>st</sup> Bulletin 120 median unimpaired runoff forecast for the Mokelumne River. (The PCC will continue to plan releases of Existing Flow Requirements based on the water year type index defined in Table 5 in Appendix 1.)

### **1.6.2 Flow Asset Decision-making**

The PCC has a schedule of decision making for deployment of Mokelumne HRL flow assets as follows:

- By mid-February each year, the PCC will design and propose a daily flow schedule for the Spring Block release to apply in March through May, based on the Mokelumne HRL Year Type initially determined using the best available estimates of runoff in the Mokelumne River. If the PCC determines that the Spring Block releases should begin in March, the PCC will designate an interim daily flow schedule for the Spring Block release by mid-March.
- By mid-April each year, after release of DWR's April 1<sup>st</sup> Bulletin 120, the PCC will revise the proposed Spring Block release as necessary and designate a daily flow schedule for the Spring Block release to apply in April and/or May.
- By mid-September each year, the PCC will design and designate a daily flow schedule for the Fall Block release, using HRL assets available for the Mokelumne HRL Year Type defined by estimated runoff in the Mokelumne River in DWR's April 1<sup>st</sup> Bulletin 120, gainshare, and any other available flow assets, to apply in October.
- The block release will be distributed on a daily schedule, subject to ramping rates in place and approved by the PCC. It is anticipated that contingency plans may also be included with the flow schedule, subject to periodic adjustments in median projections, to provide guidance on revising and/or adapting the schedule based on a change in conditions.

Each year's block release flexibility will be based on real-time conditions and decision making by the PCC within the following boundary guidelines (see Flow Measures Description):

- The flow proposal is for 70% to 90% of Mokelumne HRL flow assets to be released in the March-May period;
- The remaining flow after establishing releases in the March-May period to occur in October, not to exceed 30% of the annual quantity of Mokelumne HRL flow assets released.

The PCC will consider several parameters annually to determine the correct distribution of flows to allow for optimizing fisheries benefit. Those parameters include, but are not limited to:

- Delta entry timing of adult chinook for timing of fall attraction pulses;

- Coordination with United States Bureau of Reclamation (USBR) on Delta Cross Channel operations to improve attraction pulse effectiveness;
- Redd emergence timing so that floodplain benefits will be available for when most juvenile salmonids are able to use them;
- Water year type (e.g., the Dry Year contribution is not intended to fill floodplains to beneficial growth criteria and so spring water would be used to encourage juvenile outmigration or introduce food into the main channel – likely in May); and
- Ambient air and water temperatures (not attracting adults upstream when temperatures are limiting or not inundating floodplain when water temperatures are too low to produce good growth inducing opportunities) as well as effect of proposed action on water temperatures or cold water pool later in the year.

Ultimately, the deployment of flows must conform to the terms and conditions of the Enforcement Agreement. In the case consensus is not reached, EBMUD, as an agency subject to regulatory enforcement, will have the final decision on the deployment of flows.

The SWGC may make recommendations to the Partnership regarding the timing of flow asset releases to benefit the Delta ecosystem. The Partnership will review and consider such requests, and where possible will honor them. However, the Partnership retains final decision-making authority on Mokelumne HRL flow asset release schedules within the flexibility brackets defined in [Appendix 1](#). Reasons why the Partnership may choose not to implement recommendations from the SWGC could include operational constraints, prioritization of ecosystem benefits on the Lower Mokelumne River, or reducing the risk of flooding on the Lower Mokelumne River.

### **1.6.3 Non-Flow Asset Decision-making**

EBMUD will continue to implement the Mokelumne HRL habitat restoration measures specified in [Table 7](#) in [Appendix 1](#) with input from the PCC and support from the federal and state fisheries agencies (CDFW, USFWS, NMFS).

## Exhibit B5 Appendix 3

### MOKELUMNE RIVER TRIBUTARY SPECIFIC SCIENCE PROGRAM

#### A. Description of Mokelumne River Existing Monitoring Program Elements

EBMUD has been conducting annual biotic and abiotic monitoring of the Mokelumne River for the last 25 years, with monitoring activities specifically designed to help inform management actions and guide future restoration activities. These activities are summarized in [Table 1](#) and described in this Section A.

**Table 1. Description of EBMUD Annual Fisheries Monitoring.**

Survey Name	Survey Type	Survey Methods	Survey Duration	Survey Period	Location (rkm <sup>1</sup> )
Fish Community Study	Fish Community	Boat Electroshocking	1998 - Present	Quarterly	1-103
Juvenile Habitat Utilization	Fish Community	Backpack Electroshocking, Seining	2017 - Present	Bi-weekly: January - June	86-103
Mokelumne River Juvenile Emigration Monitoring	Juvenile Salmonid Escapement	Rotary Screw Trap	Vino: 2009-Present Golf/Bypass: 1992-Present	Daily: December - July	Vino = 87 Golf = 62 Bypass = 62
Mokelumne River Video Monitoring	Adult Escapement	Video Monitoring	1998 - Present	Daily: Year Round	62
Lower Mokelumne Redd Monitoring	Spawning Surveys: Chinook & Steelhead	Kayaking, Drift Boat	1990 - Present	Weekly: October - March	86-103
Chinook Salmon CWT Recovery	Carcass Survey	Kayaking, Drift Boat	2003 - Present	Weekly: October - January	86-103

1 rkm = river kilometer measured from confluence of the San Joaquin River to Camanche Dam

#### 1. Fisheries Monitoring

EBMUD monitors multiple life-stages of the Chinook salmon and Steelhead trout life cycle via: 1) video monitoring adult passage at the Woodbridge Irrigation District Dam fish ladder (daily; 62 rkm), 2) redd surveys (weekly; 89-103 rkm), and 3) carcass surveys (CWT Recovery; weekly; 89-103 rkm). Juvenile salmonid downstream migration and freshwater habitat use is enumerated/calculated via: 1) rotary screw traps (daily; Golf = 62 rkm; Bypass = 62 rkm; Vino = 87 rkm), 2) seining/backpack electroshocking (bi-weekly; 89-103 rkm), and 3) fish community surveys (quarterly; 0 -103 rkm). Native

and non-native resident fishes are enumerated and measured during the video monitoring, rotary screw trap, seining/backpack electrofishing, and fish community surveys.

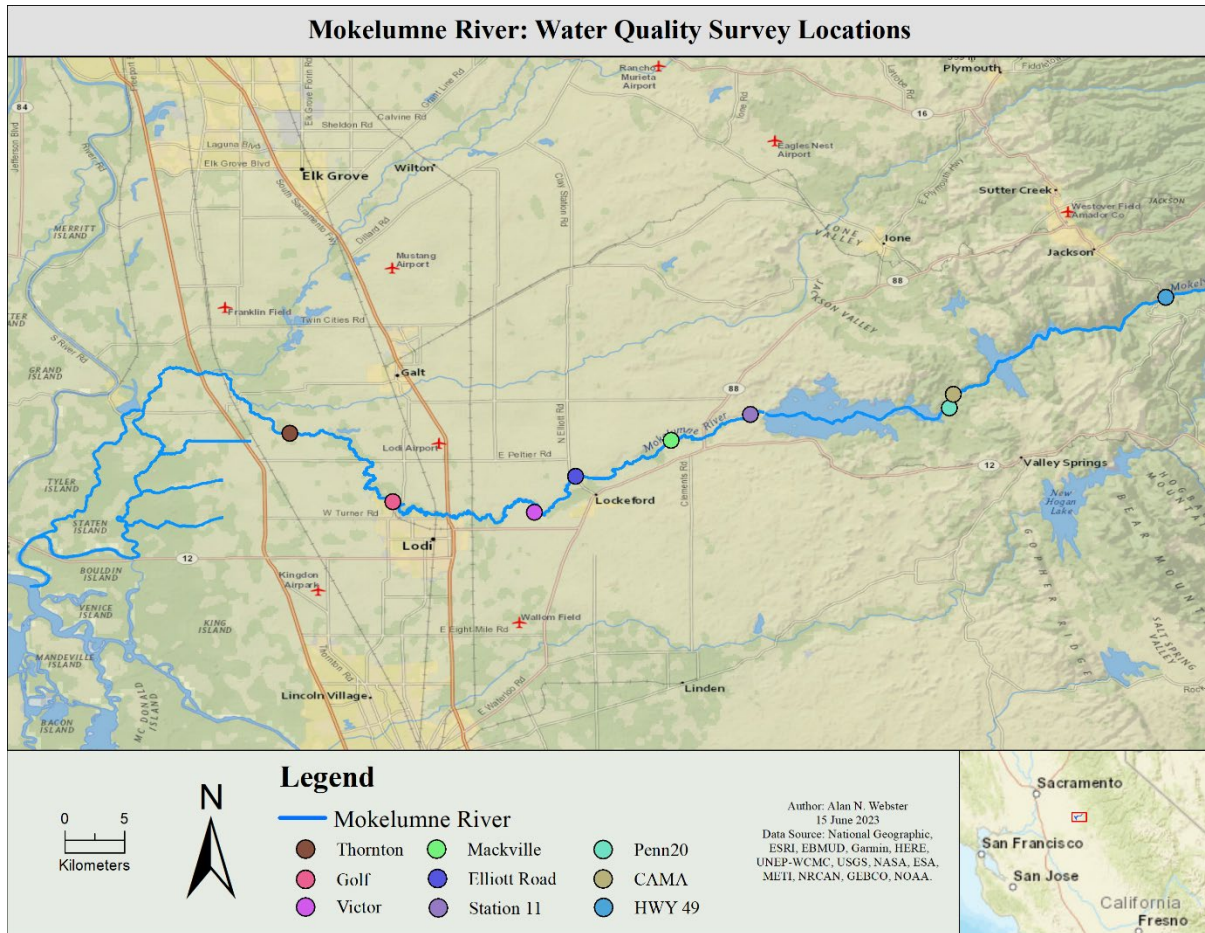
## 2. Water Quality Monitoring

In order to determine the health of the aquatic environment, EBMUD conducts monthly water quality sampling at one location within Camanche Reservoir, and one in the Lower Mokelumne River at Elliott Rd (RKM 86) multiple abiotic factors are monitored including turbidity (TSS - total suspended solids and VSS - volatile suspended solids), nutrients (total and dissolved phosphorus and nitrogen), chlorophyll, and phytoplankton and zooplankton abundance and taxonomic composition (to genus). In addition, the samples are analyzed for hardness, Al, Cd, Cr, Cu, Fe, Ni, Pb, Zn, Hg, Ti, and pH.

**Table 2. Description of EBMUD Water Quality Monitoring.**

Survey Area	Survey Location	rkm	Survey Type	Data Collected	Survey Intervals
LMR	Thornton	46	Instantaneous	Temperature (c), Depth (ft)	15-min
LMR	Golf	62	Instantaneous	Temperature (c), Flow (cfs and af), Depth (ft)	15-min
LMR	Victor	79	Instantaneous	Temperature (c), Flow (cfs), Depth (ft)	15-min
LMR	Elliot Road	86	Instantaneous	Temperature (c), Flow (cfs), Depth (ft)	15-min
LMR	Elliot Road	86	Discrete	Temperature (c), Turbidity, Dissolved Oxygen, Conductivity, Nutrients	Monthly
LMR	Mackville	95	Instantaneous	Temperature (c), Flow, Depth (ft)	15-min
LMR	Station 11	102	Discrete	Dissolved Oxygen	Monthly
LMR	Below Camanche	103	Instantaneous	Temperature (c), Flow (cfs and af), Depth (ft)	15-min
Camanche	PENN20	117	Discrete	Temperature (c), Turbidity, Dissolved Oxygen, Conductivity, Nutrients	Monthly
Camanche	CAMA	118	Discrete	Temperature (c), Turbidity, Dissolved Oxygen, Conductivity, Nutrients	Monthly
UMR	HWY 49	131	Instantaneous	Temperature (c), Flow (cfs and acft), Depth (ft)	15-min

Legend: C = Celsius; cfs=cubic feet per second; ft=feet; af=acre feet



### 3. Habitat Monitoring

EBMUD works with partners to design, run, and analyze large-scale habitat modeling projects (Table 3). CDFW flew LiDAR in 2015, and EBMUD and its partners used this updated LiDAR data to generate a two-dimensional hydraulic model of the Mokelumne River (main-channel and floodplain; HEC-RAS). The HEC-RAS model outputs were then used by collaborators with FlowWest to create habitat suitability models at a range of flows, that were finally utilized to conduct population modeling (CVPIA-SIT). Hydrologic models paired with habitat suitability indices can quantify suitable habitat for Chinook salmon to reach the Central Valley Project Improvement Act (CVPIA) doubling goal, one of the narrative objectives of the HRL Program.

**Table 3. Modeling/Habitat Monitoring**

DEM availability/source	Hydraulic Model Platform	Cover Map Available	HSI/Population Model
2015 LiDAR survey	2D-HecRAS	Partial	FlowWest unpublished 2020



## B. Non-Flow Actions and Monitoring Metrics

Minimum required non-flow measures for the Mokelumne HRL Program are 25 acres of new floodplain rearing habitat and 1 acre of instream juvenile rearing habitat.<sup>2</sup> A suite of habitat measures is planned to provide multiple benefits to the Mokelumne River anadromous fish populations, including screening riparian diversions, new gravel restoration projects and maintenance of restored gravel sites to maintain suitability throughout the term of the HRL Program.

**Table 4. Status of Implementation for Non-flow Measures on the Mokelumne River (Table 29 - 21 - Strategic Plan for the Proposed Agreements to Support Healthy Rivers and Landscapes Program).**

Description of Measures	Early Implementation (Dec 2018 -2024)	Years 1-3 <sup>1</sup> (2025 – 2027)	Years 4-6 <sup>1</sup> (2028 – 2031)	Years 7-8 <sup>1</sup> (2032-2033)	Total <sup>2</sup>
Spawning (acres)	2.14	0.6	0.6	0.6	3.94
Rearing: In-Channel (acres)	0.87	1.14	n/a	n/a	2.01
Rearing: Tributary Floodplain (acres)	3.67	11	11	n/a	25.67
Fish passage improvements <sup>3</sup> (# of projects)	3 Screens <sup>4</sup> (0.87 acre of In-Channel rearing habitat)	2 Screens <sup>5</sup> (1.14 acre of In-Channel rearing habitat)	n/a	n/a	5 Screens (2.01 acre of In-Channel rearing habitat)

(1) Early Implementation (Dec 2018 -2024) = 3 screens (Site #1 = 8.47 cfs; Site #2 = 4.46 cfs; Site #3 = 4.46 cfs; Total cfs = 17.39; Total acres = 0.87)

(2) Years 1-3 (2025 – 2027) = 2 screens (Site #1 = 11.4 cfs; Site #2 = 11.4 cfs; Total cfs = 22.8; Total acres = 1.14)

(3) Assumes adequate funding exists at the time of implementation.

(4) Fish passage improvements: Screening projects are converted to acres of in-channel rearing habitat for juvenile salmonids habitat improvement based on FlowWest/USBR calculation (20 cfs screened = 1 acre; USBR 2021)

### 1. Spawning Habitat: Enhancement (Maintenance) and Augmentation (New) Projects

Population and habitat modeling conducted by FlowWest determined that suitable spawning habitat for the Chinook salmon in the Mokelumne River is not a constraining/limiting factor in reaching the population doubling goal. Model results show ≈8.55 acres of spawning habitat is required to support the doubling goal, and the Mokelumne River currently has ≈11.94 acres of suitable spawning habitat. However, due to spawning habitat decay, EBMUD is committed to maintaining and/or augmenting the current spawning habitat in the Mokelumne River over the life of the agreement to ensure suitable spawning habitat.

The habitat maintenance and/or augmentation will be designed and constructed to meet the spawning habitat suitability criteria (Table 5) for flows between 200 cfs and 600 cfs, with a portion of the habitat design to provide suitable salmonid spawning habitat at flows as low as 150 cfs, and as high as 1,000 cfs (extreme dry or wet years). While the spawning habitat maintenance and/or augmentation projects will add spawning habitat, these projects will also provide additional suitable in-river juvenile

<sup>2</sup> Draft Staff Report/Substitute Environmental Document in Support of Potential Updates to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary for the Sacramento River and its Tributaries, Delta Eastside Tributaries and Delta (SWRCB 2023), Chapter 9 (Proposed Voluntary Agreements), Table 9.3-1.

rearing habitat complexity, as well as increased macroinvertebrate habitat, which support improvements in juvenile salmon size at migration and survival metrics.

## **2. Rearing Habitat: Floodplains Restoration**

Due to the critical importance of floodplain habitat to the survival of juvenile salmonids, EBMUD will restore approximately 25 acres of suitable floodplain habitat, which will provide much needed high quality rearing habitat along the migration corridor of the Mokelumne River, offering opportunity for fish access to critical foraging and refugia habitat, which will deliver improved growth rates before out-migrating into the delta and estuary environments. The floodplain habitats will be constructed to meet timing, duration, and frequency criteria based on supporting the progeny from a doubling target of 5,580 (60% of the 9,300 AFRP target). Currently, the available in-channel and floodplain rearing habitat has a current production potential of  $\approx 3.1$  million Chinook salmon fry, which is  $\approx 4.3$  million fry short of the  $\approx 7.4$  million fry necessary to support the adult escapement doubling goals (5,580 adult spawners; FlowWest unpublished data).

EBMUD will construct the floodplain habitat using design criteria developed for the HRL Program by CDFW in consultation with USFWS and NMFS and adopted by the SWRCB.

## **3. Rearing Habitat: In River**

The Mokelumne River is currently constrained by one acre of instream rearing habitat for juveniles, based on the FlowWest analysis (SBR 2023). The deficiency in instream habitat can be met by the addition of instream structure and habitat modification, or screening riparian diversions, associated with the proposed HRL non-flow measures for rearing habitat described below.

## **4. Water Diversion Screening Projects**

Surface water diversion structures are as a significant entrainment threat to the salmonid populations in the California Central Valley, with hydrologic conditions, timing of juvenile fish emigration, and timing of water diversions, identified as important factors in juvenile entrainment (Moore et al. 1996; Vogel 2013; Goodman et al 2017). Therefore, one of the priorities of the CVPIA, is to modify and/or replace unscreened diversions to protect juvenile anadromous fish in both the Sacramento and San Joaquin watersheds.

On the Mokelumne River, a critical time-period has been identified in which juvenile salmonid are rearing and/or out-migrating (February - July) and agriculture irrigation season (April - August) is on-going, in which farms with water rights (riparian or appropriative) pull water directly from the river via privately-owned pumps. During this time-period, both Fry (Length < 2.36 inches: 60 mm) and Fingerling (Length > 2.36 inches: 60 mm) size salmonids are present and distributed throughout the Mokelumne River. Based on this information, the screens that are fabricated and installed on water diversion structures in the Mokelumne River must meet the strictest criteria (fry criteria) set forth by NMFS (NMFS; *Fish Screening Criteria for Anadromous Salmonids* - NMFS, 1997), which ensures a project's effectiveness at protecting a variety of aquatic species and life stages based on swimming ability and project design criteria as shown below:

### Criteria for Water Diversion Screening Projects (NMFS, 1997)

- Screens must accommodate the expected range of water surface elevations
- Screens must be generally parallel to river flow and aligned with the adjacent bank line
- Approach velocities must be  $\leq 0.33$  f/s (0.10 m/s)
- Sweeping velocities must be  $\leq$  approach velocity
- Perforated plate screen face  $\leq 3/32$  inches (2.38 mm)

In order to ensure that water diversion screening projects meet the NMFS screening criteria, water velocity field surveys will be conducted pre- and post-screen construction using an acoustic doppler current profiler (ADCP), which uses an unmanned remote operated boat to map the water column velocities around each of the active water diversion locations. Measuring the three-dimensional velocity field in the vicinity of the water diversions provides a means of assessing the projects effectiveness for protecting a variety of aquatic species and life stages based on their swimming ability and project design criteria.

The restoration actions that EBMUD has committed to will be constructed using the habitat criteria in Table 5, which is adapted from Table 21 of the *Draft Strategic Plan for the Proposed Agreements to Support Healthy Rivers and Landscapes*.

**Table 5. Design criteria ranges for habitat enhancement measures included in HRL Non-Flow Measure commitments on tributaries and Bypass floodplains.**

The intention is that these criteria will act in concert to define project-specific ranges for the purposes of evaluating implementation of habitat enhancement actions (i.e., for habitat accounting). Methods for quantifying change in habitat acreage will be substantiated by peer-review literature and best available science and outlined in the Science Plan (*Table 21 - Strategic Plan for the Proposed Agreements to Support Healthy Rivers and Landscapes*).

Habitat Type	Water Depth (ft)	Water Velocity (fps)	Other
Spawning Habitat	1.0 – 2.5	1.0 – 4.0	<b>Substrate<sup>1</sup>:</b> Dominant substrate size 2 cm-10 cm (0.75 in – 4.0 in)
In-stream Rearing Habitat	0.5 – 4.0	0.0 – 3.0	<b>Cover<sup>2</sup>:</b> Minimum 20% of habitat acreage includes cover (defined in Table 22)
Tributary Floodplain Rearing Habitat	0.5 – 4.0	0.0 – 3.0	<b>Cover<sup>2</sup>:</b> Minimum 20% of habitat acreage includes cover (defined in Table 22)  <b>Floodplain Function<sup>3</sup>:</b> 1. Inter-annual frequency: Inundation 2 out of every 3 years on average and within a range of 50% to 80% of years. 2. Intra-annual frequency and duration: Minimum of (a) two distinct events for 7-18 days each OR (b) one event for >18 days, within the juvenile salmon rearing period (February through June).
Bypass Floodplain Rearing Habitat	0.5 – 4.0	0.0 – 3.0	<b>Floodplain Function<sup>3</sup>:</b> 1. Inter-annual frequency: Inundation 2 out of every 3 years on average and within a range of 50% to 80% of years. 2. Intra-annual frequency and duration: Minimum of (a) two distinct events for 7-18 days each OR (b) one event for >18 days, within the juvenile salmon rearing period (February through June).

(1) Dominant substrate is defined by the particles which compose more than fifty percent of the surface area (Gard 1998, 2006, 2009). Substrates in Gard 2006 with HSI Score  $\geq 0.5$  ranged between 2.5 cm and 10 cm (fall run Chinook salmon in the Merced River and Clear Creek). This range was reduced to 2 cm (0.75 in) to accommodate smaller sized spawning fish (i.e., including *O. mykiss*) using the equation developed in Riebe et al. 2014 and Merz et al. 2018.

(2) Table 22 synthesizes cover habitat categories with a habitat suitability index (HSI) Score  $\geq 0.5$ .

- (3) Approximate targets that are consistent with the rationale for the floodplain functionality quantified by the Meaningful Floodplain Event (MFE) described in the Final Draft Scientific Basis Report Supplement (SWB 2023), in which a floodplain habitat will flood 2 out of every 3 years (within a range of 50% to 80% of years) for a minimum of seven days of the juvenile salmon rearing period (outlined in 3.1.4.2) with flexibility for intra-annual frequency when duration is greater than 18 days.

### C. HRL Science Plan Hypotheses and Associated Monitoring.

The Mokelumne tributary specific monitoring protocol is developed such that the monitoring outputs can be utilized to inform the hypothesis described in the *HRL Program Science Plan Draft 2023*.

Habitat suitability assessments, described in Section 2 of the HRL Program Science Plan, consider habitat suitability design criteria, as well as additional factors (covariates) that may affect species utilization and their ability to feed, grow, avoid predators, and reproduce in the enhanced habitat. These covariate suitability metrics are additional to the metrics informing the habitat accounting procedures and often regard water quality (e.g., water temperature).

Covariate suitability metrics for spawning habitat, in-channel rearing habitat, tributary floodplain habitat, and tidal wetland habitat are described in HRL Program Science Plan Hypotheses H<sub>S1</sub>, H<sub>R1</sub>, H<sub>TribFP1</sub>, and H<sub>TW1</sub>, respectively.

EBMUD's existing Science Program collects data that will be leveraged to inform analysis of HRL Program hypotheses. For example, H<sub>TribWide2</sub> - *Condition factor of emigrating Chinook salmon* will use historical condition factor and post-HRL Program implementation condition factor to quantify change in juvenile salmon health at emigration that can be related to flow and non-flow measure implementation over time.

Table 6 summarizes the HRL Science Plan Draft (2023) hypotheses that will be used to analyze program success during the 8 year term and in addition adds the Mokelumne River tributary specific monitoring program that can be leveraged to address the hypotheses.

**Table 6. Summary of Healthy Rivers and Landscapes Science Program Hypotheses, Metrics, Comparisons, and Covariates for Local Full Tributary and Delta, and Population-Level Tiers, relevant to Mokelumne River HRL Program implementation and monitoring.**

All hypotheses are explained in detail in Section 2, Hypotheses, Metrics, and Baselines for Evaluating Outcomes of HRL actions. Cell colors indicate the Hypothesis Tier (Yellow = Local Tier for Non-Flow Measures; Blue = Full Tributary and Delta Tier; Light Red = Population-level Tier; colored cells adapted from Table 1 of the *HRL Program Draft Science Program*).

Action Type	Hyp. ID	Metric	Prediction	Basis for Comparison	Covariates	Mokelumne Monitoring Method
Spawning Habitat	H <sub>S1</sub>	Spawning habitat acreage*	↑	Existing suitable habitat acreage, based on depth and velocity criteria from DEMs and hydraulic models	Flow, water temperature, and dissolved oxygen	Habitat Monitoring – Bathymetric Survey Habitat Suitability Modeling (HECRAS)
Spawning Habitat	H <sub>S2</sub>	Salmon redd density (#/unit area)	↑	Non-project, proximal reference sites measured concurrently	Flow, water temperature, and dissolved oxygen	Redd Surveys
Rearing Habitat	H <sub>R1</sub>	Rearing habitat acreage*	↑	Existing suitable habitat acreage, based on depth and velocity criteria from DEMs and hydraulic models	Flow, water temperature and dissolved oxygen	Habitat Monitoring – Bathymetric Survey Habitat Suitability Modeling (HECRAS)
Rearing Habitat	H <sub>R2</sub>	Biomass density of secondary productivity (g/volume)	↑	Non-project, non-enhanced proximal reference sites measured concurrently	N/A	Environmental Consultant – Macroinvertebrate Sampling
Rearing Habitat	H <sub>R3</sub> , H <sub>R4</sub>	Juvenile Chinook salmon densities (#/unit area)	↑	Proximal project and non-project reference sites measured concurrently	N/A	Fish Community – Snorkel and Sein Surveys Backpack and Boat Shocking
Tributary Floodplain	H <sub>TribFP1</sub>	Tributary floodplain acreage subject to inundation*	↑	Existing floodplain acreage	Water temperature, dissolved oxygen, and flow	Habitat Monitoring – Bathymetric Survey Habitat Suitability Modeling (HECRAS)
Tributary Floodplain	H <sub>TribFP2</sub>	Biomass density of drift and benthic macroinvertebrates (g/volume)	↑	(1) Avg. densities for in-channel locations from historical record (2) In-channel locations measured concurrently with project areas	Water temperature, dissolved oxygen, water velocity, and indices of primary productivity	Environmental Consultant – Macroinvertebrate Sampling

<b>Tributary Floodplain</b>	<b>H<sub>TribFP3</sub></b>	Juvenile salmon presence and densities (#/unit area or #/volume)	↑	Non-project, proximal reference sites measured concurrently	Water temperature and dissolved oxygen	Fish Community – Snorkel Surveys Backpack and Boat Shocking
<b>Tributary Floodplain</b>	<b>H<sub>TribFP4</sub></b>	Growth rate of juvenile salmon	↑	Derived through experimental work using caged fish	Water temperature, secondary productivity	Fish Community – Snorkel and Sein Surveys Backpack and Boat Shocking Site Specific Study
<b>Tributary Floodplain</b>	<b>H<sub>TribFP5</sub></b>	Number of stranded juvenile salmon as a proportion of the tributary juvenile production estimate (JPE)	↔	(1) Historical estimates of stranding (2) Total population impact based on tributary JPE	N/A	Fish Community – Snorkel and Sein Surveys Backpack and Boat Shocking
<b>Tributary Floodplain</b>	<b>H<sub>TribFP6</sub></b>	Prevalence of native fish community (relative catch of native fishes compared to non-native fishes)	↑	Historical period of record for fish community sampling (seining, electrofishing, rotary screw traps)	N/A	Fish Community – Snorkel and Sein Surveys Backpack and Boat Shocking
<b>Fish Passage</b>	<b>H<sub>Pass1</sub></b>	Water velocity at surface water diversions	↓	Pre-project water velocities Pre- and post-project velocities compared with NMFS 1997 criteria for fish passage	N/A	Hydrographers – Acoustic Doppler Current Profiler
<b>Tributary Flow Pulses</b>	<b>H<sub>TribFlow1</sub></b>	Adult Chinook salmon fall upstream migration (spawner abundance/week)	↑	Weekly abundance estimates immediately before and after flow action	Water temperatures and dissolved oxygen	Redd Surveys Carcass Surveys Video Surveys
<b>Tributary Flow Pulses</b>	<b>H<sub>TribFlow2</sub></b>	Juvenile salmon outmigration rate	↑	Outmigration rates prior to flow action, same year	Fry density, fish size, turbidity, day length, PAR (sunlight), and temperature	Rotary Screw Traps
<b>Tributary Flow Pulses</b>	<b>H<sub>TribFlow3</sub></b>	Juvenile salmon survival and travel time during outmigration	↑	Survival of acoustically tagged salmon during and outside of pulse flows	Water temperature, turbidity, and dissolved oxygen	Rotary Screw Traps Acoustic Telemetry
<b>Tributary Juvenile Salmon Production</b>	<b>H<sub>TribWide1</sub></b>	Trend # estimated outmigrating juveniles / female spawner (≥ 3 years)	↑	Annual values in historical data record prior to HRL Program implementation	Flow, water temperatures and dissolved oxygen	Rotary Screw Traps
<b>Tributary Juvenile Salmon Production</b>	<b>H<sub>TribWide2</sub></b>	Condition factor of emigrating Chinook salmon	↑	Available historical data for each tributary	N/A	Rotary Screw Traps
<b>Tributary Juvenile Salmon Production</b>	<b>H<sub>TribWide3</sub></b>	Coefficient of variation in emigration timing and body size	↑	Available historical data for each tributary prior to HRL Program implementation	N/A	Rotary Screw Traps
<b>Tributary Adult Chinook Population</b>	<b>H<sub>TribPop1</sub></b>	Isotopic signature of floodplain rearing in adult population, evident in otoliths and/or eye lenses	↑	Period of record of archived samples across a variety of flow conditions, including years with known Bypass inundation	N/A	Data Gap
<b>Tributary Adult Chinook Population</b>	<b>H<sub>TribPop2</sub></b>	Natural origin adult Chinook salmon population estimates by tributary, and trend in abundance (harvest plus escapement)	↑	(1) Tributary adult abundance estimates from AFRP Doubling Goal years (1967 – 1991) (2) Tributary adult abundance since 2010	N/A	Carcass Surveys
<b>Tributary Adult Chinook Population</b>	<b>H<sub>TribPop3</sub></b>	Trend in the tributary Cohort Replacement Rate (CRR) for natural origin fish	↑	(1) Trend in the natural origin CRR in the period of record for each tributary (2) CRR since 2010	N/A	Data Mining/Summary
<b>Systemwide Chinook Population</b>	<b>H<sub>SWPop1</sub></b>	Annual Chinook salmon escapement and harvest for Sacramento and San Joaquin Valleys	↑	(1) Escapement + Harvest for AFRP Doubling Goal years (1967 – 1991) (2) Escapement + Harvest since 2010	N/A	Redd Surveys Carcass Surveys Video Surveys
<b>Systemwide Chinook Population</b>	<b>H<sub>SWPop2</sub></b>	Trend in CRR for natural origin fish for Sacramento and San Joaquin Valleys	↑	(1) CRR for AFRP Doubling Goal years (1967 – 1991) (2) CRR for Central Valley since 2010	N/A	Data Mining/Summary
<b>Native Delta Species Populations</b>	<b>H<sub>SWPop3</sub></b>	Distribution and population estimates for native species (California Bay shrimp, Sacramento splittail, longfin smelt, Delta smelt)	↑	Species abundance indices from 2023 Draft Scientific Basis Report Supplement.	N/A	Fish Community – Snorkel and Sein Surveys Backpack and Boat Shocking

#### **D. Reporting**

EBMUD will prepare annual reports and triennial reports for inclusion in Systemwide evaluations. Annual reports will include assessments of the above hypotheses through 1) monitoring summaries, 2) trends in population metrics, 3) restoration criteria metrics. Annual and Triennial reports will be collated by the HRL Program Science Committee for systemwide program goal reporting.

## Exhibit B5 Appendix 4

### FLOW ACCOUNTING FOR MOKELUMNE RIVER FLOW MEASURES

[[[ Note: EBMUD recently received comments from DWR, CDFW, and the SWRCB on this flow accounting document. EBMUD has not yet addressed certain of those comments due to time constraints. We will continue to engage with these agencies to address their comments. ]]]

### Definitions

**EBMUD** – East Bay Municipal Utility District, agency that operates Pardee and Camanche dams on the Mokelumne River.

**Joint Settlement Agreement (JSA)** – 1998 agreement between EBMUD, California Department of Fish and Wildlife, and U.S. Fish and Wildlife Service that set minimum flow requirements for the Mokelumne River. These flow requirements were incorporated into Revised Water Right Decision 1641 and thereby into the Mokelumne River water rights of EBMUD and Woodbridge Irrigation District (WID).

**PCC** – Mokelumne River Partnership Coordinating Committee. See Appendix 2 (Governance Procedures) for more detail.

Other capitalized terms used in this Appendix are defined in Appendix 1.

### Flow Measures

As described in Appendix 1, the Implementing Entities will provide the HRL Flow Contribution. The HRL Flow Contribution is defined in Section I.A.3 of Appendix 1. The HRL Flow Contribution is available in three Mokelumne HRL Year Types (“Dry”, “Below Normal”, and “Normal and Above”). The Mokelumne HRL Year Type index is defined in Appendix 1 in Section I.A.3(a) and Table 6. For purposes of implementing the HRL Flow Contribution, the PCC will be responsible for making the Mokelumne HRL Year Type determination in the manner set forth in Appendix 2, Section 3.

### Flow Measure Accounting

#### 1 Existing Flow Requirements

The Mokelumne River HRL Flow Contribution will be additive to Existing Flow Requirements. “Existing Flow Requirements,” which is defined in Section I.A.2 of Appendix 1, means the sum of the following: (1) the minimum regulatory flows specified by the JSA and D-1641 and Permit 10478, plus (2) any additional flows necessary to meet senior downstream water rights while simultaneously maintaining the minimum required regulatory flows.

##### 1.1 Minimum Regulatory Flows Specified by the JSA and D-1641

In 1998, EBMUD entered into a long-term partnership with the CDFW and USFWS by entering the Joint Settlement Agreement (JSA) for the Mokelumne River. Per the JSA, EBMUD must provide certain minimum regulatory flows specified in the JSA from Camanche Dam. The State Water Resources

Control Board (SWRCB) amended EBMUD's Mokelumne River water rights to require it to provide specified flow requirements at Camanche Dam and made corresponding changes to the water rights of WID to ensure a specified portion of the Camanche Dam releases passed below Woodbridge Dam (Revised Water Rights Decision 1641, March 15, 2000 (D-1641), pp. 170-179.) The JSA/D-1641 flow requirements are incorporated into this Implementation Agreement without change; see Appendix 1, Tables 1, 2, 3, and 4 under the column heading of "Existing Flow Requirements (JSA / D-1641 Component)." The HRL flow accounting includes this water within the Existing Flow Requirements.

## **1.2 Additional Flows Necessary to Meet Downstream Water Rights (Diversions)**

EBMUD needs to maintain the minimum regulatory flows described above and also simultaneously ensure sufficient flows are available to meet senior downstream water rights. To accomplish this, EBMUD releases additional flows from Camanche Dam for senior downstream diversions when and to the extent such additional releases are necessary to maintain the minimum regulatory flows at the compliance points designated in the JSA and D-1641. Water diverted by downstream riparian diverters and individual appropriators is not measured by EBMUD directly and is estimated based on historical monthly average losses observed on the river. Figure 1 is a schematic representation of Mokelumne River diverters throughout the watershed. The HRL flow accounting includes this water within the Existing Flow Requirements.

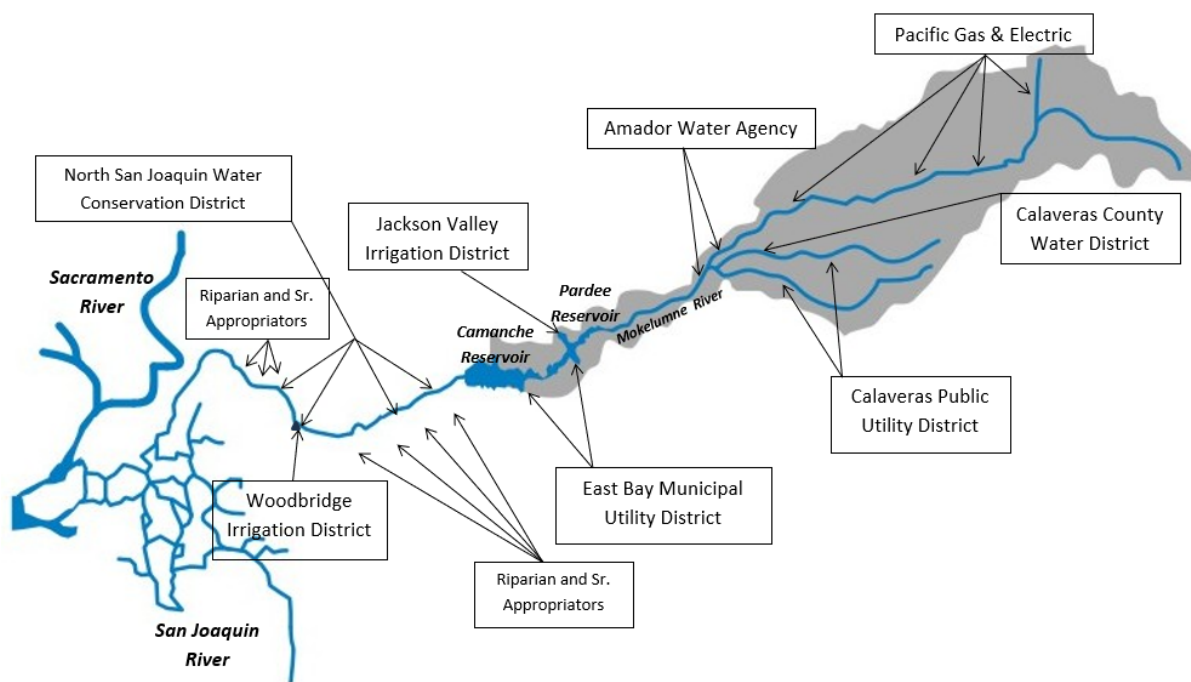
## **1.3 Buffer Water (Losses)**

EBMUD also releases buffer water to assure that sufficient water reaches senior downstream users. Water is "lost" from river flows due to several factors such as direct evaporation from the water surface, evapotranspiration from riparian phreatophytes, and seepage from the stream bed into the groundwater basin. The net effect of these losses is generally referred to as channel losses or carriage water loss. The components that make up the losses are not directly measured. Furthermore, the quantity and rate of losses vary with soil properties and geology, groundwater levels, and total seasonal flow in the river. For the purposes of HRL flow accounting, EBMUD is estimating the channel losses between Camanche and Woodbridge Dams based on historical monthly average observed losses, by JSA year type. The HRL flow accounting includes this water within the Existing Flow Requirements.

## **1.4 Water Right Permit 10478 Term 20: MMRP Fish-1**

Mitigation Measure Fish-1, Term 20 of Permit 10478, was added by the State Water Board as a condition to EBMUD's Permit 10478 in its Order WR 2016-0019-EXEC dated August 2, 2016 ("*Order Approving A Petition For Extension Of Time Until 2040 And Approving Petitions For Changes In Place Of Use, Purpose Of Use, And Permit Terms And Issuing An Amended Permit*"). Term 20 requires that EBMUD release additional fishery flows, over and above the JSA flows, to ensure that flows remain in the Mokelumne River to maintain adequate water depths for salmon passage. EBMUD releases from Camanche Dam up to a total of 2,000 acre-feet of additional water above required releases during the September through February period in Below Normal and Dry JSA water year types to facilitate adult salmonid fish passage below Woodbridge Dam. The HRL flow accounting includes this water within the Existing Flow Requirements.





**Figure 1. Mokelumne River Diverters**

## 2 Measuring HRL Flow Contribution above Existing Flow Requirements

The JSA and D-1641 establish a set of minimum release requirements from Camanche Dam, and a separate set of minimum expected flows below Woodbridge Dam. To provide the required flow below Woodbridge Dam, EBMUD coordinates with WID and releases sufficient water from Camanche Dam to satisfy the needs of diverters below Camanche Dam down to Woodbridge Dam, including WID's diversion, plus buffer water. Thus, during the irrigation season EBMUD may need to make higher releases from Camanche Dam to maintain minimum flows required below Woodbridge Dam because of diversions between Camanche and Woodbridge.

In the early Spring of each year, EBMUD will work with the PCC to develop daily release schedules that include both the Existing Flow Requirements and the HRL Flow Contribution, in accordance with the applicable JSA Year Type (respecting Existing Flow Requirements) and Mokelumne HRL Year Type (respecting the HRL Flow Contribution). The final determination of Mokelumne HRL Year Type will be made in April based on the April 1 Bulletin 120 Report (see [Appendix 2](#), section 3.3.1). Since the HRL Flow Contribution includes a Spring block of water in the March through May timeframe, it is expected that the PCC will be making decisions about deployment of HRL flows while the final Mokelumne HRL Year Type designation is still uncertain. Therefore, the PCC may approve two or more alternative schedules that can be implemented based on changing conditions. For example, the PCC could meet in February and develop schedules for both "Dry" and "Normal and Above" HRL Year Types, provided that the total HRL Flow Contribution released in March through May will be no less than the required Spring release for the Mokelumne HRL Year Type that is determined in April. The PCC may also

decide to make changes in response to evolving conditions or to shift flows to the October time period for fall attraction pulses within the Flexible Range of Block Releases from Camanche Dam specified in Appendix 1, Tables 1 through 4.

EBMUD has developed the attached spreadsheet, Table 1, to calculate the Existing Flow Requirements and to track the HRL Flow Contribution on a monthly basis. Table 1 includes a calculation of the required releases from Camanche Dam to satisfy both JSA flow requirements (Camanche Dam releases, and flow below Woodbridge Dam), accounting for senior downstream diversions, plus the Term 20 fish mitigation water, all of which together constitute the Existing Flow Requirements. The table then shows the additional flow assets to be released as the HRL Flow Contribution, based on the direction of the PCC and in accordance with Appendix 1, Section I.B.

The total release from Camanche Dam necessary to meet Existing Flow Requirements plus the HRL Flow Contribution is then calculated, which can subsequently be compared against actual Camanche Dam releases on a seasonal (March-May; October) or annual time period to demonstrate that EBMUD released the full HRL Flow Contribution from Camanche Dam required during that time period as described in Section 3.1.3 below.

Following is additional detail on the columns in Table 1:

Year and month – the particular year and month during the HRL term.

Column [1] – *JSA Year Type*. This column contains the JSA Year Type applicable during the month, determined as provided in Appendix 1, Table 5.

Column [2] – *JSA/D-1641 Minimum Release from Camanche Dam in CFS*. This column contains the minimum required release from Camanche Dam. It matches the value in “Release from Camanche Dam (CFS)” column of Appendix 1, Tables 1 through 4, whichever table is applicable to the JSA Year Type in effect during the month as indicated in Column [1].

Column [3] – *Additional JSA Releases in CFS*. Additional releases under the JSA may be required based on one or more of the following JSA provisions: (1) releases required by Footnote 5 of the Mokelumne River Minimum Flow Schedule which is Attachment 1 to the JSA, (2) releases required to meet the “gainsharing” obligation of Section F.2 of the JSA, or (3) adaptive management as authorized in D-1641.

Column [4] – *JSA/D-1641 Flow Below Woodbridge Dam in CFS*. This column contains the required flow below Woodbridge Dam. It matches the values in the table on page 178 of D-1641 as applicable to the JSA Year Type in effect during the month as indicated in Column [1].

Column [5] – *Estimated Losses and Rip/Sr. Approp. Diversions Between Camanche and Woodbridge Dams in CFS*. This column contains the estimated losses and riparian and senior appropriator diversions between Camanche and Woodbridge Dams that EBMUD must take into account to provide sufficient releases to reach Woodbridge Dam. It is based on average historical data and JSA year type.

Column [6] – *Scheduled WID Diversions in CFS*. This column contains Woodbridge Irrigation District scheduled diversions which WID provides pursuant to its agreements with EBMUD. This column may be updated during the month as WID adjusts its schedule.

Column [7] – *Calculated Camanche Dam Release Necessary to Meet JSA/D1641 and Prior Rights in CFS*. This column contains the total release from Camanche Dam needed to meet the minimum regulatory flows specified by the JSA and D-1641 in effect at a given time, plus any additional flows necessary to meet downstream senior water rights and associated carriage losses. This column contains the following calculations:

During Apr-Sep, the value is the greater of Columns [3]+[4]+[5]+[6] or Columns [2]+[3].

During Oct-Mar, the value is Columns [2]+[3].

Column [8] – ***Other Release Requirements – Water Right Permit 10478 Term 20 (MMRP FISH-1) in acre-feet.*** This column contains the required volume of additional releases from Camanche Dam, up to a total of 2,000 acre-feet, during the September through February period in “Below Normal” and “Dry” JSA Year Types to facilitate adult salmonid fish passage below Woodbridge Dam as required by Term 20 of EBMUD’s Permit 10478.

Column [9] – ***Other Release Requirements – Water Right Permit 10478 Term 20 (MMRP FISH-1) in CFS.*** This column contains the rate of release required during a given month necessary to provide the total volume stated in Column [8].

Column [10] – ***Existing Flow Requirements in CFS.*** This column contains the Existing Flow Requirements defined in Appendix 1. It is calculated by adding the required releases to meet JSA/D-1641 requirements in Column [7] to EBMUD’s Term 20 release requirements in Column [9].

Column [11] – ***Mokelumne HRL Year Type.*** This column contains the Mokelumne HRL Year Type applicable during the month, determined as provided in Appendix 1, Table 6.

Column [12] – ***HRL Flow Contribution in acre-feet.*** This column contains the volume of the applicable HRL Flow Contribution to be released during that month as determined by the PCC. It is based on and consistent with the values in the “HRL Flow Contribution” columns of Appendix 1, Tables 1 through 4, whichever table is applicable to the Mokelumne HRL Year Type in effect during the month as indicated in Column [11].

Column [13] – ***HRL Flow Contribution in CFS.*** This column contains the rate of release required during a given month necessary to provide the total volume stated in Column [12].

Column [14] – ***Calculated Total Camanche Dam Release Necessary to Meet Existing Flow Requirements and HRL Flow Contribution in CFS.*** This column contains the calculation of the total flow necessary to release from Camanche Dam to include both the Existing Flow Requirements and the HRL Flow Contribution. This column is the sum of Columns [10]+[13].

Column [15] – ***Measured Camanche Dam Average Monthly Release in CFS.*** This column contains the monthly average measured flow rate at Camanche Dam (USGS Gage # 11323500).

### **3 Real Water Verification**

The Mokelumne River HRL compliance point for purposes of verifying the release of the HRL Flow Contribution will be Camanche Dam measured at USGS Gage #11323500. As described in Appendix 1, Section I.A.3.b, EBMUD will be responsible for meeting its HRL Flow Contribution during each of three time periods as indicated in the “Flexible Range of Block Releases from Camanche Dam”: (1) a March through May time period; (2) an October time period; and (3) an annual time period.

For each year of the HRL Program term, EBMUD will prepare an annual report documenting its compliance with the HRL Flow Contribution for each of these three periods after accounting for any adaptive management approved by the SWRCB. The Annual Report will include a narrative discussion of how the HRL block flows were apportioned by the PCC, including lengths of time and flowrates for floodplain inundation in the Spring and a description of any fall pulse flows. The Annual Report will also include Tables 1, 2, and 3 to demonstrate compliance.

Table 1, Columns [1] through [14] are used to calculate the minimum Camanche Dam release and therefore will be completed before or concurrently with the release of flows from Camanche Dam

during each successive month. Columns [1] through [10] will be used to calculate EBMUD's Existing Flow Requirements. Columns [11] through [13] will be used to calculate the HRL Flow Contribution. Columns [12] and [13] will state the total acre-feet and monthly average flow of the HRL Flow Contribution for each month as determined by the PCC and in accordance with the flow measure commitments as described in Appendix 1, Section I.B. Column [14] will state the total minimum Camanche Dam release on a monthly basis, inclusive of that month's Existing Flow Requirements and HRL Flow Contribution. Column [15] will be completed after each month concludes and will state the actual average monthly Camanche Dam release measured at USGS Gage #11323500.

Table 2 will be used to convert the monthly flow rates to monthly volumes in order to determine compliance. For each month in which HRL Flow Contribution releases are required, the monthly flow rates shown as "Measured Camanche Dam Average Monthly Release" (Column [15] of Table 1) and "Calculated Total Camanche Dam Release Necessary to Meet Existing Flow Requirements and HRL Flow Contribution" (Column [14] of Table 1) will be multiplied by the number of days in that month to calculate a total monthly volume for that month for each metric.

Next, Table 3 sums these monthly volumes into the three time periods used to determine compliance with HRL flow measures (March through May, October, and Annual). If the volume of actual measured releases for each of the three time periods is greater than the volume of required releases for the corresponding time period, then EBMUD is in compliance.

### **Examples**

Following are two examples to demonstrate how the tables work in practice. The first example shows a year where the Mokelumne is in compliance with its HRL Flow Commitments.

Table 1 calculates the Existing Flow Requirements and shows the HRL Flow Contribution, by month.

*[remainder of page intentionally left blank]*

Example 1: Table 1

Example 1: Table 1		[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]	[11]	[12]	[13]	[14]	[15]
Year	Month	JSA/D-1641 Release Requirements							Other Release Requirements		Existing Flow Requirements (Appx. 1, § I.A.2)	Mok. River HRL Flow Contribution			Calculated Total Camanche Dam Release Necessary to Meet Existing Flow Requirements & HRL Flow Contribution	Measured Camanche Dam Average Monthly Release (USGS Gage #11323500)
		JSA Year Type	Minimum Release from Camanche	Additional JSA Releases: (Footnote 5; Gainsharing; Adaptive Mgmt)	Flow Below Woodbridge Dam	Estimated Losses and Rip/Sr. Approp. Diversions Between Camanche and Woodbridge Dams	Scheduled WID Diversion	Calculated Camanche Dam Release Necessary to Meet JSA / D1641 & Prior Rights	Water Right Permit 10478 Term 20 (MMRP Fish-1)			Mokelumne HRL Year Type (Appx. 1, Table 6)	HRL Flow Contribution (Appx. 1, § I.A.3)			
		JSA/D1641	JSA/D1641	JSA/D1641	*Estimated DATA	*Scheduled / Planned DATA	Apr-Sep: =max( [2] + [3] or [3] + [4] + [5] + [6] )  Oct-Mar: = [2] + [3]	= [7] + [9]	= [10] + [13]	DATA						
		(CFS)	(CFS)	(CFS)	(CFS)	(CFS)	(CFS)	(AF)	(CFS)	(CFS)		(AF)	(CFS)	(CFS)	(CFS)	
	January	Normal	325		100	10.99	0.00	325.00			325.00				325.00	1445.00
	February	Normal	325		100	42.76	0.21	325.00			325.00				325.00	600.30
	March	Normal	325		100	64.88	0.00	325.00			325.00	Normal	3375.72	54.90	379.90	2017.00
	April	Normal	325	200	150	81.44	20.30	525.00			525.00	Normal	19470.04	327.20	852.20	3158.00
	May	Normal	325	100	300	24.89	97.23	522.12			522.12	Normal	16355.94	266.00	788.12	2243.00
	June	Normal	325		300	89.04	117.83	506.88			506.88				506.88	1923.00
	July	Normal	100		25	-14.45	175.16	185.71			185.71				185.71	2187.00
	August	Normal	100		25	66.35	184.94	276.29			276.29				276.29	1073.00
	September	Normal	100		25	82.58	158.20	265.78			265.78				265.78	736.20
	October	Normal	325		100	22.46	99.39	325.00			325.00	Normal	5798.37	94.30	419.30	1235.00
	November	Normal	325		100	26.80	1.73	325.00			325.00				325.00	583.00
	December	Normal	325		100	63.33	0.00	325.00			325.00				325.00	331.10

**Example 1: Table 2**

Finally, Table 3 compares the measured releases to the required releases on a seasonal and annual basis and shows that the Mokelumne is in compliance for that year.

COMPLIANCE DETERMINATION					
	Measured	HRL Releases	Total Required Releases	Compliance?	
March-May	449,852	39201.7	122,528	YES	
October	75,937	5798.366	25,782	YES	
Annual	1,061,712	45000.06	300,050	YES	
	HRL Flow Flexibility Range	Actual Percentage			
Spring Block	70-90%	87%			
Fall Block	10-30%	13%			

The second example shows a year where the Mokelumne is not in compliance.

Example 2: Table 1

Example 2: Table 1		[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]	[9]	[10]	[11]		[12]	[13]	[14]	[15]
Year	Month	JSA/D-1641 Release Requirements							Other Release Requirements		Existing Flow Requirements (Appx. 1, § I.A.2)	Mok. River HRL Flow Contribution			Calculated Total Camanche Dam Release Necessary to Meet Existing Flow Requirements & HRL Flow Contribution	Measured Camanche Dam Average Monthly Release (USGS Gage #11323500)	
		JSA Year Type	Minimum Release from Camanche Dam	Additional JSA Releases: (Footnote 5; Gainsharing; Adaptive Mgmt)	Flow Below Woodbridge Dam	Estimated Losses and Rip/Sr. Approp. Diversions Between Camanche and Woodbridge Dams	Scheduled WID Diversion	Calculated Camanche Dam Release Necessary to Meet JSA / D1641 & Prior Rights	Water Right Permit 10478 Term 20 (MMRP Fish-1)			Mokelumne HRL Year Type (Appx. 1, Table 6)	HRL Flow Contribution (Appx. 1, § I.A.3)				
		JSA/D1641	JSA/D1641	JSA/D1641	*Estimated DATA	*Scheduled / Planned DATA	Apr-Sep: =max( [2] + [3] or [3] + [4] + [5] + [6] )  Oct-Mar: = [2] + [3]	= [7] + [9]	= [10] + [13]	DATA							
		(CFS)	(CFS)	(CFS)	(CFS)	(CFS)	(CFS)	(AF)	(CFS)	(CFS)		(AF)	(CFS)	(CFS)	(CFS)	(CFS)	
	January	Below Normal	250		100	43.28041	4.947754			250					250	342.2	
	February	Below Normal	250		100	50.25459	0.642857			250					250	270.1	
	March	Below Normal	250		100	56.16078	52.15667			250	Dry	1500.319	24.4		274.4	269.4	
	April	Dry	220		150	73.33626	68.96374			292.3	Dry	3373.934	56.7		349	315.1	
	May	Dry	220		150	90.22476	126.8347			367.0595	Dry	2625.559	42.7		409.7595	384.9	
	June	Dry	100		20	93.68855	135.019			248.7075					248.7075	270.9	
	July	Dry	100		20	97.26073	172.7456			290.0063					290.0063	313.2	
	August	Dry	100		20	98.28579	149.3511			267.6369					267.6369	285	
	September	Dry	100		20	87.66678	148.0931			255.7598					255.7598	275.4	
	October	Below Normal	250		100	57.62335	60.80888			250	Dry	2502.582	40.7		290.7	325.2	
	November	Below Normal	250		100	48.71202	4.238635			250					250	265.9	
	December	Below Normal	250		100	58.30082	3.760541			250					250	255.2	

Again, Table 2 converts the monthly flows to volumes.

**Example 2: Table 2**

Calculated Total Camanche Dam Release Necessary to Meet Existing Flow Requirements & HRL Flow Contribution							
		Measured Camanche Dam Average Monthly Release		Mokelumne River HRL Flow Contribution			
Month	Days	Volume (AF)	Flow (cfs)	Volume (AF)	Flow (cfs)	Volume (AF)	Flow (cfs)
January	31	21,041	342	0	0	15,372	250
February	28	15,001	270	0	0	13,884	250
March	31	16,565	269	1500.319	24.4	16,872	274.4
April	30	18,750	315	3373.934	56.7	20,767	349
May	31	23,667	385	2625.559	42.7	25,195	409.7595
June	30	16,120	271	0	0	14,799	248.7075
July	31	19,258	313	0	0	17,832	290.0063
August	31	17,524	285	0	0	16,456	267.6369
September	30	16,387	275	0	0	15,219	255.7598
October	31	19,996	325	2502.582	40.7	17,874	290.7
November	30	15,822	266	0	0	14,876	250
December	31	15,692	255	0	0	15,372	250

Finally, [Table 3](#) shows that in this example, the Mokelumne would not be in compliance for the Spring HRL block because the measured releases are not greater than the total required releases.

### Example 2: Table 3

COMPLIANCE DETERMINATION				
	Measured	HRL Releases	Total Required Releases	Compliance?
March-May	58,981	7499.812	62,834	NO
October	19,996	2502.582	17,874	YES
Annual	215,822	10002.39	204,519	YES
HRL Flow Flexibility Range		Actual Percentage		
Spring Block	70-90%	75%		
Fall Block	10-30%	25%		



**Exhibit B5  
Appendix 5**

**CONTACT INFORMATION FOR IMPLEMENTING ENTITIES**

[[[ TO BE INSERTED HERE ]]]

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## **Exhibit B6. Putah Creek**

**IMPLEMENTATION AGREEMENT FOR THE HEALTHY RIVERS AND  
LANDSCAPES PROGRAM IN PUTAH CREEK**

**March 29, 2024 Draft**

This “Implementation Agreement for the Healthy Rivers and Landscapes Program in Putah Creek” is entered into by and between the signatories hereto for the purpose of specifying responsibilities for implementation of the flow, habitat restoration, and other measures stated in Appendix 1 hereto.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow

and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. On May 23, 2000 a Settlement Agreement was reached between the Solano County Water Agency, Solano Irrigation District, Maine Prairie Water District, Cities of Vacaville, Fairfield, Vallejo, and Suisun City and Putah Creek Council, City of Davis, and the Regents of the University of California *Putah Creek Cases* (JCCP 2565). The Settlement Agreement is commonly referenced as the Putah Creek Accord.

G. The Putah Creek Accord provides specific details on Solano Project releases and instream flows for Lower Putah Creek for environmental benefit. It additionally provides for financial support for science and habitat restoration programs in Putah Creek, with a minimum contribution by SCWA of \$250,000 annually. Historically, SCWA has provided between \$500,000 and \$1 million above the required annual contribution. SCWA has also funded over \$2.5 million of fisheries and water quality monitoring work by UC Davis in the Cache Slough Complex, over a period of 8-years.

H. The Parties who sign this Implementing Agreement intend that they will implement the flow, habitat restoration and other measures as specified in Appendix 1.

**Drafting Note:** Yolo County Flood Control & Water Conservation District (YCFC&WCD) has engaged the Department of Water Resources in substantive discussions about becoming a signatory to this Agreement through operations that would augment streamflows in Putah Creek. Those discussions have involved conceptual proposals that are described in the Yolo Attachment to this Agreement but are not part of this Agreement as of March 29, 2024.

## **TERMS OF AGREEMENT**

1. **Purpose.** This Implementing Agreement states the specific responsibilities of Implementing Entities for implementation of flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program for Putah Creek, as specified in Appendix 1.

1.1. **Settlement of Disputed Issues.** This Agreement resolves disputes issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

1.2. **Timeliness.** The Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

2. **Definitions.** The Global Agreement states definitions applicable to all Voluntary Agreements. This Implementing Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

2.1. **Applicable Law** means: state or federal law that (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Parties contemplated by this Agreement.

2.2. **Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018 as amended by [date Final Action]).

2.3. **CDFW** means: the California Department of Fish and Wildlife.

2.4. **CDWR** means: the California Department of Water Resources.

2.5. **Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in the applicable Enforcement Agreement.

2.6. **Covered Water Quality Objectives** means: the objectives that the Healthy Rivers Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as defined below.

2.7. **Enforcement Agreement** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any VA-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscape Program.

2.8. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers Program, along with the obligations of the Parties to support implementation.

2.9. **Healthy Rivers and Landscape Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – G. This Implementing Agreement is Exhibit B.X thereto.

2.10. **Implementing Agreements** means: this and other agreements specific to water sources, committing to implement flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program. This Implementing Agreement states the measures for Putah Creek.

2.11. **Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementing Agreements. In this Agreement, the term refers to the Implementing Entities for measures in Putah Creek.

2.12. **Lower Putah Creek Coordinating Committee** means: the committee formed under and referenced in the *Putah Creek Accord*, tasked under that judgment with monitoring the implementation of the Putah Creek Settlement, monitoring the conditions of Putah Creek and making recommendations regarding the same, undertaking maintenance, restoration and enhancement measures with respect to resources to lower Putah Creek, and other obligations more fully described in the *Putah Creek Accord*.

2.13. **Parties** means: signatories to the Global Agreement. Parties who sign an Implementing Agreement are called Implementing Entities in this context. Parties who sign an Enforcement Agreement are called Responsible Parties in that context.

2.14. **Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, have amended this program to authorize implementation of the Healthy Rivers and Landscape Program.

2.15. **Putah Creek Accord** means: the May 2000 settlement agreement between the parties to the coordinated *Putah Creek Cases* (JCCP 2565), including SCWA.

2.16. **Responsible Parties** means: the Parties who sign Enforcement Agreements. Such Parties who are Implementing Entities for a given water source are called “Responsible Parties” for that water source.

2.17. **SCWA** means: the Solano County Water Agency.

2.18. **Solano Project** means: the project authorized by the Reclamation Act of 1939 (53 Stat. 1187) and subsequent statutes, consisting of Lake Berryessa, Putah Diversion Dam, Monticello Dam and other appurtenant facilities, that are owned by the U.S. Department of the Interior – Bureau of Reclamation, and operated in coordination with Solano County Water Agency for water supply, flood control and other purposes.

2.19. **State Water Board** means: the State Water Resources Control Board.

2.20. **State Water Project** or **SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

2.21. **USBR** means: the United States Bureau of Reclamation.

2.22. **VA Program** means: the Healthy Rivers and Landscape Program.

2.23. **Voluntary Agreements or VAs** means: the Global Agreement, the Implementing Agreements, and the Enforcement Agreements.

2.24. **Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### **3. Responsibilities of Putah Creek Implementing Entities.**

3.1. **Implementation.** Each Party will implement the obligations assigned to that entity in Appendix 1, including cooperation with non-Parties who are Implementing Entities.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein.
- B. If an obligation is assigned to multiple Implementing Entities under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Implementing Entity, other such entities will not be responsible for performance.
- C. This Agreement does not create any remedy for non-performance by an Implementing Entity. The corresponding Enforcement Agreement, **Exhibit C.X**, creates and specifies the remedies that run solely to Responsible Parties.

3.2. **Progress Reports and Inspections.** The Implementing Entities will prepare Annual and Triennial Reports with respect to implementation. The Implementing Entities will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

4. **Governance.** The Parties who are Putah Creek Implementing Entities agree to the governance structure for Putah Creek as stated in Appendix 2 hereto. They will participate in responsibilities for implementation, reporting, and other decision-making as stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3.

5. **Decision-making and Dispute Resolution Procedures.** The Parties who are Putah Creek Implementing Entities agree to the decision-making and dispute resolution procedures stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3, for the purpose of implementing this Agreement.

6. **Effective Date and Term.**

6.1. This Agreement takes effect when signed by the Parties who are Putah Creek Implementing Entities and will be binding as to such Parties when signed.

6.2. The term of the Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Agreement will terminate upon that Party's withdrawal from the Global Agreement.

7. **No Admission of Liability.** The Parties enter into this Agreement voluntarily. The Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the parties, other than for purposes of enforcing this Agreement. The Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or public trust doctrine, for the purpose of providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in the corresponding Enforcement Agreement would be available against them with respect to the Covered Water Quality Objectives.

8. **Compliance with Applicable Laws.** Each Party represents that it believes that this Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

9. **Reservations.**

9.1. **Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in



this Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

9.2. **Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law.

9.3. **Federal Appropriations.** All actions required of any federal Party are subject to appropriations by Congress. Nothing in this Agreement will be interpreted as or constitute a commitment or requirement that any federal Responsible Party obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Agreement.

9.4. **Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement.

10. **Notices.** Any Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 3 hereto. Each such entity will provide Notice of any change in the authorized representatives designated in Appendix 3.

11. **Attorney's Fees and Costs.** Each Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Agreement.

12. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

13. **Construction and Interpretation.** This Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the

Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Agreement.

14. **Amendment.** This Agreement may only be amended in writing by all Parties still in existence, including any successors or assigns. A Party may provide Notice of a proposed amendment at any time. The Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

15. **Addition of New Parties.** An entity may become a Party by signing the Agreement and the other Voluntary Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

16. **Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

17. **No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

18. **Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

19. **Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, the Parties agree that the remainder of the Agreement will not be affected thereby. The Parties hereto will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Agreement.

20. **Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**21. Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

*[Signatories]*

## **APPENDICES**

- 1. RESPONSIBILITIES FOR IMPLEMENTATION IN PUTAH CREEK**
- 2. GOVERNANCE PROGRAM FOR IMPLEMENTATION IN PUTAH CREEK**
- 3. PUTAH CREEK SCIENCE PROGRAM**
- 4. DESIGNATED REPRESENTATIVES FOR IMPLEMENTING ENTITIES IN PUTAH CREEK**

**Appendix 1.**  
**RESPONSIBILITIES FOR IMPLEMENTATION IN PUTAH CREEK**  
**1. Putah Creek Flow Component (Implementing Agency: SCWA)**

**1.1** The Solano County Water Agency (SCWA) will provide additional flow commitments intended to augment the flow regime in Putah Creek during specific seasons of the year. Those additional flow commitments are intended to provide enhanced environmental flow conditions in Putah Creek for salmon habitat and other benefits pursuant to the Agreements to Support Healthy Rivers and Landscapes (Healthy Rivers Agreements) entered into by several parties. SCWA, through collaborative efforts with parties to the Healthy Rivers Agreements, will provide those additional flow commitments during periods, rates, volumes, and reaches of Putah Creek to assist with benefits to enhance habitat conditions for salmon, including factors such as flow depth, velocity, and temperature. Those additional flow commitments include individual contributions by SCWA, identified below, which will be coordinated to complement each contribution. SCWA commits not to divert any of those additional flow commitments following releases into Putah Creek. The Putah Creek Healthy Rivers and Landscape Program will be supplemental to the Putah Creek Accord flows.

SCWA will have no responsibility for purchasing or providing additional flow contributions beyond those identified herein.

**1.2 Putah Creek Healthy Rivers and Landscape Flow Contribution.** During the term of this Agreement, SCWA will operate the Solano Project to provide up to 6,000 AF per year of water during Above-Normal, Below-Normal and Dry water years<sup>1</sup>, and up to 7,000 AF per year of water during Critical water years as SCWA's Healthy Rivers Flow Contribution (Putah Creek Healthy Rivers and Landscape Flow Contribution). These flows will be managed by SCWA for enhanced instream flows as part of the Putah Creek Healthy Rivers and Landscape Program. The Putah Creek Healthy Rivers and Landscape Flow Contribution will result from storage releases from Lake Berryessa. These contributions will be made available each water year on October 1 as a dedicated volume (block) of water in storage for deployment within that corresponding water year.

Table 1 presents the default plan and flexibility bracket for the Putah Creek Healthy Rivers and Landscape Flow Contributions:

<sup>1</sup> Unless otherwise stated, water year types are based on the Sacramento Valley Index (SVI) determined by CDWR as published in Bulletin 120.

**Table 1: Timing of Putah Creek Healthy Rivers and Landscape Flow Contributions from the Putah Creek water source. Bolded numbers represent the Default Plan for Putah Creek Healthy Rivers and Landscape Flow Contribution and numbers in parentheses represent the Flexibility Bracket for any given year. Putah Creek Healthy Rivers and Landscape Flow Contributions do not occur in Wet water years.**

<b>Water Year</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>
<b>Above Normal, Below Normal</b>	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-84%)	<b>16.7%</b> (0-74%)	<b>8.3%</b> (0-54%)	<b>8.3%</b> (0-57%)
<b>Dry &amp; Critical</b>	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-84%)	<b>16.7%</b> (0-74%)	<b>8.3%</b> (0-54%)	<b>8.3%</b> (0-57%)

- A. The Putah Creek Healthy Rivers and Landscape Flow Contribution can be flexibly allocated across November through May, including in response to requests from the Systemwide Governance Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and other key stakeholders at the discretion of SCWA and consistent with the regulatory and operational constraints on the Solano Project.
- B. In some years, the flexibility shown in the table may be available (i.e., 0-54% in April, and 0-57% in May), while in other years, the flexibility may be significantly limited by the Solano Project and Lower Putah Creek's hydrologic and operational constraints. SCWA will provide the total amount of Putah Creek Healthy Rivers and Landscape Flow Contribution under the default plan, but some months may require higher or lower ratios than Listed in Table 1, based upon these hydrologic and operational constraints. Changes to the schedule above will be evaluated in consultation with the Lower Putah Creek Coordinating Committee, CDWR, and USBR to optimize operation of the Lower Putah Creek Realignment Project and habitat management in the Yolo Bypass, in coordination with the State Water Board and CDFW.

### **1.3 Modifications to Healthy Rivers and Landscape Flow Contributions in Response to Specific Physical Conditions.**

- A. During the months of April – October, there are permanent barriers installed in Lower Putah Creek outside of the control and operation of SCWA. In drought years, these permanent barriers are often installed for even longer periods of time. These barriers include CDFW's Los Rios Check Dam within the Yolo Bypass Wildlife Area, Road 106A agricultural crossing, and other temporary crossings primarily located downstream of I-80. SCWA will provide the total amount of Putah Creek Healthy Rivers and Landscape Flow Contribution under the default plan, but some months may require higher or

lower ratios than listed in Table 1, based upon the installation and removal of these permanent barriers in Lower Putah Creek.

- B.** In some years, Fall Run Chinook salmon are active in the Yolo Bypass Toe Drain (Tule Canal) as early as October. If permanent barriers are removed, it may be of environmental benefit to create and/or supplement the existing Putah Creek Accord fall pulse flow. While October is not included in Table 1, the Putah Creek Healthy Rivers and Landscape Flow Contribution can be flexibly allocated if there is environmental benefit to the system. Such coordination will be done in tandem with the Systemwide Governance Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and/or other key stakeholders at the discretion of SCWA and consistent with the regulatory and operational constraints on the Solano Project.

**1.4 Flow Contribution Accounting.** SCWA’s respective Flow Contributions will be accounted for on a water year basis, in addition to the controlled water releases that SCWA is presently obligated to meet for existing minimum release requirements governed by the Putah Creek Accord. SCWA will account for the required Putah Creek Accord Flows as well as the supplemental Putah Creek Healthy Rivers and Landscape Flow Contribution. The accounting will also include Flow Contributions that are not released due to conditions and constraints beyond SCWA control, and which amounts will not carry-over to the following year and will revert back to the water rights holder.

- A.** SCWA will account for both the Putah Creek Accord Flows and the supplemental Putah Creek Healthy Rivers and Landscape Flow Contributions at the Putah Diversion Dam. The Putah Creek Healthy Rivers and Landscape Flow Contribution will be supplemental to the instream Putah Creek Accord requirements, up to the volumes and conditions specified in Table 1.

**1.5 Limitations on Releases.** SCWA will not be required to provide Flow Contributions while uncontrolled releases are occurring at the Putah Diversion Dam (aka. Flood flows – inflow from tributaries downstream of Monticello Dam or when the “Glory Hole” is spilling) or when the Yolo Bypass is passing uncontrolled flood water from the Sacramento River. SCWA will also not be obligated to provide Flow Contributions during the seasonal period (typically April – October) when the Los Rios Check Dam is installed in the Yolo Basin Wildlife Area (YBWA) by others for irrigation operations. The Parties will evaluate the potential for removing this limitation upon completion of the Putah Creek Bypass fish passage project, which was currently under construction as of the date of this Agreement. SCWA may choose, but will not be obligated, to release water during these periods of time if there is environmental benefit and done in coordination with the Systemwide Governance Committee, Lower Putah Creek

Coordinating Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and other key stakeholders.

## **2. Putah Creek Habitat Enhancement Component (Implementing Agency: SCWA)**

**2.1** As part of the Putah Creek Accord, SCWA is required to fund a minimum level of fish and wildlife monitoring, vegetation management, portion of the Putah Creek Streamkeeper position, and a non-indexed level of grant funding (\$250K) to preserve and enhance Lower Putah Creek. SCWA's annual contributions have significantly surpassed this minimum requirement. The additional funding has been used to support Lower Putah Creek wildlife monitoring including long-term monitoring of bird nesting, fisheries monitoring including both Chinook salmon juvenile snorkel surveys and adult salmon carcass surveys, as well as special studies, and educational programs along Putah Creek. SCWA has also funded over \$2.5 million of fisheries and water quality monitoring work by UC Davis in the Cache Slough Complex, over a period of 8-years. In addition to monitoring, SCWA has provided additional restoration funding for spawning gravel scarification and augmentation, specific restoration projects along Putah Creek such as the Winters Putah Creek Nature Park, as well as additional funding to support a full-time Streamkeeper position (the Accord only requires partial funding of the Streamkeeper position).

**2.2** During the term of this Agreement, consistent with the MOU (including the provision for early implementation of habitat projects), the Putah Creek Habitat Enhancement Component is the restoration of 1.4 acres of instream spawning habitat for adult Chinook salmon and resident rainbow trout (Lower Putah Creek Restoration Project: Nishikawa – UCD Reach). Planning for this component will occur in coordination with CDFW, NMFS, and SWRCB. SCWA's commitment is subject to the funding commitments and limitations set forth in Section 4 of this Appendix. SCWA will receive credit toward this obligation for early implementation of habitat measures that were approved by DWR prior to the effective date of this Agreement. SCWA anticipates completion of the restoration project in either Fall-2024 or Fall-2025 dependent on permit approvals. In addition to spawning habitat, the project will provide significant floodplain and riparian enhancement, gravel augmentation, and provide instream rearing habitat.

**2.3** Habitat measures will be designed and constructed to include a mixture of habitat features intended to enhance Chinook salmon in-river productivity to contribute toward achieving the Narrative Salmon Objective.

**2.4** Habitat measures will be developed and selected by SCWA in accordance with the best available science and local Putah Creek knowledge and experience, with input and coordination from CDFW, NMFS, and SWRCB during the design and permitting phases of each project.



**2.5** The overall Putah Creek Habitat Program purpose is to restore and rehabilitate the creek channel, banks, and associated habitats to more natural, self-sustaining form and function, consistent with the current (post-Monticello Dam) hydrologic regime. The Program is being implemented to stop further degradation of the creek corridor and to “jump-start” natural geomorphic and ecological processes systematically.

**2.6** Putah Creek Habitat Program activities will be developed with input from CDFW, NMFS, and SWRCB during the design and permitting phases. Potential additional habitat measures (subject to selection by SCWA in coordination with Putah Accord requirements) include:

- A.** Adult spawning habitat.
- B.** Instream rearing habitat.
- C.** Floodplain and riparian enhancement, including specific restoration projects along Putah Creek such as the Winters Putah Creek Nature Park,
- D.** Gravel scarification and augmentation.
- E.** Funding and support for the Putah Creek Streamkeeper position.
- F.** Fish and wildlife monitoring, including long-term monitoring of bird nesting, fisheries monitoring including both Chinook salmon juvenile snorkel surveys and adult salmon carcass surveys, as well as special studies, and educational programs along Putah Creek.
- G.** Improvements to channel geomorphology to reduce water temperature and better match existing hydrologic conditions.
- H.** Modification and/or removal of Fish Passage Barriers in Lower Putah Creek.
- I.** Vegetation management, including removal and/or management of Invasive Terrestrial and Aquatic Plant species in Lower Putah Creek.

**2.7** In addition to Putah Creek, SCWA may at its discretion, choose to partner with other agencies on habitat improvement projects within the Putah Creek watershed in

coordination with the Systemwide Governance Committee, Putah- Creek Science Program, UC Davis, CDFW, CDWR, and/or other key stakeholders.

**2.8** Table 2 presents the default implementation schedule for SCWA’s habitat enhancement measures:

**Table 2. Default implementation schedule for Non-flow Measures on Putah Creek.**

Description of Measures	Early Implementation (Dec 2018 -2024)	Years 1-3 (2025 – 2027)	Years 4-6 <sup>1</sup> (2028 – 2031)	Years 7-8 <sup>1</sup> (2032-2033)	Total
Spawning (ac)	1.4	---	---	---	1.4

<sup>1</sup>Assumes adequate funding exists at the time of implementation.

### **3. Putah Creek Healthy Rivers and Landscape Funding Component (Implementing Agency: SCWA)**

**3.1** The Parties expect that additional State and federal funds will be provided as needed to fully implement habitat measures under this agreement. To achieve the habitat enhancement commitments, SCWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal and grant sources and the issuance of all necessary permits and approvals. During the term of this Agreement, SCWA will dedicate \$2 per AF diverted for municipal and agricultural use (\$400,000 per year) for (a) Habitat Enhancement measures within Putah Creek and (b) to fund the Putah Creek Science Program, including monitoring, adaptive management, and reporting as described in Appendix 3 to this Agreement. The Parties expect that additional state and federal funds will be provided as needed to fully implement the Habitat Enhancement measures and Putah Creek Science Program under this Agreement. The Putah Creek Healthy Rivers and Landscape funding component will be in addition to the minimum required funding as part of the Putah Creek Accord.

**3.2** SCWA will receive credit toward this obligation for early implementation of habitat measures, specifically the Lower Putah Creek Restoration Project: Nishikawa – UCD Reach described in the Strategic Plan for the Healthy Rivers Program. SCWA anticipates completion of the restoration project in either Fall-2024 or Fall-2025 dependent on permit approvals.

**3.3** In addition to Putah Creek, SCWA may at its discretion, choose to partner with other agencies in neighboring watersheds on (a) Habitat Enhancement measures and/or (b) neighboring Science Programs in coordination with the Systemwide Governance Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and other key stakeholders where appropriate. This allows for greater flexibility when unique or unusual events arise, such as the 2021 Putah Creek Fish Kill, where SCWA staff were conducting monitoring in Colusa and Yolo Counties in coordination with state and local agencies

within the Colusa Basin Drain and Yolo Bypass. The 2020 LNU Fire is another example, where extensive monitoring was done in Napa, Yolo, and Solano County in response to the post-fire watershed concerns.

**3.4** Funds contributed by SCWA under this section will be accounted for and managed in accordance with the governance procedures set forth in Appendix 2 of this Agreement.

#### **4. Conditions**

**4.1** During the term of this Agreement, SCWA's commitment to provide the Putah Creek Healthy Rivers and Landscape Flow Contribution will be subject to suspension or termination by SCWA if SCWA's water rights for the SP are amended to include instream flow requirements that are substantially different from SCWA's Accord streamflow obligations for the Solano Project.

**4.2** Commitments by SCWA to implement respective Putah Creek Habitat Enhancement Components are subject to the availability of adequate funding. Funding commitments toward such components are limited to obligations under Section 4 and Section 5 of this Appendix. To achieve Putah Creek Habitat Enhancement Components, SCWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals.

**4.3** Commitments by SCWA to implement the Putah Creek Science Program are subject to the availability of adequate funding. Funding commitments toward that program are limited to obligations under Section 4 and Section 5 of this Appendix.

**4.4** The Parties intend that the Putah Creek Healthy Rivers and Landscape Program measures include all of the commitments by SCWA to contribute to the implementation of the Bay-Delta Plan's water quality objectives. Accordingly, the Parties will ask the State Water Board to include in the Bay-Delta Plan amendments provisions confirming that: (a) the State Water Board will not take any water-quality or water-right actions that would affect SCWA beyond the actions described as each entity's respective contributions to the Putah Creek Healthy Rivers and Landscape Program, or any other actions that would increase any of each entity's respective commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives, during the term of this Agreement; and (b) if the State Water Board takes any such actions, then SCWA may terminate or withdraw from this Agreement.

**4.5** The Parties intend that SCWA's Flow Contributions will not result in reductions in the amount of transfer water available under the Putah Creek Accord Water Purchase Agreement.

**Appendix 2.**  
**GOVERNANCE PROCEDURES FOR IMPLEMENTING AGREEMENT IN**  
**PUTAH CREEK**

**Appendix 3.**  
**PUTAH CREEK SCIENCE PROGRAM**

**Appendix 4.**  
**DESIGNATED REPRESENTATIVES FOR IMPLEMENTING ENTITIES IN**  
**PUTAH CREEK**

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## YOLO ATTACHMENT

**Drafting Note:** Yolo County Flood Control & Water Conservation District (YCFC&WCD) has engaged the Department of Water Resources in substantive discussions about becoming a signatory to the above Agreement through operations that would augment streamflows in Putah Creek. Those discussions have involved conceptual proposals that are described in this Attachment, but they are not part of the above Agreement as of March 29, 2024.

- *Rationale:* YCFC&WCD proposes enhancing flows in Putah Creek in lieu of flows in Cache Creek because conveying flows to Putah Creek will provide more benefit to fish species and increase Delta outflow consistent with the Bay-Delta Water Quality Control Plan more than increasing flows in Cache Creek. Cache Creek contains so-called “losing reaches,” in which surface water is “lost” to the groundwater aquifer. Additional conveyance losses occur from Capay Diversion Dam to the Cache Creek Settling Basin overflow weir. Cache Creek is an ephemeral creek that historically ran dry during summer months (pre-Cache Creek and Capay Diversion dams) and has naturally not flowed continuously into the Yolo Bypass or maintained connectivity to the Delta. (See Decision 1641, pp. 70-72.) Ongoing restoration and management efforts in Putah Creek have provided sustained creek flows and favorable conditions for attracting salmon, which has resulted in increased numbers of juvenile Chinook salmon as documented by the UCD Fisheries Group. Finally, enhanced instream flows in Putah Creek would have more benefit to fish species than enhanced instream flows in Cache Creek because salmon and other native fish are not present within the lower reaches due to Cache Creek’s ephemeral or intermittent nature and any attempts such fish would make to migrate into Cache Creek from the Yolo Bypass would be impeded by the Cache Creek Settling Basin. Spring and summertime water temperatures in Cache Creek are typically warmer and thus not as conducive to fish habitat as Putah Creek.
- *Proposed Contribution:* In exchange for compensation consistent with compensation for other streamflow contributions that are part of the Healthy Rivers & Landscapes Program, YCFC&WCD proposes to enhance Putah Creek instream flows with up to 5,000 acre-feet between November and March 31 in all water years except critically dry years when water is available and when additional flows are beneficial to salmon and other native fish in Putah Creek. The District will: (1) use its water distribution system to store water underground for later extraction to Putah Creek, with contributions coming from Cache Creek water that YCFC&WCD previously has recharged; (2) divert excess winter flows from Cache Creek to augment flows in Putah Creek; or (3) implement a combination of those measures, depending on hydrology.

- *Prerequisites:* In addition to the anticipated compensation described above, YCFC&WCD will require a water-right permit to divert excess flows in Cache Creek into augmented recharge in a manner similar to the multiple temporary water-right permits that YCFC&WCD has received for similar purposes over the last several years. YCFC&WCD anticipates that it would implement its contribution using existing diversion and conveyance facilities but may require canal lining/pipeline installation and new wells for purposes of pumping previously recharged water. To the extent that any permit would be necessary for YCFC&WCD's discharge of its proposed flow contribution, such a permit's issuance also would be a prerequisite for YCFC&WCD to implement that contribution.
- *Financial Contribution:* YCFC&WCD would dedicate \$2 per AF that it delivers for agricultural use for (a) Habitat Enhancement measures within Putah Creek and (b) to fund the Putah Creek Science Program, including monitoring, adaptive management, and reporting. When YCFC&WCD has sufficient supplies, its deliveries reach 150,000 AF per year, which would result in a contribution of \$300,000 in such a year.



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# **Exhibit B7. Sacramento Mainstem**

**IMPLEMENTATION AGREEMENT FOR THE HEALTHY RIVERS AND  
LANDSCAPE PROGRAM ON THE SACRAMENTO RIVER MAINSTEM BETWEEN  
THE CALIFORNIA DEPARTMENT OF WATER RESOURCES, SACRAMENTO  
RIVER SETTLEMENT CONTRACTORS AND TEHAMA-COLUSA CANAL  
AUTHORITY PARTIES**

**March 29, 2024**

This “Implementation Agreement for the Healthy Rivers and Landscape Program on the Sacramento River Mainstem” is entered into by and between the signatories hereto for the purpose of specifying responsibilities for implementation of the flow, habitat restoration, and other measures stated in Appendix 1 hereto.

**EXPLANATORY RECITALS**

A. The State Water Resources Control Board (State Water Board) and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital G.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than

March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.

F. In January 2019, the Newsom Administration confirmed its intention to complete the efforts to reach Voluntary Agreements. On March 1, 2019, the Directors of CDFW and CDWR entered into a “Planning Agreement Proposing Project Description and Procedures for the Finalization of the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan.” The purposes of the planning agreement were to propose: (1) a project description; (2) the process by which the parties would recommend the State Water Board analyze the project description; and (3) the process for developing appropriate terms for, and subsequent implementation of, the Healthy Rivers and Landscape Program.

G. From 2019 through 2022, the Parties and other interested entities undertook extensive efforts to develop a potential Healthy Rivers and Landscapes Program.

H. On March 29, 2022, the Parties and other interested entities signed the MOU, which included the Term Sheet.

I. The Term Sheet states in part:

The Parties intend to cooperate to submit the Term Sheet to the State Water Board, so that it may consider including the Voluntary Agreements Program, consistent with Resolution 2018-0059, as the pathway for the Parties to implement the Narrative Salmon Objective and a proposed Narrative Viability Objective. The Parties further intend to undertake a process to assist the State Water Board in its independent analysis of that pathway.

J. This Agreement is in furtherance of the Term Sheet.

K. The Parties who sign this Implementation Agreement intend that they will implement the flow, habitat restoration, and other measures as specified in Appendix 1 hereto.

## **AGREEMENT**

1. **Recitals.** The foregoing recitals are incorporated by reference.

2. **Purpose.** This Implementation Agreement states the specific responsibilities and respective obligations of the Implementing Entities for implementation of flow, habitat restoration, funding, and other measures of the Healthy Rivers and Landscape Program on the Sacramento River Mainstem as the Sacramento River Settlement Contractors’ (SRS Contractors)

and Tehama-Colusa Canal Authority (TCCA) Parties' respective contributions to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation.

2.1. **Settlement of Disputed Issues.** This Agreement resolves disputed issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

2.2. **Timeliness.** The Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

3. **Definitions.** The Global Agreement states definitions applicable to all Voluntary Agreements. This Implementation Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

3.1. **Applicable Law** means: state or federal law that (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of the Parties contemplated by this Agreement.

3.2. **Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018 as amended by [date Final Action]).

3.3. **CDFW** means: the California Department of Fish and Wildlife.

3.4. **CDWR** means: the California Department of Water Resources.

3.5. **Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control, and other purposes.

3.6. **Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed, and are identified as Covered Entities in the applicable Enforcement Agreement.

3.7. **Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscape Program will implement. These are: (i) the narrative water quality objective entitled "Salmon Protection" as stated in Bay-Delta Plan Table 3, p. 14 ("Narrative Salmon Objective"); and (ii) a new narrative objective to achieve the viability of native fish populations ("Narrative Viability Objective"), as defined below.

3.8. **Enforcement Agreement** means: with respect to non-federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State

Water Board pursuant to Government Code section 11415.60 to implement any VA-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscape Program.

3.9. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers and Landscape Program, along with the obligations of the Parties to support implementation.

3.10. **Implementation Agreements** means: this and other agreements specific to water sources, committing to implement flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program. This Implementation Agreement states the measures for the Sacramento River Mainstem.

3.11. **Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementation Agreements. In this Agreement, the term refers to the Implementing Entities for measures in the Sacramento River Mainstem.

3.12. **MOU** means the March 29, 2022 “Memorandum of Understanding Advancing a Term Sheet for The Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions.”

3.13. **Parties** means: signatories to the Global Agreement. Parties who sign an Implementation Agreement are called Implementing Entities in this context. Parties who sign an Enforcement Agreement are called Responsible Parties in that context.

3.14. **Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, have amended this program to authorize implementation of the Healthy Rivers and Landscape Program.

3.15. **Responsible Parties** means: the Parties who sign Enforcement Agreements. Such Parties who are Implementing Entities for a given water source are called “Responsible Parties” for that water source.

3.16. **State Water Board** means: the State Water Resources Control Board.

3.17. **State Water Project** or **SWP** means: the project authorized by California Water Code section 11000 et seq., and operated by CDWR, for water supply, power, flood control, and other purposes.

3.18. **Term Sheet** means the term sheet referred to in the MOU.

3.19. **USBR** means: the United States Bureau of Reclamation.

3.20. **VA Program** means: the measures, rights, and obligations stated in the Global Agreement and its Exhibits A-G. This Implementation Agreement is Exhibit B.X thereto.

3.21. **The Sacramento River Mainstem Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures for the water source as specified in Appendix 1.

3.22. **Voluntary Agreements** or **VAs** means: the Global Agreement, the Implementation Agreements, and the Enforcement Agreements.

3.23. **Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

#### **4. Responsibilities of the Sacramento River Mainstem Implementing Entities.**

4.1. **Implementation.** Each Party will implement the obligations assigned to that entity in Appendix 1, including through cooperation with non-Parties who are Implementing Entities.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein.
- B. If an obligation is assigned to multiple Implementing Entities under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Implementing Entity, other such entities will not be responsible for performance.
- C. This Agreement does not create any remedy for non-performance by an Implementing Entity. The corresponding Enforcement Agreement, Exhibit C.X, creates and specifies the remedies that run solely to Responsible Parties.

4.2. **Progress Reports and Inspections.** The Sacramento River Mainstem Governance Entity will prepare Annual and Triennial Reports with respect to implementation. The entity will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

5. **Governance.** The Parties who are the Sacramento River Mainstem Implementing Entities agree to the governance structure for the Sacramento River Mainstem as stated in Appendix 2 hereto. They have established the Sacramento River Mainstem Governance Entity and will

participate in its responsibilities for implementation, reporting, and other decision-making as stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3.

**6. Decision-making and Dispute Resolution Procedures.** The Parties who are the Sacramento River Mainstem Implementing Entities agree to the decision-making and dispute resolution procedures stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3, for the purpose of implementing this Agreement.

**7. Effective Date and Term.**

7.1. This Agreement takes effect when signed by the Parties who are the Sacramento River Mainstem Implementing Entities and will be binding as to such Parties when signed.

7.2. The term of the Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Agreement will terminate upon that Party's withdrawal from the Global Agreement.

**8. No Admission of Liability.** The Parties enter into this Agreement voluntarily. The Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the Parties, other than for purposes of enforcing this Agreement. The Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or public trust doctrine, for the purpose of providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in the corresponding Enforcement Agreement would be available against them with respect to the Covered Water Quality Objectives.

**9. Compliance with Applicable Laws.** Each Party represents that it believes that this Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

**10. Reservations.**

10.1. **Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

10.2. **Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming, or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law.

10.3. **Federal Appropriations.** All actions required of any federal Party are subject to appropriations by Congress. Nothing in this Agreement will be interpreted as or constitute a commitment or requirement that any federal Responsible Party obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Agreement.

10.4. **Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement.

11. **Notices.** Any Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 3 hereto. Each such entity will provide Notice of any change in the authorized representatives designated in Appendix 3, and [administrative entity] will maintain the current distribution list of such representatives.

12. **Attorneys' Fees and Costs.** Each Party will bear its own attorneys' fees and costs with respect to the negotiation, adoption, and enforcement of this Agreement.

13. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

14. **Construction and Interpretation.** This Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Agreement.

15. **Amendment.** This Agreement may only be amended in writing by all Parties still in existence, including any successors or assigns. A Party may provide Notice of a proposed amendment at any time. The Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

16. **Addition of New Parties.** An entity may become a Party by signing the Agreement and the other Voluntary Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

17. **Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this



Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

**18. No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

**19. Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

**20. Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, the Parties agree that the remainder of the Agreement will not be affected thereby. The Parties hereto will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Agreement.

**21. Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**22. Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

*[Signatories]*

**APPENDICES TO IMPLEMENTATION AGREEMENT  
FOR THE HEALTHY RIVERS AND LANDSCAPE PROGRAM ON THE  
SACRAMENTO RIVER MAINSTEM**

- 1. SACRAMENTO RIVER MAINSTEM HEALTHY RIVERS AND LANDSCAPE PROGRAM**
- 2. SACRAMENTO RIVER MAINSTEM GOVERNANCE PROGRAM**
- 3. SACRAMENTO RIVER MAINSTEM SCIENCE PROGRAM**

*[Drafting note: Appendices 2 and 3 are being developed in conjunction with the development of the Governance Program and Science Program for Sacramento River and Shasta operations that the SRS Contractors are currently working on with CDFW, DWR, USBR, NMFS, and USFWS as part of the ROC-LTO process. Appendix 2 may provide additional details regarding governance of flow assets that could play a role in avoidance, minimization, or mitigation measures pursuant to any related ESA/CESA requirements, and how those assets will be deployed.]*

- 4. IMPLEMENTING PARTIES AND COVERED PARTIES**
- 5. CONTACT INFORMATION**

## **APPENDIX 1**

### **SACRAMENTO RIVER MAINSTEM HEALTHY RIVERS AND LANDSCAPE PROGRAM**

#### **1. Sacramento River Mainstem Flow Component (Implementing Agencies: Sacramento River Settlement Contractors)**

The Sacramento River Settlement Contractors (SRS Contractors), in coordination with the Bureau of Reclamation's (USBR) operation of Shasta Dam, will perform a series of additional flow commitments intended to: (1) augment the flow regime required by the then current Biological Opinions governing long-term operations of the CVP on the Sacramento River mainstem during specific seasons of the year, (2) provide additional pulse flows at biologically sensitive periods, and (3) preserve cold-water pool to ensure viability of fish species during the warm summer months. These additional flow commitments are as follows:

**1.1** During the term of this Agreement, and during Above Normal, Below Normal and Dry years, the SRS Contractors will make available 100,000 acre-feet (AF) through land fallowing/crop shifting within their service areas (up to 20% of that total committed amount can alternatively be made available via groundwater substitution).<sup>1</sup> This supply will be made available for USBR to reoperate Shasta Reservoir to make water available for Sacramento River instream flows and Delta outflow. The Sacramento River Mainstem Responsible Parties commit to not divert any of this 100,000 AF of water after its release from Shasta Reservoir.

<sup>1</sup> This 100,000 AF flow commitment corresponds to the 100,000 AF flow contributions from the Sacramento River mainstem in Dry, Below Normal, and Above Normal years as listed in the Global Agreement, Appendix 1 for the Sacramento River Basin. Consistent with footnote 11 of that Appendix 1, this 100,000 AF of flow contributions shall not result in idling more than 23,256 acres of rice lands, assuming no groundwater substitution supply by the SRS Contractors.

**1.2** The 100,000 AF flow contribution will be made available by the SRS Contractors under a land idling monthly allocation from April through October as shown in Table 1 below, which sets forth the default plan and flexibility bracket for flow contributions from the Sacramento River Mainstem. The Parties to this Agreement acknowledge that the default plan shown below is to focus supply in April and May for Above Normal water years, and as to Below Normal and Dry water years it is anticipated that supply will be spread between the months of April to October to provide benefits in the season that provides the most benefits for fish.

**Table 1: Timing of VA Flow Measures from the Sacramento River Mainstem. Bolded numbers represent the Default Plan for VA Flow Measures and numbers in parentheses represent the Flexibility Bracket for any given year. The SRS Contractors are not providing flow contributions in Wet or Critical year types.**

Water Year	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
<b>Above Normal<sup>1</sup></b>	<b>0%</b>	<b>0%</b>	<b>0%</b>	<b>0%</b> (0-25%)	<b>0%</b> (0-25%)	<b>0%</b> (0-25%)	<b>50%</b> (0-100%)	<b>50%</b> (0-100%)	<b>0%</b> (0-25%)	<b>0%</b>	<b>0%</b>	<b>0%</b>
<b>Below Normal, and Dry<sup>2</sup></b>	<b>5%</b> (0-25%)	<b>0%</b> (0-25%)	<b>0%</b> (0-25%)	<b>0%</b> (0-25%)	<b>0%</b> (0-25%)	<b>0%</b> (0-50%)	<b>10%</b> (0-25%)	<b>15%</b> (0-25%)	<b>20%</b> (0-25%)	<b>20%</b> (0-25%)	<b>20%</b> (0-25%)	<b>10%</b> (0-25%)
<p>1. VA parties agree that the Sacramento River flow contribution of 100 thousand acre-feet (TAF) will be provided during the January through June period, except when it is recommended through the VA governance process that shifting the timing of a portion of this contribution would be in the best interest of the fishery. Recommendations by the VA governance process require approval from at least two of the following agencies: National Marine Fisheries Service, California Department of Fish and Wildlife, and the State Water Board. A process will need to be developed which describes this decision-making process for each of the three agencies as well as a summary of why one of the agencies chose not to approve the action.</p> <p>2. Assumes an April-October following pattern. For November-February, assumes water from the action year would be held in storage to be used in the fall or into the winter, assuming USBR approves the extension of the VA water into the next water year and operations. For March, assumes a dry year pulse in March. <i>[Drafting note: The Critical year type has been removed from this table since the SRS Contractors are not making VA flow contributions in those years.]</i></p> <p><i>[Drafting note: The flow accounting workgroup is continuing to develop a method to track deployment of these flows, and address implications of spill operations.]</i></p>												

**1.3** The Parties to this Agreement acknowledge that the 100,000 AF flow contribution from the SRS Contractors will require the reoperation of Shasta Reservoir, which is owned and operated by USBR. The Parties will coordinate with USBR so that reoperation of Shasta Reservoir will involve the following actions and order:

- A. If the water year is designated Dry, Below Normal, or Above Normal, the SRS Contractors will implement actions to make water available as stated in section 1.1 above.

- B. VA governance entities (Sacramento River Governance and Systemwide Governance Committee) will decide on a recommended Spring Action based on the framework in the VA Strategic Plan. An evaluation of Shasta Cold Water Pool would be completed to ensure any spring action would not impact winter-run salmon cold-water temperature requirements that align with the applicable Biological Opinions and State Water Board water right requirements.
- C. Recommendations by the VA governance entities require approval from at least two of the following agencies: National Marine Fisheries Service, CDFW, and the State Water Board.
- D. If a spring pulse is not possible (for example, because of winter-run salmon cold-water temperature requirements) or needed, the VA governance entities would discuss other options for the block of water made available subject to USBR approval, which could include:
  - Making the water available instream per the following schedule
  - Holding the water in storage in Shasta Reservoir until the fall to help meet fall flow and temperature requirements for fall-run salmon
  - Carrying the water over into the next water year for a spring action, or a summer/fall action, while ensuring decision-making is clear and accounting is done through an approved methodology (subject to any additional necessary regulatory approvals still under development).
- E. For the options listed above, if any option falls outside of the Flexibility Bracket as defined in Table 1 above, the Implementing Parties would seek prior approval from the State Water Board to make these adjustments.

## **2. Sacramento River Mainstem Non-Flow Measures/Habitat Enhancement Component (Implementing Agencies: SRS Contractors, CDWR)**

**2.1** Habitat measures will be designed and constructed to include a mixture of habitat features intended to enhance Chinook salmon in-river productivity to contribute toward achieving the Narrative Salmon Objective.

**2.2** Habitat measures will be developed by the SRS Contractors in coordination with USBR, CDWR, and CDFW.

**2.3** As further described in sections 3.2.B and 4.2, below, the habitat enhancement commitments in this section are subject to the availability of adequate funding, and the issuance of necessary permits and approvals, including any necessary approvals required under the Sacramento River Mainstem Governance Program as set forth in Appendix 2 to this Agreement.

**2.4** During the term of this Agreement, and consistent with the Term Sheet, the SRS Contractors and CDWR, in coordination with USBR, will implement the restoration of at

least 137.5 acres of instream habitat for juvenile Chinook salmon rearing and 113.5 acres of spawning habitat on the Sacramento River Mainstem.

**2.5** The Parties to this Agreement acknowledge that since December 2018, twelve spawning/rearing combination projects contributing to the VA environmental targets have been implemented in the Sacramento River Mainstem, and that these early implementation projects are contributing 105.65 acres of instream habitat (in-channel rearing habitat) and 71.85 acres of spawning habitat towards the habitat restoration targets established in the VA MOU.

**2.6** During the term of this Agreement, CDWR will lead implementation of the Non-Flow Measures in Table 2 below for the Years 1 through 8 columns and that exceed the SRS Contractors' acreage commitments in section 2.4 above. CDWR will coordinate with USBR, and work with the SRS Contractors, other water suppliers, and non-governmental agencies under existing habitat programs for this implementation. CDWR will lead this implementation in support of the following objectives: continued annual implementation and maintenance of salmonid habitat, maintaining vital landowner and stakeholder support, operating within the constraints of available funding, coordinating schedules with other entities' planned work in the river corridor, and allowing for adaptive management while fully meeting VA habitat acreage requirements during the term of this Agreement.

**Table 2. Default Implementation Schedule for Non-Flow Habitat Enhancement Measures on the Sacramento River Mainstem.**

Description of Measures	Early Implementation (Dec 2018-2024)	Years 1-3 (2025-2027)	Years 4-6 <sup>1</sup> (2028-2031)	Years 7-8 <sup>1</sup> (2032-2033)	Total <sup>2</sup>
Spawning (acres) <sup>3</sup>	71.85	45.37	73.20	42.20	232.62
Rearing: In-Channel (Instream) (acres) <sup>4</sup>	105.65	8.07	121.70	3.00	238.42
Rearing: Tributary Floodplain (acres) <sup>4</sup>	138.20	328.20	5,476.00	0	5,942.40
Fish passage improvements (# of acres) <sup>4</sup>	3.50	0	0	0	3.50
Other (predation reduction/combination of acres and number of clusters)	31.9 acres predation / 2,085 clusters	0 acres predation / 50 clusters	2 acres predation / 193.3 clusters	0 acres predation / 50 clusters	33.9 acres predation / 2,378.30 clusters

<sup>1</sup> Assumes adequate funding exists at the time of implementation.

<sup>2</sup> Table includes all likely feasible acreage planned for implementation and/or maintenance under existing and ongoing habitat program, based on the current implementation schedules. More habitat may be constructed during the VA timeframe above than required. The VA commitment includes 135.5 acres of rearing and 113.5 acres of spawning habitat. Any acreages created during the VA term above those obligations will not be subject to VA governance or State Water Board oversight.

<sup>3</sup> Includes implementation of current programmatically permitted and designed spawning/rearing combination sites and ongoing maintenance of spawning sites, to ensure continued habitat function at early implementation program (EIP) funded sites through the period of performance for the Healthy Rivers and Landscape Program.

<sup>4</sup> Includes implementation of current programmatically permitted rearing and spawning combination habitat sites and implementation of new rearing-only sites that have not yet been permitted and for which designs are currently at the conceptual level.

### **3. Sacramento River Mainstem Funding Component (Implementing Agencies: SRS Contractors; TCCA Parties; Systemwide Funding Entity)**

#### **3.1 Compensation to SRS Contractors.**

- A. During the term of this Agreement, the Systemwide Funding Entity will provide or arrange for funding for payment to the SRS Contractors for their 100,000 AF flow contribution in each of the above normal, below normal, and dry year types when water is called and made available under the Healthy Rivers and Landscape Program as follows:
- \$300/AF for the first 7 years while this Agreement is in effect.
  - \$375/AF for the 8th year.<sup>2</sup>
  - Each call year will include an additional \$75 acre payment for reduced Fall water use (for the 1 AF of reduced Fall water use on each idled rice acre).
- B. In addition to funding set forth above, the Systemwide Funding Entity will within \_\_ days of execution of this Agreement, provide a nonrefundable upfront payment totaling \$\_\_\_\_\_, equating to \$\_\_\_\_\_ per acre idled for the SRS Contractors 100,000 AF flow contribution.

#### **3.2 Contributions From SRS Contractors**

- A. During the term of this Agreement, each year the SRS Contractors will contribute \$8/AF to the Revolving Water Transfer Fund or equivalent funding mechanism for all Project water (as defined under the SRS Contracts) that the SRS Contractors actually divert in accordance with their SRS Contracts.
- B. During the term of this Agreement, each year the SRS Contractors will contribute an additional \$1/AF to the Structural Science and Habitat Fund or equivalent funding mechanism, for all surface water the SRS Contractors actually divert in accordance with their SRS Contracts.
- C. The SRS Contractors will receive credit toward their above-referenced per acre-foot payment obligations to the Structural Science and Habitat Fund in

<sup>2</sup> The Parties agree that water made available by riceland idling under the Healthy Rivers and Landscape Program equates to 3.3 AF per idled acre during the irrigation season, and 1 AF of reduced Fall water use per each idled acre, for a total of 4.3 AF per idled acre.

amounts equivalent to the costs they have incurred for early implementation of habitat measures that were completed prior to the effective date of this Agreement.

- D.** Funds contributed by the SRS Contractors under this section 3.2 will be accounted for and managed in accordance with the governance procedures set forth in Appendix 2 of this Agreement.

### **3.3 Contributions From Tehama-Colusa Canal Authority (TCCA) Parties**

- A.** During the term of this Agreement, each year the TCCA Parties will contribute \$8/AF to the Revolving Water Transfer Fund or equivalent funding mechanism for all CVP water that is actually delivered to the TCCA Parties in accordance with their CVP contracts.
- B.** During the term of this Agreement, each year the TCCA Parties will contribute an additional \$2/AF to the Structural Science and Habitat Fund or equivalent funding mechanism, for all CVP water that is actually delivered to the TCCA Parties in accordance with their CVP contracts.

### **3.4 Collection of Contributed Funds**

The SRS Contractors and TCCA Parties shall provide their above-referenced funding contributions through one of the following alternatives:

1. Self-collect as required under any funding collection agreement by and between the SRS Contractors, or any funding agreement by and between the TCCA Parties.
2. Request that USBR collect funds on behalf of the SRS Contractors and TCCA Parties under existing authorities.
3. Special authorizing legislation that will allow for USBR to collect from the SRS Contractors and TCCA Parties in accordance with their respective water rights settlement contract or water service contract for water supplies from the CVP.

Collected funds will be deposited into the Revolving Water Transfer Fund or Structural Science and Habitat Fund, as applicable, and may be used at the discretion of the Systemwide Governance Committee, unless otherwise prescribed by this Implementation Agreement, to implement the water acquisition, habitat, and other non-flow, and science elements of the Healthy Rivers and Landscape Program.

## **4 Conditions**

4.1 The SRS Contractors' commitment to provide their 100,000 AF flow contribution will be subject to the Systemwide Funding Entity providing the funding specified in section 3.1 of this Appendix.



4.2 The SRS Contractors' commitment to implement habitat enhancement measures is subject to the availability of adequate funding and the issuance of necessary permits and approvals, and the SRS Contractors' and TCCA Parties' funding commitment toward such measures is limited to their obligations under sections 3.2.B and 3.3.B of this Appendix. To achieve the habitat enhancement commitments, SRS Contractors will, in cooperation and coordination with other Parties, pursue all available funding sources, including state, federal, and grant sources and the issuance of all necessary permits and approvals.

4.3 The SRS Contractors' and TCCA Parties' commitment to implement the Sacramento River Mainstem Science Program is subject to the availability of adequate funding and the issuance of necessary permits and approvals, and the SRS Contractors' and TCCA Parties' funding commitment toward such program is limited to their obligations under sections 3.2.B and 3.3.B of this Appendix.

4.4 The Parties intend that the Healthy Rivers and Landscape Program for the Sacramento River Mainstem measures include all of the SRS Contractors' and TCCA Parties' commitments to contribute to the implementation of the Bay-Delta Plan's water quality objectives. If the State Water Board takes any water-quality or water-right actions in this Bay-Delta Plan amendment proceeding that would affect the SRS Contractors or TCCA Parties beyond the actions described as their respective contributions in this Implementation Agreement to the Healthy Rivers and Landscape Program for the Sacramento River Mainstem, or any other actions that would increase any of their respective commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives, during the term of this Agreement, then the SRS Contractors and TCCA Parties may terminate or withdraw from this Agreement.

4.5 During the term of this Agreement, the SRS Contractors' commitment to provide their 100,000 AF flow contribution will be subject to suspension or termination by the SRS Contractors if: (1) the new Biological Opinions issued for the Long-Term Operations of the CVP and SWP result in reduced diversions by the SRS Contractors that are not agreed to by the SRS Contractors or are otherwise inconsistent with the terms of the SRS Contracts with USBR; or (2) the State Water Board's implementation of Order 90-5 results in reduced diversions by the SRS Contractors below the quantities provided for in their respective SRS Contracts, or as otherwise may be agreed to by the SRS Contractors.

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# **Exhibit B8.**

## **State Water Purchase Program**

**The State team has drafted an MOU specifying measures to implement the State Water Purchase Program. The draft is undergoing internal review. The draft reflects the expectation that continued implementation of CNRA and DWR's existing "Instream Water Purchase Program," <https://resources.ca.gov/grants/instream-flow-water-purchase>, including procedures and requirements thereof, will achieve the State Water Purchase Program specified in VA MOU Term Sheet (2022).**

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# **Exhibit B9. Tuolumne River**

**IMPLEMENTATION AGREEMENT FOR THE HEALTHY RIVERS AND  
LANDSCAPES PROGRAM ON THE TUOLUMNE RIVER**

**March 29, 2024 Draft**

This “Implementation Agreement for the Healthy Rivers and Landscapes Program on the Tuolumne River” is entered into by and between the signatories hereto for the purpose of specifying responsibilities for implementation of the flow, habitat restoration, and other measures stated in Appendix 1 hereto.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital G.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. The Parties who sign this Implementation Agreement intend that they will implement the flow, habitat restoration and other measures as specified in this Implementation Agreement.

### **TERMS OF AGREEMENT**

1. **Purpose.** This Implementation Agreement states the specific responsibilities of Implementing Entities for implementation of flow, habitat restoration, and other measures in the VA Program for the Tuolumne River, as specified in Appendix 1.

1.1. **Settlement of Disputed Issues.** This Agreement addresses disputed issues related to the Bay-Delta Plan and specifically, addresses disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

1.2. **Timeliness.** The Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

2. **Definitions.** The Global Agreement states definitions applicable to all Agreements for Healthy Rivers and Landscapes. This Implementation Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

2.1. **Applicable Law** means: state or federal law that (a) exists independently of this Implementation Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Parties contemplated by this Implementation Agreement.

2.2. **Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018 as amended by [date Final Action]).

2.3. **CDFW** means: the California Department of Fish and Wildlife.

2.4. **CDWR** means: the California Department of Water Resources.

2.5. **Covered Diverters** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed, and are identified as Covered Entities in an Enforcement Agreement for the water source which is the basis for their point of diversion or use as appropriate.

2.6. **Covered Water Quality Objectives** means: the objectives that the VA Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as defined below.

2.7. **Enforcement Agreement** means: Enforcement Agreement related to Implementation of the Healthy Rivers and Landscapes Program on the Tuolumne River executed pursuant to Government Code section 11415.60. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscapes Program.

2.8. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers and Landscapes Program, along with the obligations of the Parties to support implementation.

2.9. **The Tuolumne River Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures for the Tuolumne River as specified in Appendix 1. The Tuolumne River Governance Entity is the Tuolumne River Partnership Advisory Committee.

2.10. **Implementation Agreements** means: this and other tributary-specific and Delta-specific agreements to implement flow, habitat restoration, and other measures. This Implementation Agreement states the measures on the Tuolumne River.

2.11. **Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementation Agreements. In this Implementation Agreement, the term refers to the Implementing Entities for measures in the Tuolumne River.

2.12. **Parties** means: signatories to the Global Agreement. Parties who sign an Implementation Agreement are called Implementing Entities. Parties who sign an Enforcement Agreement are called Responsible Parties.

2.13. **Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, have amended this program to authorize implementation of the Healthy Rivers and Landscapes Program.

2.14. **Responsible Parties** means: the Parties who are Implementing Entities under an Implementation Agreement and who sign the corresponding Enforcement Agreement. Responsible Parties under the Enforcement Agreement related to Implementation of the Healthy Rivers and Landscapes Program on the Tuolumne River are called “Tuolumne River Responsible Parties.”

2.15. **State Water Board** means: the State Water Resources Control Board.

2.16. **State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

2.17. **USBR** means: the United States Bureau of Reclamation.

2.18. **Healthy Rivers and Landscapes Program** means the measures, rights and obligations stated in the Global Agreement and its Exhibits A – G. This Implementation Agreement is Exhibit B9 thereto.

2.19. **Agreements for Healthy Rivers and Landscapes** means: the Global Agreement, the Implementation Agreements, and the Enforcement Agreements.

2.20. **Year means:** time starting on the Effective Date of the Global Agreement. Year 0 begins on the Effective Date.

### 3. **Responsibilities of Tuolumne River Implementing Entities.**

3.1. **Implementation.** Each Party will implement the obligations assigned to that entity in Appendix 1, including cooperation with other non-Parties who are Implementing Entities as applicable.



- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein.
- B. If an obligation is assigned to multiple Implementing Entities under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Implementing Entity, other Implementing Entities that do not have control over such performance will not be responsible for performance.
- C. This Implementation Agreement does not create any remedy for non-performance by an Implementing Entity. The corresponding Enforcement Agreement, Exhibit C9, creates and specifies the remedies that run solely to Responsible Parties.

3.2. **Progress Reports and Inspections.** The Tuolumne River Governance Entity will prepare Annual and Triennial Reports with respect to implementation. The Tuolumne River Governance Entity will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

4. **Governance.** The Parties who are Tuolumne River Implementing Entities agree to the governance structure for the Tuolumne River as stated in Appendix 2 hereto (Governance Procedures for Implementation Agreement for the Tuolumne River). They have established the Tuolumne River Governance Entity and will participate in its responsibilities for implementation, reporting, and other decision-making as stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3.

5. **Decision-making and Dispute Resolution Procedures.** The Parties who are Tuolumne River Implementing Entities agree to the decision-making and dispute resolution procedures stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3, for the purpose of implementing this Agreement.

6. **Effective Date and Term.**

6.1. This Implementation Agreement takes effect when signed by all Parties who are Tuolumne River Implementing Entities and will be binding as to such Parties when signed (“**Effective Date**”).

6.2. The term of this Implementation Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Implementation Agreement will terminate upon that Party’s withdrawal from the Global Agreement.

7. **No Admission of Liability.** The Parties enter into this Implementation Agreement voluntarily. Nothing in this Implementation Agreement shall be construed as an admission of liability, responsibility, or procedural requirement as to any of the Parties, other than for purposes of enforcing this Implementation Agreement. The Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section of the California Constitution, or public trust doctrine, for the purpose of providing the flows, habitat restoration, and other measures stated in Appendix 1 of this Implementation Agreement, or otherwise admit that the enforcement authorities provided in the corresponding Enforcement Agreement would be available against them with respect to the Covered Water Quality Objectives.

8. **Compliance with Applicable Laws.** Each Party represents that it believes that this Implementation Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

9. **Reservations.**

9.1. **Generally.** Nothing in this Implementation Agreement is intended or will be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Implementation Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Implementation Agreement.

9.2. **Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law.

9.3. **[Reserved]**

9.4. **Environmental Review.** Nothing in this Implementation Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Implementation Agreement.

10. **Notices.** Any Notice required by this Implementation Agreement shall be provided in writing. Notice shall be provided by electronic mail to the authorized representative of a Tuolumne River Responsible Party, unless the sending entity determines that first-class mail or personal delivery to an authorized representative of a Tuolumne River

Responsible Party is more appropriate in a given circumstance. A notice shall be effective upon receipt; but, if notice is provided by U.S. Mail, such notice shall be deemed effective on the seventh day after the date on which notice mailed. For the purpose of notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 3 hereto. Each such entity will provide notice of any change in the authorized representatives designated in Appendix 3, and the State Water Board will maintain the current distribution list of all such authorized representatives.

**11. Attorney's Fees and Costs.** Each Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Implementation Agreement.

**12. Entire Agreement.** This Implementation Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

**13. Construction and Interpretation.** This Implementation Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Implementation Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Implementation Agreement.

**14. Amendment.** This Implementation Agreement may only be amended if signed in writing by all Parties still in existence, including any successors or assigns. A Party may provide notice of a proposed amendment at any time. The Parties agree to meet in person or by teleconference within 20 days of receipt of notice of a proposed amendment.

**15. Addition of New Parties.** A qualifying entity may become a Party by signing this Implementation Agreement and the other Agreements for Healthy Rivers and Landscapes, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto and the amendment of this Implementation Agreement pursuant to Section 14 of this Implementation Agreement.

**16. Successors and Assigns.** This Implementation Agreement will apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Implementation Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

**17. No Third Party Beneficiaries.** This Implementation Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party

beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Implementation Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

18. **Elected Officials Not to Benefit.** No elected official will personally benefit from this Implementation Agreement or from any benefit that may arise from it.

19. **Severability.** This Implementation Agreement is made on the understanding that each term is a necessary part of the entire Implementation Agreement. However, if any term or other part of this Implementation Agreement is held to be unlawful, invalid, or unenforceable, the Parties agree that the remainder of the Implementation Agreement will not be affected thereby. The Parties hereto will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Implementation Agreement.

20. **Authority to Bind.** Each signatory to this Implementation Agreement certifies that he or she is authorized to execute this Implementation Agreement and to legally bind the entity the signatory represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

21. **Counterpart Signatures; Facsimile and Electronic Signature.** This Implementation Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Implementation Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

*[Signatories]*

## **Tuolumne River Implementation Agreement**

### **Appendix 1 – Responsibilities for Implementation for the Tuolumne River**

- A. Which agencies are implementing, and what contributions are they making through specific actions? i.e., Who is doing what when how?
- B. Should cover both flow and non-flow measures and funding
- C. Describe baseline conditions for the tributary/entity
- D. Tributary/entity specific flow accounting principles
- E. Procedures to address redirected adverse impacts, if applicable
- F. Conditions for performance or non-performance

### **Appendix 2 – Governance Procedures for the Tuolumne River**

- A. Description of governance program
- B. Identify organizations involved in making decisions about trib-specific measures
- C. Define responsibilities of governance structure
- D. Discuss implementation – how will this work in practice? Who is making what decisions when?
- E. Reporting

### **Appendix 3 – Tuolumne River Science Program**

- A. Describe science and monitoring for trib/entity specific non-flow actions
- B. Implementation and effectiveness criteria
- C. Reporting structure and timeline

### **Appendix 4 – Contact Info**

## Appendix 1

### RESPONSIBILITIES FOR IMPLEMENTATION FOR THE TUOLUMNE RIVER

#### Table of Contents for Tuolumne River Implementation Appendix

Implementing Measure	Implementing Entity	Sequence and Conditions for Performance
Flow <sup>1</sup>	<ul style="list-style-type: none"><li>• TID</li><li>• MID</li><li>• SFPUC</li></ul>	See Tables 1.A through 1.H, below
Habitat Restoration	<ul style="list-style-type: none"><li>• TID</li><li>• MID</li><li>• SFPUC</li></ul>	See Tables 1.I and 1.J, below.
Funding	<ul style="list-style-type: none"><li>• TID</li><li>• MID</li><li>• SFPUC</li></ul>	See Table 1.K, below.
Other Measures	<ul style="list-style-type: none"><li>• TID</li><li>• MID</li><li>• SFPUC</li><li>• SWRCB</li><li>• CDFW</li></ul>	See Table 1.L, below.
Conditions	<ul style="list-style-type: none"><li>• SWB</li><li>• USACOE</li><li>• NMFS</li></ul>	See Table 1.M, below.

<sup>1</sup> MID, TID and SFPUC will all be providing water. MID and TID, as co-owners of New Don Pedro Dam and reservoir and the La Grange Diversion Dam, will be responsible for releasing the flows committed to in this VA.

**Table 1-A – Tuolumne HRL Volume Summary**

**Critical Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne HRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne HRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne HRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne HRL Flows <sup>5</sup>  (Percent of HRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions  (AF)
Fry Rearing	Adult Habitat	1/1-2/28	17,554	86,559 (17,039) <sup>6</sup>	0%	20,479
Juvenile Rearing	Spawning	3/1-3/31	9,223		60% to 100%	67,818 (22,298) <sup>7</sup>
		4/1-4/15	4,463			5,950
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	30,193			0% to 40%
		5/1-5/15	4,760		7,141	
		Juvenile Rearing	5/16-5/31		2,975	
		6/1-6/30				
		Jan-Jun Totals:	69,168	86,559 (17,039) <sup>6</sup>		155,727 (86,207) <sup>6</sup>

**Table 1-B – Tuolumne HRL Volume Summary**

**Dry Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	<i>O. mykiss</i> Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne HRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne HRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne HRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne HRL Flows <sup>5</sup>  (Percent of HRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions  (AF)
Fry Rearing	Adult Habitat	1/1-2/28	19,309	139,720 (39,604) <sup>6</sup>	0%	23,405
Juvenile Rearing	Spawning	3/1-3/31	10,146		60% to 100%	93,951 (23,835) <sup>7</sup>
		4/1-4/15	4,909			6,694
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	46,308		0% to 40%	89,876 (59,876) <sup>8</sup>
		5/1-5/15				
	Juvenile Rearing	5/16-5/31	5,236			8,727
		6/1-6/30	4,463			7,438 (7,438) <sup>9</sup>
Jan-Jun Totals:			90,371	139,720 (39,604) <sup>6</sup>		230,091 (129,975) <sup>6</sup>



**Table 1-C – Tuolumne HRL Volume Summary**

**Below Normal Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne HRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne HRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne HRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne HRL Flows <sup>5</sup>  (Percent of HRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions  (AF)
Fry Rearing	Adult Habitat	1/1-2/28	27,793	127,368 (97,616) <sup>6</sup>	0%	26,330
Juvenile Rearing	Spawning	3/1-3/31	14,603		60% to 100%	114,545 (84,793) <sup>7</sup>
		4/1-4/15	7,066			7,438
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	89,087			0% to 40%
		5/1-5/15	7,537		9,521	
	Juvenile Rearing	5/16-5/31	9,670			8,926 (8,926) <sup>9</sup>
		6/1-6/30				
		Jan-Jun Totals:	155,756	127,368 (97,616) <sup>6</sup>		283,124 (253,372) <sup>6</sup>

**Table 1-D – Tuolumne HRL Volume Summary**

**Above Normal Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne HRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne HRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne HRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne HRL Flows <sup>5</sup>  (Percent of HRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions  (AF)
Fry Rearing	Adult Habitat	1/1-2/28	35,107	138,515	0%	26,330
Juvenile Rearing	Spawning	3/1-3/31	18,446		60% to 100%	114,545
		4/1-4/15	8,926			7,438
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	107,733			0% to 40%
		5/1-5/15			9,521	
		Juvenile Rearing	5/16-5/31		14,876	8,926 (8,926) <sup>9</sup>
		6/1-6/30				
		Jan-Jun Totals:	194,609	138,515		333,124

**Table 1-E – Tuolumne HRL Volume Summary**

**Wet Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne HRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne HRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne HRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne HRL Flows <sup>5</sup>  (Percent of HRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions (AF)
Fry Rearing	Adult Habitat	1/1-2/28	35,107	138,515	0%	26,330
Juvenile Rearing	Spawning	3/1-3/31	18,446		60% to 100%	114,545
		4/1-4/15	8,926			7,438
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	107,733			0% to 40%
		5/1-5/15				
	Juvenile Rearing	5/16-5/31	9,521		8,926 (8,926) <sup>9</sup>	9,521
		6/1-6/30	14,876			
		Jan-Jun Totals:	194,609	138,515		333,124

**Table 1-F – Tuolumne HRL Implementing Schedule, Base Flows**

Implementing Schedule for Tuolumne HRL <sup>4</sup> Instream Flow Requirement at La Grange Base Flows (CFS)								
Fall Run Chinook Salmon Life Stage <sup>2</sup>	<i>O. mykiss</i> Life Stage <sup>2</sup>	Period	Water Year Type <sup>1</sup>					
			Critical		Dry		Below Normal, Above Normal, and Wet	
			Instream Flow Requirement at La Grange <sup>10</sup>	Expected Infiltration Gallery Diversions <sup>11</sup>	Instream Flow Requirement at La Grange <sup>10</sup>	Expected Infiltration Gallery Diversions <sup>11</sup>	Instream Flow Requirement at La Grange <sup>10</sup>	Expected Infiltration Gallery Diversions <sup>11</sup>
Fry Rearing	Adult Habitat	1/1-2/28	175	0	200	0	225 <sup>15</sup>	0
Juvenile Rearing	Spawning	3/1-3/31	200	0	225	0	250	0
		4/1-4/15	200	0	225	0	250	0
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	200	0	250	0	275	0
		5/1-5/15	200	0	250	0	275	0
	Juvenile Rearing	5/16-5/31	225	0	275	0	300	0
		6/1-6/30	200 (125) <sup>11</sup>	75	200 (125) <sup>11</sup>	75	200 (150) <sup>11</sup>	50

**Table 1-G – Tuolumne HRL Implementing Schedule, Pulse Flows**

Implementing Schedule Including Tuolumne HRL <sup>4</sup> Instream Flow Requirement at La Grange Pulse Flows <sup>12, 13, 14</sup> (AF)								
Period	Water Year Type <sup>1</sup>							
	Critical	Successive Critical	Dry	Successive Dry	Below Normal	Successive Below Normal	Above Normal	Wet
1/1-2/28	0	0	0	0	0	0	0	0
3/1-3/31	55,521	10,000 <sup>7</sup>	80,116	10,000 <sup>7</sup>	99,174	69,421 <sup>7</sup>	99,174	99,174
4/1-4/15	0	0	0	0	0	0	0	0
4/16-4/30	35,000	11,000 <sup>8</sup>	75,000	45,000 <sup>8</sup>	100,000	100,000	150,000	150,000
5/1-5/15								
5/16-5/31	0	0	0	0	0	0	0	0
6/1-6/30	0	0	0	0	0	0	0	0

**Notes for Tables 1-A through 1-G:**

**1.** The Tuolumne HRL implementing schedule uses the San Joaquin Index Water Year Types as defined in D1641.

**2.** The timing of life stages is approximate and may depend on hydrologic cues or other factors that vary from year to year.

**3a.** The 1996 FERC Order Amending the License for the Don Pedro Project has 10 water year type classifications as set by the 1995 Settlement Agreement that have been converted to the 5 SJI Water Year Type classifications by averaging minimum flow requirements. A crosswalk for year type classifications is provided below:

1995 Settlement Agreement Water Year Type	Crosswalk to D1641 SJI Water Year Type
CRITICAL WATER YEAR AND BELOW	Critical
MEDIAN CRITICAL WATER YEAR	
INTERMEDIATE C-D WATER YEAR	
MEDIAN DRY	Dry
INTERMEDIATE D-BN	
MEDIAN BELOW NORMAL	Below Normal
INTERMEDIATE BN-AN	
MEDIAN ABOVE NORMAL	Above Normal
INTERMEDIATE AN-W	
MEDIAN WET/ MAXIMUM	Wet

**3b.** The minimum instream flow requirements shown in this column exclude interpolation water. Interpolation water requirements are described in the 1996 FERC Order amending the license for the Don Pedro Project. The volume of interpolation water that is required varies from year to year and is not always required. If it is required in a given year, the interpolation water is typically applied in October.

**4.** The Tuolumne HRL implementing schedule occurs from January through June. The effective FERC license for the Don Pedro and La Grange hydroelectric projects will determine July through December flow requirements.

**5.** The flexibility in the Tuolumne HRL can be achieved through adjusting the timing of the two spring pulse flows. Such adjustments will be made to increase benefits to salmonids in the lower Tuolumne River based on the timing of hydrologic conditions and results of salmonid monitoring.

**6.** The increase from 1995 minimum instream flows shown in parentheses occurs when dry-year relief is applied to the Tuolumne HRL implementation schedule. See the description of dry-year relief in notes 7 and 8 below.

**7.** The March (floodplain) pulse volume is reduced in Dry or Critical water year types that follow a Dry or Critical water year type; such years are referred to here as successive Dry and successive Critical water year types, respectively. The March pulse volume is also reduced as shown in Below Normal years that follow a Dry or Critical water year type; these years are referred to as successive Below Normal water year types. Below Normal years that follow a successive Below Normal water year are also considered successive Below Normal years and have a reduced March pulse volume as shown.

As described here, the March pulse flows contain a “dry-year relief” plan. Specifically, in a successive Dry or Critical year, the floodplain pulse is set at the dry-year relief level for that year and any following

successive Dry or Critical years. In any Below Normal year occurring in a sequence of Critical and/or Dry years, the floodplain pulse flow will be set to the dry-year relief level for Below Normal years. Any Below Normal year occurring within a sequence of Dry and/or Critical years does not interrupt the dry-year relief sequence. For example, in the water year type sequence of C, D, BN, C, D, the first and second Dry and second Critical years in the sequence would be considered successive Dry or Critical years and would have dry-year relief applied because a Below Normal year does not interrupt the dry-year relief sequence. In this example, there would also be dry-year relief in the Below Normal year. Similarly, in a water year type sequence of C, BN, D, there would be dry-year relief in the Below Normal year and in the Dry year.

In a 3rd successive Below Normal year, the Tuolumne River Partnership Advisory Committee (TRPAC) shall meet and confer to see what if any water is available for a March floodplain pulse. For example, in a sequence of W, BN, BN, BN water years, the meet-and-confer would occur in the third BN water year.

For purposes of determining dry year relief, a sequence cannot start with a Below Normal year (excluding sequential Below Normal years as set-forth above). For example, in a water year type sequence of BN, C, D, there would be no dry-year relief in the Below Normal year or in the Critical year, but dry-year relief would be applied in the Dry year.

**8.** The April-May (outmigration) pulse volume is reduced as shown in Dry years that follow a Dry or Critical water year, and also in Critical years that follow a Dry or Critical water year. These years are referred to here as Successive Dry Years and Successive Critical Years, respectively.

Similar to the March pulse flows, the April-May pulse flows include the provision for “dry-year relief”. In successive occurrences of Dry and/or Critical water years, the spring outmigration pulse flows are as shown above. Examples of this dry-year relief are enumerated below.

Example 1: If there were a sequence of six water years of type C, D, C, D, C, D, the second and third Critical years and each of the three Dry years would be considered successive Dry or Critical years and would have dry-year relief applied to the April-May pulse.

Example 2: If there were a sequence of four water years of type C, C, D, D, the second Critical year and each of the two Dry years would be considered successive Dry or Critical years and would have dry-year relief applied to the April-May pulse.

Example 3: If there were a sequence of six years of type C, D, BN, C, D, C, both Dry years and the third Critical year would be considered successive Dry or Critical years and would have dry-year relief applied to the April-May pulse.

**9.** Values in parentheses are interim minimum instream flows that will be released at La Grange Diversion Dam until both infiltration galleries are operational. Both infiltration galleries are expected to be constructed and operating by year 6 of the Tuolumne HRL implementation.

**10.** Base flows and pulse flows will be measured at the USGS La Grange stream gage below La Grange Diversion Dam.

**11.** Diversions at the infiltration galleries will be measured by flow meters in the galleries. Flow in the Tuolumne River downstream of the infiltration galleries will be calculated by subtracting the flow measured in the infiltration galleries from the flow measured at the La Grange stream gage.

**12.** Base flows and pulse flows will be measured at the USGS La Grange stream gage below La Grange Diversion Dam.

**13.** The default timing of pulse flows will be to start the March pulse in mid-March, and to start the April-May pulse in mid-April. The Tuolumne HRL includes flexibility to adjust the start timing of these pulses to optimize benefits to salmonids in the lower Tuolumne River.

**14.** Pulse volumes are inclusive of any required ramping in the FERC license for the Don Pedro and La Grange Hydroelectric Projects.

**15.** "Fry rearing flows from 1/1-2/28 in Below Normal, Above Normal, and Wet water years are contingent upon VA terms being included in the FERC license. Unless FERC indicates otherwise, flows in this time period will be consistent with the current FERC flow schedule."



**Table 1-H – Tuolumne River HRL General Notes Regarding Flow Commitments**

1. By definition, the Tuolumne HRL flows are regulatory flows, not a transfer, and therefore there are no compensable redirected impacts. Nonetheless, the Tuolumne River Parties have offered Additional Maximum Tuolumne Flows (in thousands of AF), that may be deployed upon the occurrence of certain conditions that Tuolumne River Parties agree upon with the California Department of Water Resources (DWR), the U.S. Bureau of Reclamation (Reclamation), and other VA parties, up to the volumes listed below:

	<b>C</b>	<b>D</b>	<b>BN</b>	<b>AN</b>	<b>W</b>
<b>Additional Maximum Tuolumne Flows</b>	16	19	30	8	0

2. Tuolumne Parties will work collaboratively with DWR, Reclamation, and other HRL parties to set the terms and conditions (e.g., additional flows will only occur when the Delta is in balanced conditions, etc.) of providing additional flow contributions consistent with Sections 8.1 and 8.3 of the Term Sheet.

3. Real-time hydrology dependent. The Tuolumne Parties will work collaboratively with DWR, Reclamation, and other HRL Parties in each year where Tuolumne HRL Flows are provided to determine the total volumetric need for these additional flows. The Tuolumne's additional flow contribution shall equal 1/3 of this agreed upon volume, or the Additional Maximum flow contribution, whichever is less. These volumes, when provided, will provide instream flow benefits, but will not be subject to flow protection below La Grange Diversion Dam.

4. Tuolumne Parties are releasing or bypassing flow contributions at their lowest point of control, which is La Grange Diversion Dam. This is the point at which the State Water Board will have authority to enforce the flow measures as contemplated by Term Sheet section 7.2.

5. Modeling done by the State predicts that with implementation of the Tuolumne HRL that Tuolumne River flows as measured at the Modesto gage, on average by water year type, will exceed the average January-June flows in the base case (flow resulting under current conditions with the 1995 FERC Settlement Agreement in effect). The State's modeling projects the following resultant flows at Modesto Gage that will be protected as Delta outflows:

	<b>C</b>	<b>D</b>	<b>BN</b>	<b>AN</b>	<b>W</b>
<b>Resultant Tuolumne River flows at the Modesto Gage (TAF)</b>	37	62	78	27	0

6. Consistent with Term Sheet Section 8.3 these flows will be protected in the Tuolumne River as HRL flows that implement the native fishes water quality objective and will be protected as Delta outflow. Term Sheet Section 8.1 anticipates that the State Water Board will use its legal authorities to protect HRL flows and obligates HRL parties to support the State Water Board in its proceedings to protect HRL flows. The Tuolumne Parties will assist and partner in this endeavor consistent with section 8.1 of term sheet. The resultant flows at Modesto Gage are not flow commitments that will be enforceable against the Tuolumne Parties pursuant to Term Sheet Section 2.2(C).

7. The State and Tuolumne Parties understand these flows will be included in the systemwide assessment as specified in Footnote 3 in Appendix 1 Flow Tables, Table 1a: “An assessment based on the accounting procedures to be developed pursuant to Term Sheet section 8.4 will be conducted prior to year 8 of [HRL] to determine if the flows in this table have materialized on average above baseline by water year type. The [HRL] parties acknowledge that, if this analysis does not demonstrate that flows have materialized as shown in this table, then the [HRLs] will be subject to Term Sheet provisions of Section 7.4(B)(ii) or (iii).”

8. The Tuolumne Parties and State Parties recognize that the State Water Board has previously adopted 2018 Amendments to the Bay-Delta Plan, including a water quality objective and program of implementation applicable to the Tuolumne River, and the intent of the parties is to present for State Water Board consideration revisions to the 2018 Bay-Delta Plan that would authorize a Voluntary Agreement implementation pathway for the Tuolumne Parties consistent with this Memorandum of Understanding and the Term Sheet it advances. The resolution of pending litigation concerning the 2018 Bay-Delta Plan and 401 water quality certifications that implement the 2018 Bay-Delta Plan will be the subject of future negotiations consistent with MOU section 1.3(B), as explained in the “401 WQC & Litigation” bullets of the Tuolumne VA Principals’ Deal Points (Aug. 31, 2022).

## Non-flow Measure Descriptions

Consistent with the MOU Advancing a Term Sheet for VAs (November 2022), the Tuolumne River Partners propose a number of non-flow actions that, in combination with the proposed HRL flow commitments, are intended to improve salmonid spawning and rearing habitat on the lower Tuolumne River. Some of the highlights of the Tuolumne non-flow measures include additional in-channel spawning and rearing habitat, as well as 77 acres of rearing/floodplain habitat that will be inundated at the flows proposed in the MOU for the HRL. Many of the proposed projects include a mixture of habitat features that include both instream and floodplain benefits. The non-flow actions proposed by the Tuolumne River Partners go beyond habitat restoration projects and include additional measures, such as predation management, that are also intended to improve conditions for native fish on the lower Tuolumne River.

The non-flow measures for the lower Tuolumne River are based on science developed on the lower Tuolumne River over several decades, including the most recent studies completed as part of the relicensing of the Don Pedro hydroelectric project. The non-flow measures identified for the 8-year term of the HRL Program are included in the tables below and descriptions of the various actions are also provided. All of the non-flow measures described below are supported by studies conducted as part of the Amended Final License Application (AFLA) for the Don Pedro Hydroelectric Project and can be found at the Don Pedro relicensing website: [www.donpedro-relicensing.com](http://www.donpedro-relicensing.com). Of importance is the fact that the projects and resulting acreages listed in the tables below were developed for the AFLA and are subject to adjustment as part of ongoing and future project specific design.

Non-flow habitat projects 1, 2, 3, 4, 6, 7, 8, 9, 11 as listed in the table below will improve spawning gravel quantity and quality through (1) gravel augmentation of approximately 75,000 tons between RM 52 and 39 and 25,000 tons between RM 39 and 24.5; (2) gravel cleaning of selected gravel patches for two to three weeks for 5 years to expand availability of high quality gravel which would improve spawning success and egg-to-emergence survival for fall-run Chinook salmon; and (3) placement of properly-sized and designed large woody debris between RM 43- 50 to provide favorable micro-habitats for *O. mykiss* and promote localized scour of fines to benefit fall-run Chinook salmon spawning.

The Lower Tuolumne River Habitat Improvement Program (project 5) will identify, design, construct and monitor floodplain and in-channel habitat improvements to benefit fall-run Chinook and *O. mykiss* juvenile rearing life stages. Individual projects will be located along the lower Tuolumne River and will be designed in coordination with the flow regimes in the Tuolumne HRL. Specific individual projects envisioned to be undertaken through the fund are likely to include floodplain restoration; floodplain lowering to foster floodplain access at lower flows; backwater slough connections to the mainstem; riparian vegetation enhancements using native species; in-channel habitat improvements through placement of LWD; and/or re-contouring of potential juvenile Chinook stranding areas.

Non-flow habitat projects 12 & 13 will include predator control and a fish counting and barrier weir, which will be implemented, subject to and depending on obtaining applicable requirements for project-specific environmental review or regulatory approval, within the 8-year term of the agreement.

Non-flow habitat project 14 will involve deployment of a temporary barrier when female spawners counted at the RM25.2 counting facility reaches 4,000 to encourage use of suitable habitats at locations further downstream.

Non-flow habitat project 10 will complete/construct and operate two infiltration galleries near RM 26 for the purpose of benefiting lower Tuolumne River cold-water fisheries, notably *O. mykiss*, while at the same time protecting the Districts' water supplies.

**Table 1-I – Tuolumne HRL Habitat Restoration <sup>1</sup>**

					Implementation timing <sup>2</sup>				
Project No.	Project and location	Description	Life stage	Benefits	Early Implementation (Dec 2018-2024) <sup>3</sup>	Years 1-3	Years 4-6	Years 7-8	Total
1	Riffle A2 Rehabilitation River Mile (RM) 50.6/50.7	Add appropriately sized gravel to improve substrate conditions for spawning and incubation	Spawning and incubation	Increased spawning opportunity and improved egg-to-emergence survival		0.15 acres			0.15 acres
2	Riffle A3 Rehabilitation RM 50.4 to 50.6	Add appropriately sized gravel to improve substrate conditions for spawning and incubation	Spawning and incubation	Increased spawning opportunity and improved egg-to-emergence survival		1.00 acres			1.00 acres
3	Riffles 3A and 3B RM 49.2 to 49.6	Add appropriately sized gravel; restore banks to appropriate floodplain elevation and function; remove invasive hardwood	Spawning incubation and juvenile rearing	Improved egg-to-emergence survival and expanded floodplain rearing habitat			0.50 acres		0.50 acres
4	Gravel Cleaning RM 45-49	Clean select gravel patches to expand availability of high-quality gravel to improve spawning and incubation	Spawning and incubation	Improved spawning habitat quality and egg-to-emergence survival		Clean selected gravel patches in the lower Tuolumne River at or below the confluence of intermittent streams downstream from La Grange			

					Implementation timing <sup>2</sup>				
Project No.	Project and location	Description	Life stage	Benefits	Early Implementation (Dec 2018-2024) <sup>3</sup>	Years 1-3	Years 4-6	Years 7-8	Total
						Diversion Dam, including Gasburg Creek (RM 50.3) and Peaslee Creek (RM 45.5), for two to three weeks each year for 5 years			
5	Lower Tuolumne River Habitat Improvement Program RM 5-48	\$19M capital fund shall be used for a variety of improvement and restoration projects to be developed in conjunction with the TRPAC (below). Examples of likely projects include floodplain lowering, floodplain connectivity, riparian plantings, in-channel placement of LWD	Juvenile rearing, smolt outmigration	Expanded floodplain rearing; expanded in-channel rearing; and improved smolt outmigration survival			77 acres		77 acres
6	Riffle A5 RM 51.2	Construct alternative riffle/pool morphology	Over-summering <i>O. mykiss</i> juvenile and adults	Improved juvenile rearing; improved foraging; improved spawning habitat	2.78 acres				2.78 acres
7	Riffle A6 RM 51.0	Construct alternative riffle/pool morphology	Over-summering <i>O. mykiss</i> juvenile and adults	Improved juvenile rearing; improved foraging;	2.29 acres				2.29 acres

					Implementation timing <sup>2</sup>				
Project No.	Project and location	Description	Life stage	Benefits	Early Implementation (Dec 2018-2024) <sup>3</sup>	Years 1-3	Years 4-6	Years 7-8	Total
				improved spawning habitat					
8	Basso Pool RM 47.0-47.3	Construct medial bar: riffle pool-tail morphology	Over-summering <i>O. mykiss</i> juvenile and adults	Improved juvenile rearing; improved foraging; improved spawning habitat			8.78 acres		8.78 acres
9	Large Woody Debris	Improve instream habitat complexity through targeted addition of LWD to the lower Tuolumne River	<i>O. mykiss</i> Juvenile rearing	Improved juvenile rearing and increased in-channel rearing area		Place 6,535 cubic feet of large woody material			6,535 cubic feet of large woody material
10	Infiltration Galleries (IG) RM 26	Construct IG#2 and operate IG#1 (existing) and IG#2 (proposed) from June through mid-October, enabling an increase of flow between La Grange and the IGs to benefit <i>O. mykiss</i>	<i>O. mykiss</i> Juvenile rearing and over-summering adults.	Improve temperature conditions for <i>O. mykiss</i> juvenile rearing and adult habitat		Operate IG #1	Construct IG #2		
11	Riffle A3/A4 (RM 51.5); Gravel Augmentation	Spawning gravel size and distribution integrated with VA flow regime	Stream geomorphology	Resorting gravels and improved gravel size for Chinook spawning			5.85 acres		5.85 acres

					Implementation timing <sup>2</sup>				
Project No.	Project and location	Description	Life stage	Benefits	Early Implementation (Dec 2018-2024) <sup>3</sup>	Years 1-3	Years 4-6	Years 7-8	Total
12	Fish Counting Barrier and Weir RM 25	Improve rearing and migration conditions upstream of the weir by preventing access by striped bass and other predators	Fry and juvenile rearing; smolt outmigration	Reduce predation on fry and juvenile fall-run Chinook Salmon		Construct Fish Counting and Barrier Weir			
13	Predator Control	Improve rearing and migration conditions by reducing predation	Fry and juvenile rearing; smolt outmigration	Reduce predation on fry and juvenile fall-run Chinook salmon			Implement Predator Control		
14	Reduce Redd Superimposition (seasonal weir) RM 47-52	Construct a seasonal weir when upstream gravel patches are at capacity to encourage use of suitable habitats at downstream locations	Spawning and incubation	Improve overall fall-run Chinook spawning success by reducing red superimposition		Implement seasonal weir operational when >5,000 female spawners are observed in the Tuolumne River.			

1. The projects and their associated attributes listed in above table were derived as part of on-going FERC relicensing activities and are subject to adjustment as part of ongoing and future project specific design. Tuolumne Parties will work to define the habitat projects above in collaboration with the California Department of Fish and Wildlife – that were drawn from the prior 15-year Tuolumne HRL habitat list – that will be funded by the Tuolumne Parties and implemented, subject to and depending on obtaining applicable requirements for project-specific environmental review or regulatory approval, within the 8-year term of the agreement.

2. The HRL timeframes identified in the table for implementation include the expected timeframe for construction to be completed as well as the timeframes associated with performing activities associated with project implementation. For example, under “Predator Control,” the fish counting and barrier weir would be in place by Year 3 and the predator suppression would occur in tandem with placement and continue through Years 4 through 8.



3. The Tuolumne Parties may develop additional projects that can qualify as early implementation projects to be added consistent with timing in the strategic plan.

**Table 1-J – Tuolumne HRL Habitat Restoration – Gravel Augmentation Volumes for Specific Non-Flow Measure Projects**

<b>Riffle location</b>	<b>Volume (cu. yds.)</b>	<b>Tons</b>
Project 1: Riffle A2	519	700
Project 2: Riffle A3	3,707	5,000
Project 6: Riffle A5	9,637	13,000
Project 7: Riffle A6	14,456	19,500
Project 8: Basso Pool	27,281	36,800
<b>Totals</b>	<b>55,600</b>	<b>75,000</b>
Project 11: Riffle A3/A4 <sup>1</sup>	TBD	TBD
Project 3: Riffle 3A/3B <sup>1</sup>	TBD	TBD
New Project(s) TBD between RM 39 and 24.5	18,535	25,000

<sup>1</sup> These riffle projects will include gravel augmentation above the HRL MOU commitment of 75,000 tons of new gravel between RM 52 and 39.

**Table 1-K – Tuolumne HRL Funding for Framework**

<b>Habitat on Tuolumne Funded by Tuolumne Parties<sup>1</sup></b>	\$81.56 M over 8 years
<b>Habitat on the Tuolumne Funded by {State Entity}<sup>2</sup></b>	TBD

1. San Francisco’s funding commitments in this Implementation Agreement are subject to the budget and fiscal provisions of San Francisco’s Charter. San Francisco’s financial obligations will accrue only after prior written authorization certified by the San Francisco Controller, and the amount of San Francisco’s obligation under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. San Francisco has no obligation to make appropriations for this Implementation Agreement in lieu of appropriations for new or other agreements. San Francisco budget decisions are subject to the discretion of the San Francisco Mayor and the Board of Supervisors. The assumption of risk of possible non-appropriation is part of the consideration for this Implementation Agreement.

2. In addition to the self-funded financial commitment, Tuolumne Parties may seek to fund additional habitat restoration projects during the term of the HRL Program and, as part of such effort, may pursue federal, state, or local funding participation and assistance.

**Table 1-L – Other Measures of Implementation Agreement - Tuolumne River**

<b>Measure</b>	<b>Responsible Agency</b>	<b>Expectation</b>
Permitting for Habitat Restoration	NMFS, CDFW, USACOE, Stanislaus County	All necessary permits are issued (1) in a timely manner, and (2) enable Districts/SF to perform the work in substantial compliance with the HRL HSC.
Project Specific CEQA	MID, TID and SF	All necessary environmental review is successfully completed in a timely manner and any required mitigation measures or changes to the proposed project do not result in significant changes to the project itself or unreasonably higher costs.
Temperature Monitoring	MID and TID	Tuolumne parties recognize a need to avoid temperature degradation from implementation of the HRL water commitments. Districts will develop a plan to monitor water temperatures in Don Pedro Reservoir near the dam whenever the reservoir elevation is lower than 700 feet and at five sites in the lower Tuolumne River to inform the management of cool-water storage in Don Pedro Reservoir when the reservoir is drawn down and scheduling spring pulse flows with the goal of benefitting Chinook salmon and <i>O. mykiss</i> in the lower Tuolumne River. Specific temperatures will not be enforceable against the Tuolumne Parties pursuant to Term Sheet Section 2.2(C), but the results of the monitoring plan will be included as a metric to be measured in Term Sheet Appendix 4.
Tuolumne River Partnership Advisory Committee	MID and TID	Within 45 days of affirmative commitment by the SWB to consider the Tuolumne HRL as part of a future, comprehensive Bay-Delta Plan update consistent with ordering paragraph 7 of SWB Resolution No. 2018-0059, the Tuolumne Parties shall begin the formation of and develop of protocols for the TRPAC.

<b>Measure</b>	<b>Responsible Agency</b>	<b>Expectation</b>
Protected Delta Outflow	SWB	Consistent with Term Sheet Section 8.3 these flows will be protected in the Tuolumne River as HRL flows that implement the native fishes water quality objective and will be protected as Delta outflow. Term Sheet Section 8.1 anticipates that the State Water Board will use its legal authorities to protect HRL flows and obligates HRL parties to support the State Water Board in its proceedings to protect HRL flows. The Tuolumne Parties will assist and partner in this endeavor consistent with section 8.1 of term sheet. The resultant flows at Modesto gage (see Note 5 of Table 1-H – Tuolumne River HRL General Notes Regarding Flow Commitments) are not flow commitments that will be enforceable against the Tuolumne Parties pursuant to Term Sheet Section 2.2(C).

**Table 1-M – Conditions - Tuolumne River**

<b>Condition</b>	<b>Responsible Agency</b>	<b>Outcome</b>
Amendment of 2018 Water Quality Control Plan	SWB	Tuolumne Parties' commitment to provide the flow, non-flow and funding may be suspended or terminated if the SWB does not amend the 2018 Water Quality Control Plan to (1) eliminate the UIF flow objectives for the LSJR (or Tuolumne), (2) adopt the narrative

<b>Condition</b>	<b>Responsible Agency</b>	<b>Outcome</b>
		objective(s) proposed by the HRL parties for native fish viability and salmon doubling, (3) place the Tuolumne HRL flow commitments in the POI, and (4) agree to utilize the process for renewing, modifying or extending the Tuolumne HRL as provided in Section 2.2 of Exhibit A to the HRL Global Agreement.
401 Certification	SWB	Tuolumne Parties' commitment to provide the flow, non-flow and funding may be suspended or terminated if the SWB does not (1) rescind the 401-certificate issued on January 15, 2021, for the Don Pedro and La Grange Hydroelectric Projects, and (2) issue a new 40-certificate for the Don Pedro and a Grange Hydroelectric Projects that conforms to the (a) flow schedules, flow volumes, and non-flow measures set forth in the Tuolumne HRL and (b) the flow schedules, flow volumes, and nonflow measures set forth in the July 7, 2020 FEIS issued by FERC for the Don Pedro and La Grange Hydroelectric Projects.
ESA Section 7 Consultation	NMFS	Tuolumne Parties' commitment to provide the flow, non-flow and funding may be suspended or terminated if NMFS adopts reasonably prudent alternatives or otherwise requires actions that are inconsistent with and/or more onerous than those set forth in the Tuolumne HRL or the July 7, 2020, FEIS issued by FERC for the Don Pedro and La Grange Hydroelectric Projects.
License Issuance	FERC	Tuolumne Parties' commitment to provide the flow, non-flow and funding may be suspended or terminated if FERC issues a new license for the Don Pedro Hydroelectric Project, and/or an original license for the La Grange Hydroelectric Project, that does not allow the flow schedule and volumes (1) for the January-June time period as set forth in the Tuolumne HRL, and (2) the July-December time period as set forth in its July 7, 2020 FEIS.
Flood Control	US Army Corps of Engineers	Tuolumne HRL activities are expressly conditioned upon Districts' compliance with the requirements of any then-

Condition	Responsible Agency	Outcome
		applicable flood control manual/requirements issued by the U.S. Army Corps of Engineers, including the requirement that flows measured at the Modesto gauge do not exceed 9,000 cfs.
Biological Goals	SWB	The criteria for evaluating the performance of the Tuolumne HRL will be developed in accordance with Sections 2.3 and 7.4 of the Term Sheet. Tuolumne Parties' commitment to provide the flow, non-flow and funding may be suspended or terminated if the SWB uses or relies upon the biological goals for the LSJR as contemplated in the 2018 WQCP amendment, and does not specifically provide that during the term of the HRL Program, it will not use or rely upon the progress in meeting the biological goals for purposes of (1) evaluating the effectiveness of the Tuolumne HRL in the Year 6-8 review, or (2) otherwise requiring a change, adjustment or increase in flows provided under the Tuolumne HRL.

## Appendix 2

### GOVERNANCE PROCEDURES FOR THE TUOLUMNE RIVER

#### Tuolumne HRL Governance Program

The Tuolumne River Health Rivers and Landscapes Agreement (Tuolumne HRL) Governance Program will include the formation of the Tuolumne River Partnership Advisory Committee (TRPAC) which shall include USFWS, CDFW, NMFS, SF, MID and TID as initial members; other resource agencies will be invited to actively participate. The TRPAC will provide advice regarding the selection and design of individual habitat projects and the management of spill to benefit salmonids, while not jeopardizing dam safety. In all matters, the TRPAC will operate in an advisory capacity only, with final decision-making

authority resting solely with the Tuolumne Parties. The TRPAC will function as an appropriate forum for implementing the Tuolumne HRL, including consideration of recommendations from the Systemwide Governance Committee.

Within 45 days of affirmative commitment by the SWB to consider the Tuolumne HRL as part of a future, comprehensive Bay-Delta Plan update consistent with ordering paragraph 7 of SWB Resolution No. 2018-0059, the Tuolumne Parties shall begin the formation of and develop of protocols for the TRPAC. Development of protocols for the TRPAC shall be memorialized in an MOU, JPA, or other structure as determined applicable by the Tuolumne Parties and may include, but is not limited to the following:

- A. Development of Mission Statement and Goals
- B. Establishment of TRPAC members
- C. Membership structure
- D. Governance
- E. Committee development
- F. Reporting
- G. Decision making
- H. Budget and costs
- I. Funding and voting
- J. Relationship of the participants
- K. Term
- L. General provisions



## Appendix 3<sup>1</sup>

### TUOLUMNE HRL SCIENCE AND MONITORING PROGRAM

#### Fall-run Chinook salmon counting weir

The Tuolumne River weir and associated Vaki Riverwatcher fish counting system is located at RM 24.5. The system began monitoring annual upstream migration of fall-run Chinook salmon and occasional adult *O. mykiss* in the fall of 2009. Until 2009, most estimates of escapement on the Tuolumne River were obtained using carcass surveys, although some weir counts were made at Modesto in the 1940s. While carcass surveys provide data to coarsely describe timing and distribution of spawning, population estimates from mark-recapture models are prone to bias if rigid assumptions are not met. Alternatively, resistance board weirs have been widely used in Alaska to estimate salmonid escapement since the early 1990s (Tobin 1994), and were introduced to the San Joaquin Basin in 2003. Resistance board weirs provide direct counts that are not subject to the same biases and provide precise migration timing data.

Monitoring objectives include:

- Determine escapement and passage of fall-run Chinook salmon and adult *O. mykiss* to the Tuolumne River through direct counts.
- Document migration timing of adult fall-run Chinook salmon and *O. mykiss* in the Tuolumne River and evaluate potential relationships with environmental factors.
- Determine size and sex composition of adult fall-run Chinook salmon population.
- Estimate hatchery contribution to the spawning population of fall-run Chinook salmon. Document passage of non-salmonid fishes.

Ongoing monitoring at the Tuolumne River weir will provide data for analysis of the following HRL Program Science Plan hypotheses:

Action Type	Hyp. ID	Metric	Prediction	Basis for Comparison	Covariates
<b>Tributary Flow Pulses</b>	<b>H<sub>TribFlow1</sub></b>	Adult Chinook salmon fall upstream migration (spawner abundance/week)	↑	Weekly abundance estimates immediately before and after flow action	Water temperatures and dissolved oxygen
<b>Tributary Juvenile Salmon Production</b>	<b>HTribWide1</b>	Trend # estimated outmigrating juveniles / female spawner (≥ 3 years)	↑	Annual values in historical data record prior to VA implementation	Flow, water temperatures and dissolved oxygen

<sup>1</sup> This appendix is subject to change based upon further recommendations of the VA Science Committee and/or the contents of the SWB's draft Scientific Basis Report for the Tuolumne HRL.

<b>Tributary Adult Chinook Population</b>	$H_{TribPop2}$	Natural origin adult Chinook salmon population estimates by tributary, and trend in abundance (harvest plus escapement)	↑	(1) Tributary adult abundance estimates from AFRP Doubling Goal years (1967 – 1991) (2) Tributary adult abundance since 2010	N/A
<b>Tributary Adult Chinook Population</b>	$H_{TribPop3}$	Trend in the tributary Cohort Replacement Rate (CRR) for natural origin fish	↑	(1) Trend in the natural origin CRR in the period of record for each tributary (2) CRR since 2010	N/A
<b>Systemwide Chinook Population</b>	$H_{SWPop1}$	Annual Chinook salmon escapement and harvest for Sacramento and San Joaquin Valleys	↑	(1) Escapement + Harvest for AFRP Doubling Goal years (1967 – 1991) (2) Escapement + Harvest since 2010	N/A
<b>Systemwide Chinook Population</b>	$H_{SWPop2}$	Trend in CRR for natural origin fish for Sacramento and San Joaquin Valleys	↑	(1) CRR for AFRP Doubling Goal years (1967 – 1991) (2) CRR for Central Valley since 2010	N/A

#### Additional data collection

<b>Tributary Adult Chinook Population</b>	$H_{TribPop1}$	Isotopic signature of floodplain rearing in adult population, evident in otoliths and/or eye lenses	↑	Period of record of archived samples across a variety of flow conditions, including years with known Bypass inundation	N/A
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### Rotary screw trap

Action Type	Hyp. ID	Metric	Prediction	Basis for Comparison	Covariates
<b>Tributary Flow Pulses</b>	<b>H<sub>TribFlow2</sub></b>	Juvenile salmon outmigration rate	↑	Outmigration rates prior to flow action, same year	Fry density, fish size, turbidity, day length, PAR (sunlight), and temperature
<b>Tributary Flow Pulses</b>	<b>H<sub>TribFlow3</sub></b>	Juvenile salmon survival and travel time during outmigration	↑	Survival of acoustically tagged salmon during and outside of pulse flows	Water temperature, turbidity, and dissolved oxygen
<b>Tributary Juvenile Salmon Production</b>	<b>HTribWide1</b>	Trend # estimated outmigrating juveniles / female spawner (≥ 3 years)	↑	Annual values in historical data record prior to VA implementation	Flow, water temperatures and dissolved oxygen
<b>Tributary Juvenile Salmon Production</b>	<b>HTribWide2</b>	Condition factor of emigrating Chinook salmon	↑	Available historical data for each tributary	N/A
<b>Tributary Juvenile Salmon Production</b>	<b>HTribWide3</b>	Coefficient of variation in emigration timing and body size	↑	Available historical data for each tributary prior to VA implementation	N/A

## Additional data collection

<b>Tributary Flow Pulses</b>	<b>H<sub>TribFlow4</sub></b>	(1) <i>C. shasta</i> spore density (#/volume) (2) Clinical infection rate of <i>C. shasta</i> in juvenile salmon	↓	Spore densities and infection rates two weeks prior to flow pulses, same year	Water temperature and dissolved oxygen
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## Snorkel surveys

## Seining surveys

The primary objective of annual seining surveys is to document juvenile Chinook salmon (*Oncorhynchus tshawytscha*) size, abundance, and distribution in the Tuolumne and San Joaquin rivers.

## Monitoring for Tuolumne HRL habitat restoration

### Lower Tuolumne River Habitat Improvement Program

The Lower Tuolumne River Habitat Improvement Program will identify, design, construct and monitor floodplain and in-channel rearing habitat improvements to benefit fall-run Chinook and O. mykiss juvenile life stages.

For each rearing habitat restoration project, the Tuolumne River partners will conduct consistent with the Science/Strategic Plan hypothesis.

<b>Tributary Floodplain</b>	<b>H<sub>TribFP1</sub></b>	Tributary floodplain acreage subject to inundation*	↑	Existing floodplain acreage	Water temperature, dissolved oxygen, and flow
<b>Tributary Floodplain</b>	<b>H<sub>TribFP2</sub></b>	Biomass density of drift and benthic macroinvertebrates (g/volume)	↑	(1) Avg. densities for in-channel locations from historical record (2) In-channel locations measured concurrently with project areas	Water temperature, dissolved oxygen, water velocity, and indices of primary productivity
<b>Tributary Floodplain</b>	<b>H<sub>TribFP3</sub></b>	Juvenile salmon presence and densities (#/unit area or #/volume)	↑	Non-project, proximal reference sites measured concurrently	Water temperature and dissolved oxygen
<b>Tributary Floodplain</b>	<b>H<sub>TribFP4</sub></b>	Growth rate of juvenile salmon	↑	Derived through experimental work using caged fish	Water temperature, secondary productivity
<b>Tributary Floodplain</b>	<b>H<sub>TribFP5</sub></b>	Number of stranded juvenile salmon as a proportion of the tributary juvenile	↔	(1) Historical estimates of stranding (2) Total population impact based on tributary JPE	N/A

		production estimate (JPE)			
<b>Tributary Floodplain</b>	$H_{TribFP6}$	Prevalence of native fish community (relative catch of native fishes compared to non-native fishes)	↑	Historical period of record for fish community sampling (seining, electrofishing, rotary screw traps)	N/A

### Riffle rehabilitation and Basso Pool

Approximately 75,000 tons of properly sized gravel will be added between RM 52 and RM 39, and 25,000 tons between RM 39 and 24.5 over the 8-year term of the HRL Program. Because spawning preferences of fall-run Chinook are more heavily weighted towards upstream habitats, the highest priority for initial gravel augmentation measures is in the vicinity of Old La Grange Bridge. The specific priority sites are the reaches containing Riffles A2, A3, 3A and 3B, A5, A6, A3/A4, and portions of Basso Pool.

Monitoring and adaptive management activities to identify potential future coarse sediment management actions include:

- Repeat a spawning gravel study in Year 12 to inform additional measures.
- Conducting annual surveys of fall-run Chinook and *O. mykiss* spawning use of new gravel patches for five years following completion of each gravel augmentation project. Additional coarse sediment augmentation projects will be guided by the results of the updated Spawning Gravel study conducted in Year 12 and the annual surveys of spawning use.

<b>Spawning Habitat</b>	$H_{S1}$	Spawning habitat acreage*	↑	Existing suitable habitat acreage, based on depth and velocity criteria from DEMs and hydraulic models	Flow, water temperature, and dissolved oxygen
<b>Spawning Habitat</b>	$H_{S2}$	Salmon redd density (#/unit area)	↑	Non-project, proximal reference sites measured concurrently	Flow, water temperature, and dissolved oxygen

<b>Rearing Habitat</b>	$H_{R1}$	Rearing habitat acreage*	↑	Existing suitable habitat acreage, based on depth and velocity criteria from DEMs and hydraulic models	Flow, water temperature and dissolved oxygen
<b>Rearing Habitat</b>	$H_{R2}$	Biomass density of secondary productivity (g/volume)	↑	Non-project, non-enhanced proximal reference sites measured concurrently	N/A

<b>Rearing Habitat</b>	<b>H<sub>R3</sub>, H<sub>R4</sub></b>	Juvenile Chinook salmon densities (#/unit area)	↑	Proximal project and non-project reference sites measured concurrently	N/A
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## Monitoring for other Tuolumne HRL non-flow actions

### Gravel cleaning

Gravel cleaning has the potential to expand availability of high-quality gravel which would improve spawning success and egg-to-emergence survival for fall-run Chinook salmon in the lower Tuolumne River. The Tuolumne HRL partners will conduct a five-year program of experimental gravel cleaning using a gravel ripper and pressure wash operated from a backhoe, or equivalent methodology to improve the quality of salmonid spawning gravel in the lower Tuolumne River. Each year of the program will consist of two to three weeks of cleaning select gravel patches.

The Tuolumne HRL partners will conduct *O. mykiss* spawning and redd surveys in areas planned for gravel cleaning prior to commencing any gravel cleaning. Subject to the findings of these surveys, the gravel cleaning may coincide with May pulse flows to benefit Chinook smolt outmigration by providing increased turbidity to reduce predator sight feeding effectiveness.

During short periods, localized increases in turbidity may exceed state water quality standards, but the improvements in spawning gravel quality and potential increases in fall-run Chinook outmigrant survival due to short-duration reductions in predator efficiency are likely to significantly outweigh any short-term effects of increased turbidity. The Tuolumne HRL parties will coordinate with the SWRCB to secure necessary permits and conduct any required turbidity monitoring.

If gravel cleaning is judged to be successful, the program will continue, adjusted as needed to comply with any water-quality related concerns of the SWRCB. The Tuolumne HRL partners will coordinate this program with the TRPAC

### Large Woody Debris

Studies conducted as part of the Don Pedro Relicensing Project (AFLA W&AR-12) indicate that *O. mykiss* rearing habitat, and to a lesser extent fall-run Chinook salmon habitat, can be improved by the introduction of properly sized large woody debris (LWD) material for the purpose of introducing greater instream structure and habitat complexity.

Annual snorkeling surveys will be conducted to examine habitat use and localized substrate conditions before and after LWD placement.

### Infiltration Galleries

Two infiltration galleries will be constructed and operated near RM 26 for the purpose of benefiting lower Tuolumne River cold-water fisheries, notably *O. mykiss*, while at the same time protecting Tuolumne HRL partners' water supplies.

### Predator Control/Fish Counting and Barrier Weir

In response to the substantial adverse effects of invasive predatory fish on native fish populations, predator control efforts have been implemented throughout the U.S. and elsewhere. Recognizing the

impact of predatory fishes on juvenile salmonid survival in the lower Tuolumne River and that exclusion or removal of a relatively small fraction of these fish is expected to reduce predation and considerably improve smolt production (TID/MID 1992, Appendix 22; TID/MID 2013) Tuolumne HRL includes a robust predator control and suppression program to increase juvenile salmonid production from the lower Tuolumne River.

The goal of the predator control and suppression program is to reduce population-level impacts on juvenile Chinook salmon and *O. mykiss* production through a combination of predator exclusion, reduction, and removal or relocation efforts. Program objectives include:

- Exclude striped bass from the reach upstream of RM 25.5;
- Reduce and eventually eliminate smallmouth bass upstream of RM 25.5; and
- Reduce black bass populations downstream of RM 25.5 by 10 percent.
- The program will construct and operate a fish barrier and counting weir that will prohibit the movement of striped bass into habitats upstream of RM 25.5 used by rearing juvenile fall-run Chinook salmon and *O. mykiss*, while simultaneously providing a location where striped bass will congregate, facilitating their isolation and removal.
- The specific design and location of the barrier and counting weir will be determined in consultation with CDFW and may be constructed with permanent concrete abutments and necessary appurtenances. Potential design features may include inflatable rubber dams, flap-gate spillways, radial gates and types of adjustable weirs that will minimize impacts to resident fish movement, boating and other recreation.
- Annual predator suppression activities may include removal and/or isolation methods such as electro-fishing, fyke netting, seining and other positive collection methods.
- With input from CDFW and NMFS, the development of a scientific study and monitoring plan to evaluate the efficacy of predator removal. Evaluating the success of predator removal and control efforts in achieving desired targets requires metrics that describe predator populations before and after control methods are implemented, as well as metrics to assess effects on prey (i.e., salmon survival).

**Predator Populations.** The following metrics are proposed to evaluate predator populations and the effect of control methods on the populations:

- *Absolute abundance and density.* Absolute abundance is the total number of fish in a defined area. Density is the number of fish per unit area (e.g., fish per m<sup>2</sup>), determined using abundance and sampled area. Density metrics normalize abundance and allow comparison among units of different size (area). Predators per unit of habitat area and predators per unit of bank length are the density metrics used in previous Tuolumne River predator studies (TID/MID 2013; McBain & Trush and Stillwater Sciences 2006; TID/MID 1992, Appendix 22). Methods used to collect absolute abundance and density data include depletion sampling (e.g., multi-pass electrofishing) and mark-recapture (Portt et al. 2006).
- *Relative abundance.* Relative abundance is the ratio between multiple species or locations. It is a commonly used descriptor of predator population size or density among species, reaches, or habitat types. Relative abundance can be calculated from CPUE if catchability is equal among species or locations (Portt et al. 2006).

- *Population demographics.* Demographic metrics include age class structure, size-at-age, and recruitment. These metrics are useful indicators of the response of predator populations to removal or control efforts. For example, an age class structure heavily skewed toward juveniles could indicate that predator control efforts are disproportionately removing adults from the population.

Each of these metrics will be evaluated every five years, through targeted field efforts that are separate from ongoing predator control efforts. However, data (e.g., CPUE) collected during predator control efforts may also be used to monitor and inform program effectiveness.

**Salmon Survival.** Paired RST monitoring will be used to evaluate changes in reach-specific salmon survival resulting from predator control. Survival during the fry, juvenile, and smolt emigration period (approximately January–May) will be evaluated based on the ratio of total seasonal RST passage at Grayson (RM 5.2) divided by passage at Waterford (RM 29.8). Survival will be assessed for at least one year prior to implementation of the Plan and annually beginning the year following implementation.

### **Reduce Redd Superimposition**

Studies have demonstrated the occurrence of redd superimposition in the Tuolumne River’s dominant salmon spawning reach above approximately RM 47 (FISHBIO 2013). Over the long-term, reduction of adverse effects of superimposition will increase spawning success and egg-to-emergence survival. Studies have shown (AFLA W&AR-05) that rates of spawning superimposition are relatively high for fall-run Chinook in the lower Tuolumne River at higher escapement levels (e.g., >5,000 female spawners) due to a preference for spawning to occur above RM 47. The reasons for this preference are uncertain but may be correlated with the high percentage of out-of-basin hatchery strays in the Tuolumne River escapement and their lack of site fidelity. Suitable spawning gravels in the lower Tuolumne River extend from RM 51.5 to approximately RM 30.

To reduce the superimposition that occurs when a newly arrived spawning female selects a spawning site on top of a previously used site, the Tuolumne HRL partners shall deploy a temporary barrier to encourage use of suitable habitats at locations further downstream. Deployment of the temporary barrier (e.g., picket barrier) will occur once the number of female spawners counted at the RM 25.5 counting facility reaches 4,000. The precise location, timing and operational duration of the temporary weir will be determined in consultation with the TRPAC. Redd surveys will also be used to inform annual decisions regarding deployment.

### **Implementation and effectiveness criteria**

The Tuolumne River partners will utilize the implementation and effectiveness criteria and procedures described in Section 3.1.4 of the Strategic Plan and Section 4 of the Science Plan.

### **Reporting structure and timeline**

The Tuolumne HRL partners will implement the reporting structure described in Section 1.4 of the Strategic Plan, Section 9.4 of the Term Sheet, and Section 4 of the Science Plan. The Tuolumne HRL partners will adhere to the timeline described in Section 1.5 of the Strategic Plan.



## Appendix 4

### CONTACT INFORMATION

Turlock Irrigation District	GM?
Modesto Irrigation District	GM?
San Francisco Public Utilities Commission	GM?

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# **Exhibit B10.**

## **Yuba River**

# **IMPLEMENTATION AGREEMENT FOR HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE YUBA RIVER**

**March 29, 2024**

This Implementation Agreement for the Healthy Rivers and Landscapes Program in the Yuba River is entered into by and between the signatories hereto for the purpose of specifying responsibilities for implementation of the flow, habitat enhancement, funding and other measures stated in Appendix 1 hereto.

## **RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital G.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. The Parties who sign this Implementation Agreement intend that they will implement the flow, habitat restoration and other measures as specified in Appendix 1.

## **TERMS OF AGREEMENT**

1. **Purpose.** This Implementing Agreement states the specific responsibilities of Implementing Entities for implementation of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for the Yuba River, as specified in Appendix 1.

1.1. **Settlement of Disputed Issues.** This Agreement resolves disputes issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

1.2. **Timeliness.** The Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

2. **Definitions.** The Global Agreement states definitions applicable to all Voluntary Agreements. This Implementing Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

2.1. **Applicable Law** means: state or federal law that (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Parties contemplated by this Agreement.

**2.2. Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018 as amended by [date of Final Action]).

**2.3. CDFW** means: the California Department of Fish and Wildlife.

**2.4. CDWR** means: the California Department of Water Resources.

**2.5. Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.6. Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in the applicable Enforcement Agreement.

**2.7. Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscape Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as defined below.

**2.8. Enforcement Agreement** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any Healthy Rivers and Landscapes Program-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscape Program.

**2.9. Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers and Landscape Program, along with the obligations of the Parties to support implementation.

**2.10. Yuba River Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures for the water source as specified in Appendix 1.

**2.11. Healthy Rivers and Landscape Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Implementing Agreement is Exhibit BX thereto.

**2.12. Implementing Agreements** means: this and other agreements specific to water sources, committing to implement flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program. This Implementing Agreement states the measures for the Yuba River.

**2.13. Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementing Agreements. In this Agreement, the term refers to the Implementing Entities for measures in the Yuba River.

**2.14. Parties** means: signatories to the Global Agreement. Parties who sign an Implementing Agreement are called Implementing Entities in this context. Parties who sign an Enforcement Agreement are called Responsible Parties in that context.

**2.15. Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, have amended this program to authorize implementation of the Healthy Rivers and Landscape Program.

**2.16. Responsible Parties** means: the Parties who sign Enforcement Agreements. Such Parties who are Implementing Entities for a given water source are called “Responsible Parties” for that water source.

**2.17. State Water Board** means: the State Water Resources Control Board.

**2.18. State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

**2.19. USBR** means: the United States Bureau of Reclamation.

**2.20. Year means:** time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

**3. Responsibilities of the Yuba River Implementing Entities.**

**3.1. Implementation.** Each Party will implement the obligations assigned to that entity in Appendix 1, including cooperation with non-Parties who are Implementing Entities.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein.
- B. If an obligation is assigned to multiple Implementing Entities under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Implementing Entity, other such entities will not be responsible for performance.
- C. This Agreement does not create any remedy for non-performance by an Implementing Entity. The corresponding Enforcement Agreement, Exhibit CX, creates and specifies the remedies that run solely to Responsible Parties.

**3.2. Progress Reports and Inspections.** The [Tributary/Delta] Governance Entity will prepare Annual and Triennial Reports with respect to implementation. The entity will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

**4. Governance.** The Parties who are the Yuba River Implementing Entities agree to the governance structure for the Yuba River as stated in Appendix 3 hereto. They have established the Yuba River Governance Entity and will participate in its responsibilities for implementation, reporting, and other decision-making as stated in Appendix 3 and Governance Program, Exhibit D section 1.2.3.

**5. Decision-making and Dispute Resolution Procedures.** The Parties who are the Yuba River Implementing Entities agree to the decision-making and dispute resolution procedures stated in Appendix 2 and Governance Program, Exhibit D section 1.2.3, for the purpose of implementing this Agreement.

**6. Effective Date and Term.**

**6.1.** This Agreement takes effect when signed by the Parties who are the Yuba River Implementing Entities and will be binding as to such Parties when signed.

**6.2.** The term of the Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Agreement will terminate upon that Party's withdrawal from the Global Agreement.

**7. No Admission of Liability.** The Parties enter into this Agreement voluntarily. The Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the parties, other than for purposes of enforcing this Agreement. The Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section of the California Constitution, or public trust doctrine, for the purpose of providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in the corresponding Enforcement Agreement would be available against them with respect to the Covered Water Quality Objectives.

**8. Compliance with Applicable Laws.** Each Party represents that it believes that this Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

**9. Reservations.**

**9.1. Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

**9.2. Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law.

**9.3. Federal Appropriations.** All actions required of any federal Party are subject to appropriations by Congress. Nothing in this Agreement will be interpreted as or constitute a commitment or requirement that any federal Responsible Party obligate or pay



funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Agreement.

**9.4. Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement.

**10. Notices.** Any Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 4 hereto. Each such entity will provide Notice of any change in the authorized representatives designated in Appendix 4, and [administrative entity] will maintain the current distribution list of such representatives.

**11. Attorney's Fees and Costs.** Each Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

**13. Construction and Interpretation.** This Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Agreement.

**14. Amendment.** This Agreement may only be amended in writing by all Parties still in existence, including any successors or assigns. A Party may provide Notice of a proposed amendment at any time. The Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

15. **Addition of New Parties.** An entity may become a Party by signing the Agreement and the other Voluntary Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

16. **Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

17. **No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

18. **Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

19. **Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, the Parties agree that the remainder of the Agreement will not be affected thereby. The Parties hereto will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the Parties' intention to the greatest lawful extent under this Agreement.

20. **Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

21. **Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

State of California  
Department of Water Resources

\_\_\_\_\_  
By:

Dated: \_\_\_\_\_

Approved as to legal form  
and sufficiency:

\_\_\_\_\_  
Chief Counsel

Yuba County Water Agency

\_\_\_\_\_  
By:

Dated: \_\_\_\_\_

Approved as to legal form  
and sufficiency:

\_\_\_\_\_  
Paul M. Bartkiewicz, Special Legal Counsel

## Appendix 1

### RESPONSIBILITIES FOR IMPLEMENTATION IN YUBA RIVER

#### 1. YWA Flow Component (Implementing Agency: YWA)

**1.1** During the term of this Agreement, YWA will operate the Yuba River Development Project (YRDP) to provide up to 50,000 AF per year of water during Above-Normal, Below-Normal and Dry water years. This water will be made available by: (a) YWA providing all Yuba Accord Water Purchase Agreement transfer releases during April, May and June during Above Normal, Below Normal and Dry water years that cannot be backed into Oroville Reservoir or exported by CDWR rather than transferring this water to others: and (b) by releasing water from New Bullards Bar Reservoir that would otherwise remain in storage at the end of September between elevation 1,881.45 ft msl and elevation 1,867.63 ft msl (650,000 acre-ft and 600,000 acre-ft), resulting in an end of September storage to achieve the 50,000 acre-ft to contribute to Delta outflow. Subsections 1.1.1 and 1.1.2 further describe the elements of YWA's Healthy Rivers and Landscapes Flow Component. When planning releases of the YWA Healthy Rivers and Landscapes Flow Component, YWA and CDWR will consult with CDFW on local and Delta conditions and the biological benefits of options for flow deployment. These flows will be managed by CDWR for Delta outflows as part of the Yuba River Healthy Rivers and Landscapes Program.

**1.2** During the term of this Agreement, YWA will operate the YRDP to provide 9,000 AF per year of water during Above-Normal, Below-Normal and Dry water years<sup>1</sup> based on the operational commitments described in Section 1.1, as YWA's Base Flow Contribution.

**1.3** During the term of this Agreement, YWA will operate the YRDP to provide up to 41,000 AF per year of water during Above-Normal, Below-Normal and Dry water years based on the operational commitments described in Section 1.1, as YWA's Supplemental Flow Contribution. These flows will be managed by CDWR for Delta outflows as part of the Yuba River Healthy Rivers and Landscapes Program.

**1.4** Yuba River Healthy Rivers and Landscapes Program operations and the corresponding additional flows will be supplemental to Yuba Accord flows and YRDP

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<sup>1</sup> Unless otherwise stated, water year types are based on the Sacramento Valley Index (SVI) determined by CDWR as published in Bulletin 120.

operations and water transfer operations, including the requirements for instream flows specified in the State Water Board’s Corrected Order WR 2008-0014, and transfer operations and accounting provisions of the Yuba Accord Water Purchase Agreement, as summarized in Appendix 2.

**1.5** “YWA’s Healthy Rivers and Landscapes Flow Component” includes water available under subsection 1.1 of this Appendix.

**1.6** Reservoir refill accounting as detailed in the Yuba Accord Water Purchase Agreement, as amended from time to time and supplemented by the YWA Healthy Rivers and Landscapes accounting principles, will apply to refilling of New Bullards Bar Reservoir storage evacuated due to YWA Healthy Rivers and Landscapes Program releases that exceed 9,000 AF annually, which are accounted as impacts to CVP and SWP water supplies.

**1.7** Table 1 presents the default plan and flexibility bracket for the Yuba River Healthy Rivers and Landscapes flow measures:

**Table 1: Timing of Healthy Rivers and Landscapes Healthy Rivers and Landscapes Flow Measures. (Bolded numbers represent the default plan for Healthy Rivers and Landscapes flow measures, and numbers in parentheses represent the flexibility bracket for any given year. YWA does not provide Yuba River Healthy Rivers and Landscapes flow measures during wet and critical water years.)**

<b>Water Year</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>
<b>Above-Normal and Below Normal</b>	<b>50%</b> (33-66%)	<b>50%</b> (33-66%)	<b>0%</b> (0-33%)
<b>Dry</b>	<b>50%</b> (33-66%)	<b>50%</b> (33-66%)	<b>0%</b> (0-33%)

- A. The flow contribution can be flexibly allocated across April through June, including in response to recommendations from the Yuba River Healthy Rivers and Landscapes Program Systemwide Governance Committee, at the discretion of YWA and consistent with the regulatory constraints on the YRDP.

- B. When planning releases of the flow contribution, YWA and CDWR will consult with CDFW in the scheduling of deployment of flows on local and Delta conditions. YWA will manage flow contribution by YWA using the Yuba Accord Water Purchase Agreement's existing framework for coordination of operations with CDWR and Reclamation.
- C. In some years, the flexibility shown in the table may be available (i.e., 33-66% in April, 33-66% in May, and 0-33% in June), while in other years, the flexibility may be significantly limited by the YRDP's regulatory and operational constraints. YWA will provide the total amount of flow contribution under the default plan to the extent of limitations under the flexible plan. The total amount of flow contribution required under this Agreement will not exceed 50,000 AF in any year.

## **2. YWA Habitat Enhancement Component (Implementing Agency: YWA)**

**2.1** During the term of this Agreement, consistent with the MOU (including the provision for early implementation of habitat projects), the Yuba River Healthy Rivers and Landscapes habitat action is the restoration of 50 acres of instream habitat and 100 acres of floodplain habitat for juvenile Chinook salmon rearing. YWA's commitment is subject to the funding commitments and limitations set forth in Section 3 of this Agreement. To achieve the habitat enhancement commitments, YWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals. YWA will receive credit for both acreage and funding contributions toward this obligation for early implementation of habitat measures completed prior to the effective date of this Agreement as follows:

- A. Hallwood Side Channel and Floodplain Restoration Project between River Mile (RM) 8-10
- B. Lower Long Bar Salmonid Habitat Enhancement Project near RM 15
- C. Upper Rose Bar Enhancement Project near RM 20

**2.2** Habitat measures will be designed and constructed to include a mixture of habitat features intended to enhance Chinook salmon in-river productivity to contribute toward achieving the Narrative Salmon Objective.

**2.3** Habitat measures will be developed and selected by YWA in coordination with CDWR and CDFW.

**2.4** Potential habitat measures during the term of this Agreement (subject to selection by YWA in coordination with CDWR and CDFW) include:

- A. Rose Bar Comprehensive Enhancement Plan between RM 20-21
- B. Upper Long Bar Habitat Project near RM 16

**2.5** Instream (i.e., in-channel) habitat is defined as certain components (i.e., “features”) of the habitat portfolio that occur within the bankfull boundaries of the lower Yuba River. Importantly, instream habitat is not defined by a specific flow threshold. Rather, instream habitat occurs within the bankfull channel geospatial boundary generally associated with 5,000 cfs<sup>2</sup>. Instream habitat associated with Yuba River Healthy Rivers and Landscapes habitat measures are intended to provide physical habitat structure (i.e., complexity, sinuosity, diversity, instream object and over-hanging cover), refugia from predators and high flows, and improved food availability. The measures can comprise various features including perennial side-channels, ephemeral side-channels, backwater and alcoves, and channel edge habitats.

**2.6** Floodplain habitats are intended to increase aquatic habitat productivity (primary and secondary) and food availability (as well as quality and diversity) to encourage juvenile Chinook salmon growth. As specified in the March 2022 MOU, the Yuba River Healthy Rivers and Landscapes floodplain habitats would be constructed to be inundated at 2,000 cfs and would be suitable (i.e., meeting the State Team’s depth and velocity criteria) when inundated. Since drafting of the MOU, the Healthy Rivers and Landscapes Science Committee has refined design criteria and habitat accounting procedures, including floodplain inundation duration and frequency criteria, identifying floodplain habitat functionality over a range of flows that will encompass 2,000 cfs.

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<sup>2</sup> Wyrick, J. and G. Pasternack. 2012. Landforms of the Lower Yuba River. Prepared for the Lower Yuba River Accord Planning Team. Lower Yuba River Accord Monitoring and Evaluation Program. April 2012.

**2.7** Floodplain habitat associated with Yuba River Healthy Rivers and Landscapes Program habitat measures consists of broad areas that may be flat or have a gentle slope, and tend to be characterized by relatively low velocities with little to no concentrated flow paths.

**2.8** Table 1 presents the default implementation schedule for YWA's Healthy Rivers and Landscapes habitat measures:

**Table 2. Default Implementation Schedule for Healthy Rivers and Landscapes Habitat Measures on the Yuba River.**

<b>Description of Measures</b>	<b>Early Implementation<sup>1</sup> (Dec 2018 - 2024)</b>	<b>Years 1-3 (2025 – 2027)</b>	<b>Years 4-6<sup>1</sup> (2028 – 2031)</b>	<b>Years 7-8<sup>2</sup> (2032- 2033)</b>	<b>Total</b>
Hallwood Side Channel and Floodplain Restoration Project (Constructed in 4 phases)	Total Floodplain habitat: ~138 ac  Total Instream habitats: ~6 ac  Total Other habitats: ~13 ac				Approximate 157 ac project footprint
Long Bar Salmonid Habitat Restoration Project (Lower Long Bar)	Floodplain habitat: ~ 18 ac  Instream habitat: ~12 ac  Other habitats: ~13 ac				Approximate 43 ac project footprint
Upper Rose Bar Restoration Project <sup>3</sup>	Spawning habitat <sup>4</sup> : ~5 ac  Instream habitat:				Approximate 43 ac project footprint



	~1.2 ac				
	Other habitats and construction areas: ~37 ac				
Upper Long Bar Habitat Enhancement Project		Preliminary concept is to create a diversity of seasonal off-channel juvenile salmonid rearing habitat types (e.g., floodplain, side channel, alcove). Project contingent upon funding and permitting, timeline for implementation is TBD <sup>5</sup> , but could occur within the term of this Agreement.			Approximately 100 ac <sup>6</sup> of floodplain and instream rearing habitat
Rose Bar Comprehensive Restoration Plan		Preliminary concept includes creating instream/rearing, spawning, floodplain, and fish food production habitat functionalities. Project contingent upon funding and permitting, timeline for implementation is TBD, but could occur within the term of this Agreement.			Approximately 50 ac <sup>6</sup> of floodplain and instream rearing habitat

<sup>1</sup> As specified in the Healthy Rivers and Landscapes Strategic Plan, as of Jan. 1, 2024, projects that have been completed since December 2018 or that are in more advanced stages of the project lifecycle (i.e., permitting, in-progress/implementation, or construction) will be considered as Early Implementation projects.

<sup>2</sup> Assumes adequate funding exists at the time of implementation.

<sup>3</sup> Permits have been drafted, ESA consultation initiated and funding application submitted to CDFW Fisheries Enhancement Grant Program during April 2022.

<sup>4</sup> The Yuba River Healthy Rivers and Landscapes Program does not include spawning habitat enhancement actions.

<sup>5</sup> Funding for project planning has been secured from YWA and the Wildlife Conservation Board. Implementation funding sources have not yet been identified, but may potentially include YWA and other grant funds (e.g., Prop 68), among others.

<sup>6</sup>Proportionate amount of instream and floodplain habitats that will be created under this habitat project will be determined through further design development.

### **3. YWA Funding Component (Implementing Agency: YWA)**

**3.1** During the term of this Agreement, YWA will contribute \$667,000 per year for habitat enhancement measures. The Parties expect that additional state and federal funds will be provided as needed to fully implement habitat measures under this Agreement. To achieve the habitat enhancement commitments, YWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals. YWA will receive credit for both acreage and funding contributions toward this obligation for early implementation of habitat measures included in section 2.1 above

**3.2** During the term of this Agreement, YWA will contribute \$2 per AF diverted for irrigation use for YWA's Member Units for funding the Yuba River Science Program, including monitoring, adaptive management and reporting, as described in Appendix 1 of YWA's Healthy and Rivers and Landscapes Implementation Agreement. The Parties expect that additional state and federal funds will be provided as needed to fully implement the Yuba River Science Program.

**3.3** Funds contributed by YWA under this section will be accounted for and managed in accordance with the governance procedures set forth in Appendix 3 of YWA's Healthy and Rivers and Landscapes Implementation Agreement.

### **4. CDWR Funding Component (Implementing Agency: CDWR)**

**4.1** CDWR and YWA entered into a "Funding Agreement for Healthy Rivers and Landscapes Early Implementation for the Yuba River" (dated February 9, 2024), under which CDWR will compensate YWA for YWA's Healthy Rivers and Landscapes Flow Component from January 1, 2025 through December 31, 2032, which is described in the Funding Agreement as follows:

YWA will provide up to 50,000 acre-feet (AF) per year of water during Above-Normal, Below-Normal and Dry water years during the period January 1, 2025

through December 31, 2032, as measured at the Marysville Gage. These flows will be managed for additional Delta outflows and will involve the following:

- YRDP operations to make the Flow Contribution will be supplemental to Yuba Accord flows and YRDP operations, including the requirements for instream flows specified in the State Water Resources Control Board's Corrected Order WR 2008-0014, and transfer operations and accounting provisions of the Yuba Accord Water Purchase Agreement (WPA).
- All Yuba Accord transfer releases during April, May and June that cannot be backed into Lake Oroville or exported by DWR will be repurposed from potential exports under the WPA to Delta outflows.
- Additional storage releases from New Bullards Bar Reservoir will result from operating to a new target September 30 storage level of 600,000 AF, which is 50,000 AF below the Yuba Accord target September 30 storage level of 650,000 AF.
- WPA refill accounting provisions will apply to New Bullards Bar Reservoir storage releases that exceed 9,000 AF annually in Above-Normal, Below-Normal and Dry year types, which are accounted as impacts to CVP and SWP water supplies.

This payment constitutes full compensation for YWA's Flow Component through December 31, 2032.

**4.2** To the extent that YWA provides YWA's Healthy Rivers and Landscapes Flow Component under this Agreement (including an extension of the term of this Agreement) after the expiration of YWA's obligation to provide YWA's Healthy Rivers and Landscapes Flow Component under the "Funding Agreement for Healthy Rivers and Landscapes Early Implementation for the Yuba River" referenced in section 4.1 above, then YWA and CDWR will meet and confer for the purpose of reaching agreement for compensation for such amounts of YWA's Healthy Rivers and Landscapes Healthy Rivers and Landscapes Flow Component under per AF pricing provisions that are comparable to compensation for Healthy Rivers and Landscapes flow contributions applicable to other tributaries in the Sacramento Basin.

## **5. Conditions**

**5.1** YWA's commitment to provide YWA's Supplemental Flow Contribution will be subject to CDWR providing the funding specified in Section 4 of this Appendix.

**5.2** YWA's commitment to implement habitat enhancement measures will not exceed YWA's funding component commitment as described in Section 3 of this Appendix.

**5.3** YWA's commitment to implement the Yuba River Science Program will not exceed YWA's funding commitment as described in Section 3 of this Appendix.

**5.4** The Parties intend that Yuba River Healthy Rivers and Landscapes Program measures include all of YWA's commitments to contribute to the implementation of the Bay-Delta Plan's water quality objectives. Accordingly, YWA has asked the State Water Board to include in the Bay-Delta Plan amendments provisions confirming that: (a) the State Water Board will not take any water-quality or water-right actions that would affect YWA beyond the actions described as YWA's contributions to the Yuba River Healthy Rivers and Landscapes Program, or any other actions that would increase any of YWA's commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives, during the term of this Agreement; and (b) if the State Water Board takes any such actions, then YWA may terminate or withdraw from this Agreement.

**5.5** During the term of this Agreement, YWA's commitment to provide the Base Flow Contribution and Supplemental Flow Contribution will be subject to suspension or termination by YWA if the new FERC license for the YRDP (including the provisions of water quality certification), or YWA's water rights for the YRDP, are amended to include instream flow requirements that are a Material Modification from YWA's instreamflow proposal to FERC for the new license under the Federal Power Act for the YRDP.

**5.6** "Material Modification" means (a) a Regulatory Approval; or (b) an action or inaction with respect to a Party's ability to perform its obligations under this Agreement, that increases the obligations or other costs, reduces assurances or otherwise impairs bargained-for benefits of a Party to a significant extent. Such conditions may arise from subsequent actions by the State Water Board, FERC, other regulatory agencies or courts, or from other changes in Applicable Law. Section 5 establishes the procedures under this Agreement for a response to a potential Material Modification.

## **6. Guiding Principles for the Administration, Interpretation and Extension of this Agreement.**

**6.1** The following principles will guide the Parties in the administration, interpretation and potential extension of the term of this Agreement:

**A.** New contributions to Delta inflows, habitat enhancement, funding and other measures from YWA in implementing the Bay-Delta Plan should be comparable and proportionate to the contributions required of water users in other tributaries in the Sacramento River Basin, except as otherwise agreed to by YWA.

**B.** New contributions to Delta inflows, habitat enhancement, funding and other measures from water users in the Yuba River Watershed should be comparable and proportionate to their respective diversions of unimpaired flow from the Yuba River Watershed.

**C.** The Yuba River Watershed comprises about 9% of the average annual applied water use of the Sacramento River hydrologic region. Diversions by YWA comprise about one-third of the annual average diversions from the Yuba River Watershed. Therefore, YWA's comparable and proportionate share of flow contributions to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation would be about 3% of the flow contributions relative to contributions from water users in the tributaries in the Sacramento River Basin.

**D.** "The Yuba River has been extensively developed for hydropower generation and water supply. Development in the upper watersheds of North, Middle, and South Fork Yuba River and Deer Creek include parts of the South Feather Water and Power Agency's South Feather Hydroelectric Project (FERC No. 2088), Yuba County Water Agency's Yuba River Development Project (FERC No. 2246), Nevada Irrigation District's Yuba-Bear Hydroelectric Project (FERC No. 2266), PG&E's Drum Spaulding Project (FERC No. 2310), and U.S. Army Corps of Engineers' (USACE) Englebright and Daguerre Point Dams (^SacWAM 2023). The many hydropower reservoirs and diversions in the upper watershed affect the timing of inflows to New Bullards Bar and Englebright Reservoirs. Additionally, there are major transfers of water out of the watershed. The Slate Creek Diversion (discussed in Section 2.2.6.1, Feather River) diverts on average about 80 TAF/yr from North Fork Yuba River into the Feather River watershed. The South Yuba Canal and the Drum Canal divert on average about 430 TAF/yr from the South Fork Yuba River at Lake

Spaulding to the Deer Creek and Bear River watersheds.” (State Water Board’s Draft Staff Report for the Bay-Delta Plan Update, at page 2-53.)

**E.** The Base Flow Contribution generally reflects the comparable and proportionate share of contributions to Delta inflows by YWA under the Healthy Rivers and Landscapes Program.

**F.** YWA will provide the Supplemental Flow Contribution during the term of this Agreement in order to advance the overall objectives of the Healthy Rivers and Landscapes Program, and not as a comparable and proportionate share of contributions to Delta inflow.

**G.** CDWR will not assert that YWA providing the Supplemental Flow Contribution for Delta inflow should be a precedent for future regulatory proceedings.

**H.** CDWR will not assert that YWA is responsible for providing flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than YWA and its Member Units.

## **7. Covered Parties.**

**7.1** This Agreement covers the contribution of YWA and YWA’s Member Units to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation.

**7.2** This Agreement does not cover the contribution of other water users in, or diverters of water from, the Yuba River Watershed to achieving the water quality objectives in the Bay-Delta Plan.

**7.3** Nothing in this Agreement will require or be construed to require YWA or YWA’s Member Units to provide flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than YWA and its Member Units.

## Appendix 2

### YUBA RIVER FLOW ACCOUNTING

#### APPROACH

The Yuba Water Agency (YWA) proposal for a Bay-Delta Healthy Rivers and Landscapes Agreement is founded on the Yuba Accord, including the requirements for instream flows identified in the Fisheries' Agreement and transfer operations and accounting provisions of the Water Purchase Agreement (WPA). Healthy Rivers and Landscapes Agreement operations are intended to be supplemental to the Accord flows and YRDP operations. The YWA Healthy Rivers and Landscapes Agreement proposal includes two quantifiable water components, (Healthy Rivers and Landscapes Agreement Component A) Accord transfer releases in April, May and June that cannot be backed or exported by DWR and (Healthy Rivers and Landscapes Agreement Component B) storage releases from New Bullards Bar Reservoir that occur by operating to a new target storage level for September 30<sup>th</sup> of 600,000 AF, 50,000 AF below the Accord target storage of 650,000 AF. The YWA Healthy Rivers and Landscapes Agreement proposal includes accounting for refill of storage releases that are compensated which are the volumes accounted from Healthy Rivers and Landscapes Agreement Component A and B which exceed 9,000 AF annually in Above Normal, Below Normal and Dry water year types<sup>3</sup>.

Accord Transfer Flows Dedicated to Delta Outflow (YWA Healthy Rivers and Landscapes Agreement Flow Component A Water) accounting principles are already documented in the Yuba Accord Exhibit 1 Accounting Principles except for specific terms listed below to provide for the differences between this Healthy Rivers and Landscapes Agreement and the Accord transfer program. The Yuba Accord transfer program accounting is meant to ensure only water that is released and exported for delivery to a participating water user is accounted, while this Healthy Rivers and Landscapes Agreement program accounting is intended to determine volumes of water exiting the Yuba River which will result in Delta outflow (with the cooperation of the CDWR and the USBR).

Transfer operations of the YRDP under the Accord are classified into two categories, operations to the Accord instream flows that are above baseline flows, and releases of water from New Bullards Bar Reservoir that result in storage below 705,000 AF, which is the

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<sup>3</sup> Unless otherwise specifically identified, all water year types are defined using the Sacramento Valley Index (SVI)

baseline September 30<sup>th</sup> target, and which are not releases of water to meet Accord instream flows. The releases of transfer water generated by operating for the Accord target end of September storage are always scheduled for the months of July and August when there is high confidence of balanced conditions and accuracy in forecasted operations. For Healthy Rivers and Landscapes Agreement storage releases the planned primary months for releases are April to June which presents a greater challenge for forecasted operations. Scheduling and accounting for the volumes and timing of these releases will be based on the information available at the time of release planning and may need to be adjusted through the springtime to adjust to changing conditions. YWA will prepare forecasts of operations of the YRDP and resulting flows for release of Healthy Rivers and Landscapes Agreement water. These forecasts will be compared to forecasts that are prepared for Yuba Accord operations (including baseline operations) to determine the additional storage releases for Healthy Rivers and Landscapes Agreement purposes. Springtime Accord Released Transfer Water (as defined in the WPA accounting) will also be forecast as required in the WPA and will be accounted as Healthy Rivers and Landscapes Agreement Component B through the Accord accounting, with added determination that the water meet criteria included in these Healthy Rivers and Landscapes Agreement accounting principles.

YWA will prepare preliminary operations plans for release of Healthy Rivers and Landscapes Agreement water in coordination with DWR, USBR and CDFW. Prior to April 1, which would be the earliest date that a release of Healthy Rivers and Landscapes Agreement water from New Bullards Bar Reservoir storage would occur, YWA will meet with CDFW, DWR and USBR to discuss and formulate the preliminary operations plan using information provided by DWR and USBR on Delta conditions and SWP and CVP forecasted operations. YWA may begin a release of stored water for Healthy Rivers and Landscapes Agreement purposes as early as April 1 based on this planning. YWA will revise the plan as new forecast information is available but will finalize the plan in most years no later than May 15<sup>th</sup> with minor adjustments after that date that may be needed due to changing conditions. Due to the complexity of regulatory and operational criteria of the YRDP, YWA will retain sole decision authority for final plans and scheduling water operations to implement Healthy Rivers and Landscapes Agreement water releases, however DWR must approve releases of Healthy Rivers and Landscapes Agreement water that are scheduled to occur after June 30<sup>th</sup>.

### **Accounting Principles**

The following are the set of accounting principles for use in quantifying the water released from the Yuba River under this Agreement.



- 1) WPA Accounting of transfer water for purchase by DWR will not change.
- 2) The control points for determining releases of Healthy Rivers and Landscapes Agreement flows from re-operation of New Bullards Bar Reservoir storage and Accord WPA Released Transfer Water to be applied to Healthy Rivers and Landscapes Agreement purposes are a) Daily New Bullards Bar Reservoir storage values and b) Mean Daily flow measured at USGS Gage 11421000 Yuba River near Marysville.
- 3) Two sources of water will qualify as water provided under the Healthy Rivers and Landscapes Agreement as Healthy Rivers and Landscapes Agreement Flow Measure Water, Healthy Rivers and Landscapes Agreement Component A; April through June WPA Released Transfer Water that is not Delivered Transfer Water as those terms are defined in the WPA Accounting Exhibit and Healthy Rivers and Landscapes Agreement Component B; releases of stored water from New Bullards Bar Reservoir that is not used to meet Accord instream flows and are a result of releases of water to achieve levels on September 30<sup>th</sup> below 650,000 AF.
- 4) Healthy Rivers and Landscapes Agreement Component A is Released Transfer Water as defined in the WPA Exhibit 1 “Scheduling and Accounting Principles” and is further defined as water that occurs during April, May and June and is not accounted as Delivered Transfer water as determined by DWR for delta conditions and export facility operations.
- 5) Accounting for Accord WPA Release Transfer Water that is not Delivered Transfer Water occurring from April 1 to June 30 each Above Normal, Below Normal and Dry water year (SVI as of the date of the water occurrence) will be accounted as Healthy Rivers and Landscapes Agreement Component A volume and no other accounting will be required (except refill accounting will still be completed).
- 6) Healthy Rivers and Landscapes Agreement Component B is water that is made available through releases of stored water from New Bullards Bar Reservoir to achieve an end of September Storage below 650,000 AF and which are not releases to comply with the Accord required instream flows.
- 7) Flows from the Yuba River in April through June that result from operation to the Accord that are accounted as negative values (negative flows in Accord accounting terms) will reduce the amount of Accord flow credited to the Healthy Rivers and

Landscapes Agreement (Component A) but will not reduce the amount of stored water releases for Healthy Rivers and Landscapes Agreement purposes (Component B). Negative flows for Accord operations are already included in the Accord accounting provisions and the Healthy Rivers and Landscapes Agreement Component B releases are always additive to the “without Healthy Rivers and Landscapes Agreement” condition. In other words, the Healthy Rivers and Landscapes Agreement Component B baseline is the flow that occurs under the Accord and all other YRDP constraints and Healthy Rivers and Landscapes Agreement Component B water volumes will be measured from the “Yuba River outflow resulting from Accord operations” line and therefore can never be negative flows.

- 8) Negative Healthy Rivers and Landscapes Agreement flows which are defined as actual recorded Yuba River flows at Marysville Gage that are less than Healthy Rivers and Landscapes Agreement Baseline flows as calculated in the Healthy Rivers and Landscapes Agreement accounting that occur in the months of October to March will not be accounted against the Healthy Rivers and Landscapes Agreement Component water volumes except as further defined for refill impacts to SWP/CVP water supplies.
- 9) Flows volumes to be credited for Healthy Rivers and Landscapes Agreement purposes must meet the WPA accounting rules for Released Transfer Water as defined in Section 4 of Exhibit 1 of the WPA except the Healthy Rivers and Landscapes Agreement Component B storage release baseline will be the flow that would occur under the Accord without any storage releases to reduce New Bullards Bar Storage below 650,000 AF (i.e. standard Accord releases).
- 10) YWA operations planning, forecasting and exchange of information will follow Section 11 of Exhibit 1 of the WPA with an added item that is the Forecasted flow at Marysville Gage with Healthy Rivers and Landscapes Agreement Component B releases (i.e. YWA will provide forecasts for Baseline Flow, Accord flows without any Healthy Rivers and Landscapes Agreement Component B flow and Accord flow with Healthy Rivers and Landscapes Agreement Component B flow). Forecast updates will be provided each time a significant change in flows is anticipated due to changed conditions or updated forecast information that requires a change in planned flows.

- 11) The first 9,000 AF of water accounted as Healthy Rivers and Landscapes Agreement water (either Healthy Rivers and Landscapes Agreement Component A or B) will not be added to the volume of Healthy Rivers and Landscapes Agreement water to be accounted under the Healthy Rivers and Landscapes Agreement refill accounting rules (uncompensated water) and since this water would not be Delivered Transfer Water as defined in the Accord Accounting would not be subject to refill under the Accord refill accounting. If for any reason there is additional Healthy Rivers and Landscapes Agreement Flow Measure Water that is not compensated, that additional water will not be included in the refill accounting volume. However, the refill of compensated water will be deemed to the first Healthy Rivers and Landscapes Agreement evacuated storage to refill (i.e. uncompensated water not subject to refill impact repayment will be accounted as the last increment of storage attributable to Healthy Rivers and Landscapes Agreement releases to refill).
- 12) If a volume of water is being accounted for refill in one refill accounting for impact (WPA or Healthy Rivers and Landscapes Agreement) then it is not subject to refill in the other refill accounting.
- 13) Healthy Rivers and Landscapes Agreement refill accounting will be done through comparison of measured New Bullards Bar Reservoir storage and associated reservoir releases with Healthy Rivers and Landscapes Agreement operations to Accord operations without a Healthy Rivers and Landscapes Agreement New Bullards Bar Reservoir storage and releases (i.e. the Accord transfer uses a refill storage line the Healthy Rivers and Landscapes Agreement refill will not use this line).
- 14) If a refill impact is accounted due to previous Healthy Rivers and Landscapes Agreement operations, then YWA will release water during Balanced Conditions on a schedule that is agreed to by YWA and DWR at a time when such releases will not create or affect deficiencies in local deliveries or instream flows, and these releases will be coordinated with releases for other (if any) water transfers of YWA. The water released to offset refill impacts will be delivered by YWA as Delivered Transfer Water, as that term is defined in the WPA, and the accounting provisions and refill conditions of the WPA refill accounting exhibit will apply to those quantities.

- 15) Accounting of Healthy Rivers and Landscapes Agreement Component A, the Released Transfer Water generated by Accord instream flows and Healthy Rivers and Landscapes Agreement Component B may occur simultaneously.
- 16) Healthy Rivers and Landscapes Agreement component water is accounted at the Marysville Gage as defined in the accounting of Release Transfer Water in the Accord WPA.
- 17) During the springtime, accounting of timing and volume of Healthy Rivers and Landscapes Agreement Component B releases will be based on actual flows which determine the Healthy Rivers and Landscapes Agreement operation and the forecasted operations for the Accord and Baseline operations that are in effect at the time of operation. Forecasted operations will use CNRFC ensemble based daily forecasts of runoff in the Yuba River watershed. YWA will document the method for calculating a time series of runoff derived from the CNRFC ensembles.
- 18) YWA Healthy Rivers and Landscapes Agreement flows are to be provided in SVI year types of Dry, Below Normal and Above Normal. YWA will make releases based on the current water year type as determined by DWR using the Bulletin 120 forecasts as these forecasts are made. If DWR determines that it will not be operating to provide Healthy Rivers and Landscapes Agreement flows for Delta outflow, then YWA will not be operating to release Healthy Rivers and Landscapes Agreement flows.
- 19) Even with the proceeding method for scheduling and accounting of Healthy Rivers and Landscapes Agreement component releases, there may be times when changing conditions require re-scheduling Healthy Rivers and Landscapes Agreement Component B releases beyond the April to June period. Changes to the schedule resulting in releases of Healthy Rivers and Landscapes Agreement water in the months of July through September (and possibly October) will require prior agreement by DWR.
- 20) YWA will prepare the accounting for Healthy Rivers and Landscapes Agreement water and will submit the accounting to DWR for review and concurrence. Procedures for accounting of Healthy Rivers and Landscapes Agreement Components A and B will generally follow those described in Section 6 of the WPA except where the accounting provisions listed here are in conflict with Section 6, these accounting principles will govern.

21) Because of the near real time operations nature of the Healthy Rivers and Landscapes Agreement flows, after the fact accounting may result in corrections to Healthy Rivers and Landscapes Agreement accounted volumes. Upon review by DWR of the submitted accounting, if it is determined that a portion of accounted Healthy Rivers and Landscapes Agreement flows that were relied upon by DWR for its operations to ensure the Healthy Rivers and Landscapes Agreement water resulted in Delta outflow were not actually provided by YWA, then repayment provisions of the refill accounting will be relied upon to repay the miss-accounted volume.

## **Appendix 3**

### **GOVERNANCE PROCEDURES FOR YUBA RIVER**

#### **Administration of Agreement**

YWA and CDWR will jointly administer this Agreement. YWA will make decisions regarding implementation of YWA's Healthy Rivers and Landscapes Program, the Yuba River Science Program and operation of the YRDP after consulting with CDWR, CDFW and the State Water Board as appropriate. All other decisions under this Agreement will require approval of both YWA and CDWR.

#### **Advisory Group**

YWA and CDWR may create an advisory group of stakeholders in the Healthy Rivers and Landscapes Program to review and provide advice regarding implementation of YWA's Healthy Rivers and Landscapes Program.

#### **Coordination with the Healthy Rivers and Landscapes Program Systemwide Governance Committee and State Water Board**

YWA and CDWR will coordinate in providing information and reports to the Healthy Rivers and Landscapes Program Systemwide Governance Committee and the State Water Board as required by this Agreement, a Healthy Rivers and Landscapes Global Agreement that has been executed by YWA and CDWR and the Enforcement Agreement.

YWA will consider recommendations from the Healthy Rivers and Landscapes Program Systemwide Governance Committee related to deployment of flow and non-flow measures under YWA's Healthy Rivers and Landscapes Program, subject to the regulatory and operational constraints of the YRDP as determined by YWA.

## **Appendix 4**

### **DESIGNATED REPRESENTATIVES FOR YUBA RIVER**

## Appendix 5

### APPENDIX 4

#### HEALTHY RIVERS AND LANDSCAPES PROGRAM YUBA RIVER SCIENCE PLAN

March 29, 2024

##### Introduction

The agreements to support the Healthy Rivers and Landscapes (“HR&L”) Program described in the March 29, 2022, Term Sheet, is an alternative program of implementation for the Sacramento River, Delta, and Tributary update to the San Francisco Bay/Sacramento-San Joaquin Delta Water Quality Control Plan. The HR&L Program includes formation of a HR&L Science Program, guided by the HR&L Science Committee. The HR&L Science Program is a coordinated collective of tributary- and Delta-focused monitoring and research programs relevant to understanding the outcomes of HR&L Program implementation. Individual tributary and Delta science programs will play a key role in generating the base of information necessary to support the HR&L Science Program.

Yuba Water Agency’s (YWA) HR&L Program consists of flow and non-flow habitat enhancement components in the lower Yuba River (**Figure 1**), and includes a Yuba River HR&L Science Program to implement monitoring, adaptive management, and reporting consistent with the framework identified in the HR&L Science Plan. The purpose of this Yuba River Science Plan is to clearly describe the fisheries and environmental monitoring activities that will be undertaken by the Yuba River HR&L Science Program to generate the information needed to quantify the outcomes of implementing YWA’s HR&L Program.

The Yuba River HR&L Science Program, developed by YWA, is consistent with and builds upon the methodological framework presented in the systemwide HR&L Science Program including hypothesis testing prioritization, a monitoring program designed to obtain the information for hypothesis testing, and habitat accounting protocols and procedures. These components are still under development by the systemwide HR&L Science Committee. YWA will use this information to develop detailed assessment protocols tailored to the specific Non-flow Measures implemented within the lower Yuba River. To the extent practicable, the Yuba River HR&L Science Program will leverage



existing or anticipated monitoring activities being conducted for other lower Yuba River initiatives. As needed, the Yuba River HR&L Science Program will coordinate, develop, and implement monitoring activities with appropriate timing and spatial coverage to collect additional data as necessary to conduct analyses identified in the Yuba River HR&L Science Program.

### **Existing or Anticipated Monitoring for Other Lower Yuba River Initiatives**

#### **Fisheries Monitoring**

Fisheries monitoring in the lower Yuba River is currently being conducted in association with the Lower Yuba River Accord (Yuba Accord) River Management Team (RMT) and the California Department of Water Resources' (DWR) spring-run Chinook salmon Juvenile Production Estimate (Spring-run JPE) program. Future fisheries monitoring associated with YWA's Yuba River Development Project (YRDP) includes the Lower Yuba River Aquatic Monitoring Plan (LYRAMP), and is anticipated to occur when the Federal Energy Regulatory Commission (FERC) issues a new license for operation of the YRDP. Brief descriptions of each of these programs and the associated fisheries monitoring activities are provided below.



**Figure 1. Aerial images of the lower Yuba River from Englebright Dam to Daguerre Point Dam (top panel), and from Daguerre Point Dam to the confluence with the Feather River (bottom panel).**

#### **Yuba Accord River Management Team**

The Yuba Accord, which was approved by the State Water Resources Control Board (SWRCB) on March 18, 2008, is a consensus-based, comprehensive program to protect and enhance approximately 24 miles of aquatic habitat in the lower Yuba River, extending from Englebright Dam downstream to the river's confluence with the Feather River. The main components of the Yuba Accord consist of a Fisheries Agreement,

Conjunctive Use Agreements, and a Water Purchase Agreement. The Fisheries Agreement requires YCWA to maintain instream flows in the lower Yuba River in accordance with the Yuba Accord Flow Schedules to benefit native Chinook salmon, steelhead and other fish and aquatic-related resources. The Fisheries Agreement also established the River Management Fund (RMF) for funding of monitoring and evaluation in the lower Yuba River, and the Yuba Accord River Management Team (RMT), which includes representatives from the parties to the Fisheries Agreement (YWA, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), Pacific Gas and Electric (PG&E), CDFW, DWR, and non-governmental organizations). The RMF is funded annually by YWA, and the RMT developed the Monitoring and Evaluation Program (M&E Program) to guide the efficient expenditure of RMF funds to evaluate the biological provisions of the Fisheries Agreement. The term of the Yuba Accord Fisheries Agreement, including the RMT and RMF, extends until FERC issues a new FERC License for the YRDP. **Table 1** provides a summary of ongoing fisheries monitoring activities being conducted by the RMT through the M&E Program.

**Table 1. Summary of existing monitoring activities in the lower Yuba River conducted by the Yuba Accord RMT.**

Survey Name	Survey Type	Survey Methods	Survey Duration	Survey Period	Location (rkm <sup>1</sup> )
Yuba Accord RMT VAKI Riverwatcher™	Adult Escapement	VAKI Riverwatcher™ video/infrared monitoring systems installed in fish ladders at Daguerre Point Dam	2004 - Present	Year-round: Continuous	Daguerre Point Dam 11.5
Yuba Accord RMT Carcass Biometric Survey	Adult Biometric Sampling (tissues, scales, otoliths, CWTs)	Kayaking, Drift Boat	2009 - Present	Weekly: September - January	Narrows Pool – Daguerre Point Dam 11.5-22.5

Yuba Accord RMT Carcass Mark- Recapture Survey	Adult Escapement	Kayaking, Drift Boat	2011 - Present	Weekly: September - January	Daguerre Point Dam – Simpson Lane Bridge 1.8-11.5
Yuba Accord RMT Juvenile Survival Study	Juvenile survival	Acoustic (JSATS) Telemetry	2021 - Present	Variable: April - July	8 Receiver Gate Locations from Englebright Dam to Highway 70 Bridge

#### DWR Spring-run Juvenile Production Estimate

On March 31, 2020, CDFW issued Incidental Take Permit No. 2081-2019-066-00 (2020 SWP ITP) to DWR for the long-term operation of the State Water Project (SWP) in the Sacramento-San Joaquin Delta. The 2020 SWP ITP provides take authorization for SWP activities as described therein for the following species: longfin smelt (*Spirinchus thaleichthys*), Delta smelt (*Hypomesus transpacificus*), spring-run Chinook salmon (spring-run; *Oncorhynchus tshawytscha*), and winter-run Chinook salmon (winter-run; *O. tshawytscha*) (collectively “Covered Species”). The 2020 SWP ITP includes several Conditions of Approval intended to avoid, minimize, and/or mitigate the impacts of the SWP on the Covered Species. Condition of Approval 7.5.2 – New and Ongoing Monitoring Required to Develop and Establish a Spring-Run Chinook Salmon JPE (COA 7.5.2) requires DWR to develop a juvenile production estimate (JPE) for spring-run Chinook salmon (Spring-Run JPE). Monitoring will be conducted in spring-run Chinook salmon natal tributaries and includes adult passage, spawning, and escapement surveys, juvenile emigration monitoring using screw traps coupled with trap capture efficiency studies, juvenile survival studies using appropriate tagging methodologies, and genetic sampling of adult and juvenile Chinook salmon sampled during monitoring. Data collected from monitoring and any relevant historical data will be used to develop inputs and refine models under consideration for a Spring-Run JPE. **Table 2** summarizes DWR’s Spring-run JPE monitoring activities in the lower Yuba River.



**Table 2. Summary of existing fisheries monitoring activities in the lower Yuba River conducted for the DWR Spring-run JPE Program.**

<b>Survey Name</b>	<b>Survey Type</b>	<b>Survey Methods</b>	<b>Survey Duration</b>	<b>Survey Period</b>	<b>Location (rkm<sup>1</sup>)</b>
DWR Spring-Run JPE Redd Survey	Spawning	Kayak	2022 - Present	Weekly: September – mid-October	Narrows Pool – Simpson Lane Bridge 1.8-22.5
DWR Spring-Run JPE Juvenile Outmigrant Survey	Juvenile Outmigrant	Rotary Screw Traps	Oct 2022 - Present	Daily: Year Round	Hallwood Blvd. 7.5

#### **YRDP Lower Yuba River Aquatic Monitoring Plan**

On June 5, 2017, YWA filed an amended license application for the YRDP with FERC. The amended license application included numerous proposed environmental measures, one of which is Implement the Lower Yuba River Aquatic Monitoring Plan (Proposed Condition AR-8). YWA developed the Lower Yuba River Aquatic Monitoring Plan (LYRAMP) with relicensing participants, and filed the LYRAMP with FERC on December 2, 2016. The Staff Alternative identified as the recommended alternative in FERC’s January 2019 Final Environmental Impact Statement (FEIS; FERC and USACE 2019) for the YRDP included implementing the proposed LYRAMP, with modifications to remove: (1) BMI monitoring in the lower Yuba River; (2) upstream fish passage monitoring at Daguerre Point Dam (DPD); (3) weekly Chinook salmon spawning surveys in the lower Yuba River; and (4) monitoring of substrate and riparian vegetation cover and community structure. Despite FERC staff’s recommendation for modifications to the LYRAMP, FERC adopted the LYRAMP (filed on June 5, 2017) without modification in Article 403 (Approval of Implementation Plans), and the LYRAMP was made part of the proposed FERC license.

Implementation of the LYRAMP will begin subsequent to FERC’s issuance of a new FERC license for the YRDP, and will provide a comprehensive monitoring program on the lower Yuba River. The LYRAMP includes monitoring fish passage at DPD year-

round, salmonid spawning population abundance, temporal spatial distributions of steelhead spawning, abundance, size, and timing of emigrating salmonids, interactions of anadromous fish at Narrows 2 Facilities, channel substrate and LWM, riparian vegetation and community structure, and BMI community structure. This comprehensive set of studies would provide key indicators for the health and management of the lower Yuba River aquatic ecosystem. **Table 3** provides a summary of fisheries and habitat monitoring activities anticipated to occur through implementation of the LYRAMP upon issuance of a new FERC license for the YRDP.

**Table 3. Summary of anticipated fisheries monitoring activities to be conducted in the lower Yuba River through the YRDP Lower Yuba River Aquatic Monitoring Plan.**

Survey Name	Survey Type	Survey Methods	Survey Duration	Survey Period	Location (rkm <sup>1</sup> )
YRDP LYRAMP VAKI Riverwatcher <sup>TM</sup>	Adult Escapement	VAKI Riverwatcher <sup>TM</sup> video/infrared monitoring systems installed in fish ladders at Daguerre Point Dam	Anticipated to occur annually upon YRDP license issuance	Continuous: Year-round	Daguerre Point Dam 11.5
YRDP LYRAMP Carcass Biometric Survey	Adult Biometric Sampling (tissues, scales, otoliths, CWTs)	Kayaking, Drift Boat	Anticipated upon YRDP license issuance  • Annually for first 10 years after license issuance, then during 3 years of every subsequent 10-year block	Weekly: September - January	Narrows Pool – Daguerre Point Dam 11.5-22.5

			through the term of the license.		
YRDP LYRAMP Carcass Mark- Recapture Survey	Adult Escapemen t	Kayaking, Drift Boat	<p>Anticipated upon YRDP license issuance</p> <ul style="list-style-type: none"> <li>• Annually for first 10 years after license issuance, then during 3 years of every subsequent 10-year block through the term of the license.</li> </ul>	Weekly: September - January	Daguerre Point Dam – Simpson Lane Bridge 1.8-11.5
YRDP LYRAMP Juvenile Downstream Movement Monitoring	Juvenile Outmigrant	Rotary Screw Traps	<p>Anticipated upon YRDP license issuance</p> <ul style="list-style-type: none"> <li>• First 5 years of license, then 3 consecutive years every subsequent 10-year block until new license is issued</li> </ul>	Daily: November 15 – June 15	Hallwood Blvd. 7.5
YRDP LYRAMP Narrows 2 Anadromous Salmonid	Stranding	Field Surveys, Wading	Anticipated to occur annually upon YRDP	When triggering conditions are met:	Vicinity of Narrows 2

Stranding Monitoring			license issuance	July - February	Powerhouse 24.2
YRDP LYRAMP Substrate and Large Woody Material Monitoring	Substrate Composition and LWM	Field Surveys, Kayaks, GPS	<p>Anticipated upon YRDP license issuance</p> <ul style="list-style-type: none"> <li>• Once within first three years of license issuance, once in License Year 10, and every 10 years thereafter until a new license is issued</li> </ul>	Once annually	<p>6 Reaches</p> <p>0.1-1.0 3.8-5.1 10.0-11.5 12.1-13.7 16.1-17.3 19.8-20.8</p>
YRDP LYRAMP Riparian Vegetation Monitoring	Riparian Vegetation	Aerial Imagery, Field Surveys, GPS	<p>Anticipated upon YRDP license issuance</p> <ul style="list-style-type: none"> <li>• Once within first three years of license issuance, once in License Year 10, and every 10 years thereafter until a new license is issued</li> </ul>	Once annually	<p>6 Reaches</p> <p>0.1-1.0 3.8-5.1 10.0-11.5 12.1-13.7 16.1-17.3 19.8-20.8</p>

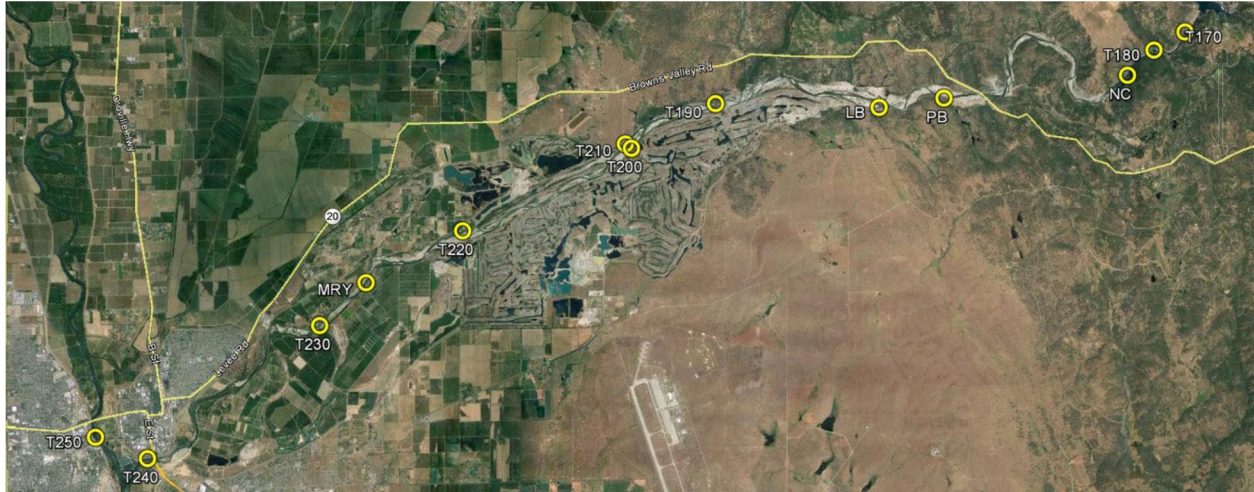


**Table 3 (Cont.). Summary of anticipated fisheries monitoring activities to be conducted in the lower Yuba River through the YRDP Lower Yuba River Aquatic Monitoring Plan.**

Survey Name	Survey Type	Survey Methods	Survey Duration	Survey Period	Location (rkm <sup>1</sup> )
YRDP LYRAMP Benthic Macroinvertebrate Monitoring	Benthic Macroinvertebrate (BMI)	D-Frame Kick Net	<p>Anticipated upon YRDP license issuance</p> <ul style="list-style-type: none"> <li>• Once within first three years of license issuance, once in License Year 10, and every 10 years thereafter until a new license is issued</li> <li>• Additionally, in the second of two consecutive Schedule 5, 6, or Conference years, unless monitoring will otherwise occur in that year</li> </ul>	Once annually	<p>4 Reaches</p> <p>7.2-7.5</p> <p>11.1-11.4</p> <p>17.5-17.8</p> <p>20-20.3</p>

### Water Quality Monitoring

YWA operates and maintains a network of water temperature monitoring equipment deployed at locations throughout the lower Yuba River (**Figure 2**) in compliance with revised Water Right Decision 1644 (RD-1644).



**Figure 2. Water temperature monitoring locations in the lower Yuba River.**

### Monitoring Data Application and Modeling

#### YRDP Daily Operations Model

Operations modeling is conducted using an updated version of YCWA's (2017) YRDP Relicensing Water Balance/Operations Model (Operations Model) to simulate hydrology in the lower Yuba River and upstream reservoirs. The Operations Model simulates hydrology in the lower Yuba River, in New Bullards Bar Reservoir on the North Yuba River, at Log Cabin Diversion Dam on Oregon Creek, and at Our House Diversion Dam on the Middle Yuba River on a daily time-step for the period of record extending from water year (WY) 1922-2022, encompassing the simulation period of WY 1922-2015 used in the Final Draft Scientific Basis Report Supplement (SBRS; SWRCB September 2023). For a detailed model description, see Yuba River Development Project Water Balance/Operations Model Documentation (YCWA 2022).

#### Water Temperature Model

Water temperature modeling is conducted with an updated version of the Yuba River Watershed water temperature model developed by YCWA (2017), which simulates daily water temperatures for a period of record extending from WY 1970 through 2021). YCWA has undertaken extensive efforts to re-calibrate the water temperature model to

reflect a greater range of conditions observed since the original calibration (circa 2013) using more recent data. Simulated daily flows and storages output from the Operations Model were used as inputs to the water temperature model. YCWA relicensing Technical Memorandum 2-6, Water Temperature Models, in Appendix E6 of YCWA (2017) provides a detailed description of the various modeling platforms used in the development of the water temperature model. A description of the updates to the water temperature model are provided in YCWA (2021).

#### Lower Yuba River Fisheries Hydraulic and Habitat Modeling

Water velocities and water depths in the lower Yuba River are simulated using a TUFLOW HPC 2D hydrodynamic model of the lower Yuba River and a 2017 digital elevation model (DEM). The 2017 DEM was developed subsequent to high flows that occurred during Winter of 2017 using Airborne Light Detection and Ranging (LiDAR), boat-based multibeam and single beam echosounding, and ground-based topographic surveying with Real-time kinematic (RTK) Global Positioning System (GPS) and robotic total stationing (Silva and Pasternack 2018). The 2D model is run with a 3'x3' computation mesh for flows  $\leq 30,000$  cfs and a 10'x10' mesh for flows  $> 30,000$  cfs. Water velocity, water depth, water surface elevation, shear stress and other variables are produced for discharges from 300 cfs to 110,400 cfs throughout the lower Yuba River and for discharges up to 198,885 cfs upstream of Daguerre Point Dam.

Species- and lifestage-specific habitat-discharge relationships for the lower Yuba River are developed by applying habitat suitability criteria (HSC) to modeled water depths and velocities and substrate and cover data. Simulated daily flows output from the Operations Model are used as inputs to the habitat-discharge relationships to model daily amounts of habitat under a given model scenario.

Additional hydraulic and habitat modeling has been conducted in localized areas of the lower Yuba River in association with development and implementation of habitat enhancement projects, including the Hallwood Side Channel and Floodplain Restoration Project ("Hallwood Project"), and the Long Bar Salmonid Habitat Restoration Project ("Lower Long Bar"), both of which are early implementation projects for the Yuba River HR&L Program. **Table 4** presents a summary of the fisheries hydraulic and habitat modeling efforts on the lower Yuba River that are relevant to YWA's HR&L habitat measures.

**Table 4. Summary of lower Yuba River fisheries hydraulic and habitat modeling information.**

<b>Spatial Extent</b>	<b>DEM availability/source</b>	<b>Hydraulic Model Platform</b>	<b>Cover Map Available</b>
Entire Lower Yuba River	2017 LiDAR/bathymetry survey	TUFLOW (2D)	Full coverage (Englebright Dam to Feather-Yuba Confluence)
Hallwood Side Channel and Floodplain Restoration Project (Early Implementation)	Pre-Project, As-Built	HEC-RAS-2D	In Progress
Long Bar Salmonid Habitat Restoration Project (“Lower Long Bar”; Early Implementation)	Pre-Project, As-Built	HEC-RAS-2D	In Progress

### **Yuba River HR&L Non-Flow Actions and Criteria**

#### **In-Channel Rearing Habitat**

Instream (i.e., in-channel) habitat is defined as certain components (i.e., “features”) of the habitat portfolio that occur within the bankfull boundaries of the lower Yuba River. Importantly, instream habitat is not defined by a specific flow threshold. Rather, for modeling and analysis purposes, instream habitat occurs within the bankfull channel geospatial boundary generally associated with 5,000 cfs (Wyrick and Pasternack 2012).

Instream habitat associated with Yuba River HR&L habitat measures are intended to provide physical habitat structure (i.e., complexity, sinuosity, diversity, instream object and over-hanging cover), refugia from predators and high flows, and improved food availability. The measures can comprise various features including perennial side-channels, ephemeral side-channels, backwater and alcoves, and channel edge habitats.

#### **Tributary Floodplain Rearing Habitat**

The Final Draft SBRS differentiated lower Yuba River instream versus floodplain rearing habitats by equating instream habitats as those occurring at flows less than or equal to 5,000 cfs, and floodplain habitats as those occurring at flows greater than 5,000 cfs.

While YWA recognizes the State Team's need to simplify habitat characterization for the purpose of distinguishing in-channel versus floodplain rearing habitat, habitat features in the lower Yuba River occurring within the bankfull channel at flows up to 5,000 cfs can serve a variety of ecological functions, including some functionality as floodplain rearing habitat. Floodplain rearing habitat associated with HR&L habitat measures consists of broad areas that may be flat or have a gentle slope, and tend to be characterized by relatively low velocities with little to no concentrated flow paths. An activation flow has previously been identified as 2,000 cfs for HR&L floodplain rearing habitat in the lower Yuba River. Since drafting of the MOU, the HR&L Science Committee has refined design criteria and habitat accounting procedures, including floodplain inundation duration and frequency criteria, identifying floodplain rearing habitat functionality over a range of flows that will encompass 2,000 cfs in the lower Yuba River. Because floodplain habitats are intended to increase aquatic habitat productivity (primary and secondary) and food availability to encourage juvenile Chinook salmon growth, floodplain habitats will be designed and constructed to be functional at the lower end of the suitable depth and velocity ranges over a range of flows.

#### **Yuba River HR&L Non-Flow Actions Descriptions**

The primary objectives of the habitat enhancement component of the Yuba River HR&L proposal are to improve the productivity, complexity and diversity of anadromous salmonid juvenile rearing habitat in the lower Yuba River, and therefore provide greater opportunities for a more diverse portfolio of rearing and outmigration life history strategies. The anticipated outcomes include increased growth and survivability of juvenile anadromous salmonids, and subsequent contribution to spawning stock escapement. The Yuba River HR&L proposed habitat enhancement measures are intended to provide physical habitat conditions that would support broad temporal and spatial distributions of juvenile anadromous salmonid rearing, and larger individuals in better condition with higher survivorship by providing: (1) physical habitat structure (i.e.,

complexity, sinuosity, diversity, instream object and over-hanging cover); (2) improved food availability, quality and diversity; (3) refugia from predators; and (4) refugia from high flows.

The Yuba River proposed HR&L habitat enhancement strategy originates from biological and ecological functionality, not strict geomorphology, or hydrological statistical characterization of flow exceedance probabilities. In other words, adherence to a simplistic definition of flow levels or suitability criteria does not reflect the holistic definition of ecological diversity that contributes to the viability of native fish populations. Rather, each habitat enhancement measure reflects ecological diversity through variation in ecological functionality resulting, in part, from variable flow regimes and their interaction with the physical habitat structure associated with each habitat enhancement measure.

### Early Implementation (2018 – 2024) Projects

The following habitat enhancement projects are identified as “early implementation” (December 2018 – January 1, 2024) projects for which Yuba Water has committed resources and funding for the design, permitting, and construction of these projects. These projects will contribute toward the 50 acres of instream and 100 acres of floodplain juvenile Chinook salmon rearing habitat Yuba River HR&L commitments, and include the Hallwood, Lower Long Bar, and Upper Rose Bar Restoration projects.

#### **Hallwood Side Channel and Floodplain Restoration Project**

The Hallwood Project, located in the lower Yuba River downstream of Daguerre Point Dam, is a side channel and floodplain rearing habitat enhancement project developed by the U.S. Fish and Wildlife Service (USFWS), Yuba County, and the South Yuba River Citizens League (SYRCL). Yuba Water joined the project through funding implementation and construction during the summer of 2019. The project would increase the extent and duration during which juvenile salmonids are able to access the floodplain over a range of flows, as well as create and enhance perennial and seasonal side channel habitat.

The Hallwood Project consists of 4 phases, with habitat enhancement consisting of seasonally inundated riparian floodplain, perennial side channels, and seasonally inundated side channels, alcoves, and swales occurring within an approximately 157 acre footprint. Phase 1 represents an enhancement of floodplain rearing habitat within a grading footprint of 89 acres and includes instream habitat of approximately 1.7 miles of



perennial side channels and 6.1 miles of seasonally inundated side-channels, alcoves, and swales. Phase 1 of the Hallwood Project was completed during 2020.

Phase 2, which involved removal of about 800,000 yd<sup>3</sup> of sediment from the Middle Training Wall and surrounding floodplains in the upper reach and enhancing 34 acres of floodplain and seasonally inundated side channel habitat, was completed during 2021.

Phase 3 removed approximately 825,000 yd<sup>3</sup> of mainly Middle Training Wall material, with an overall footprint of 13 acres of created floodplain habitat. Phase 3 was completed in 2022.

Phase 4 of the Hallwood Project removed a total of about 400,000 yd<sup>3</sup> of sediment from portions of the Middle Training Wall and enhanced an additional 21 acres of floodplain and seasonally inundated side channel habitat. Construction of Phase 4 was completed during fall 2023.

### **Long Bar Salmonid Habitat Restoration Project (Lower Long Bar)**

Located upstream of Daguerre Point Dam, the Lower Long Bar Salmonid Habitat Restoration Project was designed to enhance approximately 43 acres along the lower Yuba River in an area referred to as Long Bar (USFWS and Yuba County 2021). This is a collaborative project developed and funded by Yuba Water, USFWS, SYRCL, the Long Bar Mine LLC, Western Aggregates, and Silica Resources Inc. The project involved removing about 350,000 yd<sup>3</sup> of hydraulic mining debris to lower the floodplain and create juvenile anadromous salmonid rearing habitat. In addition to riparian plantings adjacent to re-graded areas, other habitat features include enhanced floodplain areas (17.9 acres), perennial backwater channels (5.4 acres), riparian terraces (2.9 acres), side channels (4 acres), secondary and low flow channels (2.4 acres), and terraces (6.4 acres), among others (USFWS and Yuba County 2021). Construction began in 2020 and was completed in 2022, and about 80,000 yd<sup>3</sup> of material was removed as of July 2022 (SYRCL 2022).

### **Upper Rose Bar Restoration Project**

The Upper Rose Bar Restoration Project is located on private property owned by YWA along the lower Yuba River near the community of Smartsville in Yuba County, California. The project, including design, permitting, construction, and monitoring, is funded and directed by CDFW through the Proposition 1 grant program, and designed by SYRCL. The project footprint is approximately 43 acres and will provide approximately 5 acres of Chinook salmon spawning habitat. The project also includes placement of large wood, and other measures that provide refugia and suitable rearing habitat for juvenile

salmonids, resulting in approximately 1.2 acres of juvenile Chinook salmon instream rearing habitat. Construction began during 2023 and is anticipated to be completed during 2024.

### **Longer-Term Implementation (2024 and Beyond) Projects**

Preliminary conceptual outlines, designs, or other progress for potential longer-term (2024 and beyond) habitat enhancement projects that may contribute to the Yuba River Healthy Rivers and Landscapes non-flow (habitat) actions of 50 acres of instream habitat and 100 acres of floodplain habitat for juvenile Chinook salmon rearing include the Upper Long Bar Habitat Enhancement Project (Upper Long Bar) and Rose Bar Comprehensive Restoration Plan (and Project). Timing for permitting, funding, and construction of these projects will need to be assessed by project proponents, but could be completed within the term of the Healthy Rivers and Landscapes Program.

#### **Upper Long Bar Habitat Enhancement Project**

Located immediately upstream of the Lower Long Bar project, the Upper Long Bar Habitat Enhancement Project represents an opportunity for enhancement of extensive and complex juvenile anadromous salmonid rearing habitat that provides benefits over a range of flow conditions. California Wildlife Conservation Board grant funding for Phase I of the Upper Long Bar Project was awarded in 2021 to support the planning, permitting, and design to restore juvenile salmonid rearing habitat within an approximate 100 acre footprint. The project represents a collaborative effort by the Wildlife Conservation Board, SYRCL, YWA, the Long Bar Mine LLC, Western Aggregates, and Silica Resources Inc.

Preliminary conceptual designs for the Upper Long Bar project include the creation of edge habitat, flood runner, alcove, and floodplain rearing habitats. The project implementation is contingent upon funding and permitting, and while the timeline for implementation is yet to be determined, it could occur with the term of the HR&L Program.

Proportionate amount of instream and floodplain habitats that will be created under this habitat enhancement project will be determined through further design development.

#### **Rose Bar Comprehensive Restoration Project**

The Rose Bar Comprehensive Restoration Project, located at the Blue Point Mine and Roger-Tinners properties (currently owned by YWA), represents a potential longer-term HR&L habitat enhancement project that could create up to 50 acres of functional



floodplain rearing habitat, and improve spawning habitat conditions in the project area. Potential project elements could include lowering of floodplain elevation to create juvenile rearing habitat through the removal of past mining tailings at the downstream end of Rose Bar, and the creation of small amounts of spawning habitat in a nearby gully. Further considerations would be required prior to advancing this potential habitat enhancement project, particularly regarding set-back, grading, and flow issues.

While the project implementation is contingent upon design, funding, permitting and implementation schedule considerations, this project could be realized during the term of the HR&L Program. The proportionate amount of floodplain habitat that would be created under this habitat enhancement project would be determined through further design development.

### Implementation Schedule

**Table 5** presents the default implementation schedule for YWA’s HR&L habitat measures.

### Funding for Yuba River Non-Flow Actions

Consistent with the March 2022 MOU, Yuba Water would contribute \$10 million together with additional state funds as needed to meet the 50 acres of instream and 100 acres of floodplain juvenile Chinook salmon rearing habitat enhancement component of the Yuba River HR&L Program over the 15-year term of the Yuba River HR&L Program, prorated per the HR&L Strategic Plan. Thus, YWA will contribute \$667,000 per year for habitat enhancement measures. The Parties expect that additional state and federal funds will be provided as needed to fully implement habitat measures under this Agreement. To achieve the habitat enhancement commitments, YWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals. YWA will receive credit for both acreage and funding contributions toward this obligation for early implementation of habitat measures.

**Table 5. Default implementation schedule for YWA’s HR&L habitat measures.**

<b>Description of Measures</b>	<b>Early Implementation<sup>1</sup> (Dec 2018-Jan 2024)</b>	<b>Years 1-3 (2025-27)</b>	<b>Years 4-6<sup>2</sup> (2028-31)</b>	<b>Years 7-8<sup>2</sup> (2032-33)</b>	<b>Total<sup>3</sup></b>
Hallwood Side Channel and Floodplain Restoration Project	<p>Constructed in 4 phases:  Phase 1 footprint – 89 ac  Phase 2 footprint – 34 ac  Phase 3 footprint – 13 ac  Phase 4 footprint – 21 ac</p> <p>Floodplain habitat footprint:  ~138 ac</p> <p>Instream habitat footprint: ~ 6 ac</p> <p>Other habitats footprint:  ~13 ac</p>				Approximate 157 acre project footprint
Long Bar Salmonid Habitat Restoration Project (Lower Long Bar)	<p>Floodplain habitat footprint: ~18 ac</p> <p>Instream habitat footprint: ~12 ac</p> <p>Other habitats footprint:  ~13 ac</p>				Approximate 43 acre project footprint
Upper Rose Bar Restoration Project <sup>4</sup>	<p>Spawning habitat<sup>5</sup> footprint: ~5 ac</p> <p>Instream habitat footprint: ~1.2 ac</p>				Approximate 43 acre project footprint

	Other habitats and construction area footprints: ~37 ac				
Upper Long Bar Habitat Enhancement Project		Preliminary concept is to create a diversity of seasonal off-channel juvenile salmonid rearing habitat types (e.g., floodplain, side channel, alcove). Project contingent upon funding and permitting, timeline for implementation is TBD <sup>6</sup> , but could occur with the term of the HR&L Program.			Approximately 100 acre <sup>7</sup> footprint of floodplain and instream rearing habitat
Rose Bar Comprehensive Restoration Plan		Preliminary concept includes creating instream/rearing, spawning, floodplain, and fish food production habitat functionalities. Project contingent upon funding and permitting, timeline for implementation is TBD, but could occur with the term of the HR&L Program.			Approximately 50 acre <sup>7</sup> footprint of floodplain and instream rearing habitat

<sup>1</sup>As specified in the Healthy Rivers and Landscapes Strategic Plan, as of Jan. 1, 2024, projects that have been completed since December 2018 or that are in more advanced stages of the project lifecycle (i.e., permitting, in-progress/implementation, or construction) will be considered as Early Implementation projects.

<sup>2</sup>Assumes adequate funding exists at the time of implementation.

<sup>3</sup>Totals identified here are estimated project footprint areas. Habitat area meeting applicable design criteria will be identified through post-construction implementation (habitat accounting) assessments.

<sup>4</sup>Permits have been drafted, ESA consultation initiated, and funding application submitted to CDFW Fisheries Restoration Grant Program during April 2022.

<sup>5</sup>The Yuba River HR&L Program does not include spawning habitat restoration actions.

<sup>6</sup>Funding for project planning has been secured from YWA and the Wildlife Conservation Board. Implementation funding sources have not yet been identified, but may potentially include YWA and other grant funds (e.g., Prop 68), among others.

<sup>7</sup>Proportionate amount of instream and floodplain habitats that will be created under this habitat enhancement project will be determined through further design development.

### Habitat Design Criteria

The HR&L Strategic Plan identifies design criteria for habitat measures by habitat objective (i.e., tributary spawning, tributary floodplain rearing, and in-channel rearing).

**Table 6** summarizes the habitat design criteria that are relevant to YWA's HR&L habitat measures.

**Table 6. Habitat design criteria identified in the HR&L Strategic Plan (Table 27) that are relevant to Yuba River HR&L habitat measures.**

Habitat Type	Water Depth (ft) <sup>1</sup>	Water Velocity (fps) <sup>1</sup>	Other
<b>In-stream Rearing Habitat</b>	0.5 – 4.0	0.0 – 3.0	<p><b>Cover<sup>2</sup>:</b></p> <p>Sufficient cover to provide suitable rearing habitat for juvenile salmonids, defined as a minimum of 20% coverage of cover features that have a Habitat Suitability Index (HSI) score <math>\geq 0.5</math> supported by the scientific literature (listed in Strategic Plan Table 28).</p>
<b>Tributary Floodplain Rearing Habitat</b>	0.5 – 4.0	0.0 – 3.0	<p><b>Cover<sup>2</sup>:</b></p> <p>Sufficient cover to provide suitable rearing habitat for juvenile salmonids, defined as a minimum of 20% coverage of cover features that have a Habitat Suitability Index (HSI) score <math>\geq 0.5</math> supported by the scientific literature (listed in Strategic Plan Table 28).</p> <p><b>Floodplain Function:</b></p> <p>Sufficient frequency, magnitude, and duration of inundation to</p>

			provide benefits for rearing salmonids <sup>3</sup> .
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<sup>1</sup> Water depth and velocity criteria for each habitat type are consistent with SWB in preparation and identified by the Conservation Planning Foundation for Restoring Chinook Salmon and O. mykiss in the Stanislaus River (Anchor QEA, LLC 2019). Proposed variances from these specific values will be reviewed in the design criteria review process outlined above.

<sup>2</sup> The HR&L Strategic Plan (Table 28) synthesizes cover habitat categories with a habitat suitability index (HSI) Score  $\geq 0.5$ . Cover will be evaluated at project completion in accordance with final phases and/or full implementation of the project design (e.g., vegetation at maturity).

<sup>3</sup> For instances where daily data or tributary-specific high-resolution models are available, a range of combined duration and frequency targets may adhere to the rationale of the MFE and provide opportunities for adaptive management.

### **HR&L Science Plan Hypotheses, Metrics, and Associated Monitoring Needs**

The HR&L Science Plan identifies several hypotheses related to Non-flow Habitat Measures that are relevant to the Yuba River HR&L Program (**Table 7**).

To the extent practicable, the Yuba River HR&L Science Program will leverage existing or anticipated fisheries monitoring programs for other Yuba River initiatives to collect the data needed to calculate the metrics and covariates associated with the Science Plan hypotheses identified above. For some of the identified hypotheses (e.g.,  $H_{R2}$ ,  $H_{TribFP2}$ ), existing and/or anticipated monitoring activities for other Yuba River initiatives will need be adjusted in terms of survey timing or spatial coverage to be able to collect data relevant to specific projects. Metrics for several hypotheses (e.g.,  $H_{R3}$ - $H_{R4}$ ,  $H_{TribFP3}$ - $H_{TribFP6}$ ) are not addressed by existing or anticipated monitoring programs for other Yuba River initiatives. The Yuba River HR&L Science Program will coordinate, develop, and implement monitoring activities with appropriate timing and spatial coverage to ensure that the data needed to inform all metrics and covariates associated with the identified hypotheses are collected.

**Table 7. Summary of HR&L Science Program Hypotheses, Metrics, Comparisons, and Covariates for Local, Full Tributary, and Population-Level Tiers, relevant to Yuba River HR&L Program implementation and monitoring.<sup>1</sup>**

Action Type	Hyp. ID	Metric	Prediction	Basis for Comparison	Covariates	Yuba Monitoring Method
<b>Rearing Habitat</b>	<b>H<sub>R1</sub></b>	Rearing habitat acreage*	↑	Existing suitable habitat acreage, based on depth and velocity criteria from DEMs and hydraulic models	Flow, water temperature and dissolved oxygen	Project-specific habitat modeling
<b>Rearing Habitat</b>	<b>H<sub>R2</sub></b>	Biomass density of secondary productivity (g/volume)	↑	Non-project, non-enhanced proximal reference sites measured concurrently	N/A	YRDP LYRAMP BMI
<b>Rearing Habitat</b>	<b>H<sub>R3</sub>, H<sub>R4</sub></b>	Juvenile Chinook salmon densities (#/unit area)	↑	Proximal project and non-project reference sites measured concurrently	N/A	Project-specific monitoring
<b>Tributary Floodplain</b>	<b>H<sub>TribFP1</sub></b>	Tributary floodplain	↑	Existing floodplain acreage	Water temperature, dissolved	Project-specific

		acreage subject to inundation*			oxygen, and flow	habitat modeling
<b>Tributary Floodplain</b>	<b>H<sub>TribFP2</sub></b>	Biomass density of drift and benthic macroinvertebrates (g/volume)	↑	(1) Avg. densities for in-channel locations from historical record (2) In-channel locations measured concurrently with project areas	Water temperature, dissolved oxygen, water velocity, and indices of primary productivity	YRDP LYRAMP BMI
<b>Tributary Floodplain</b>	<b>H<sub>TribFP3</sub></b>	Juvenile salmon presence and densities (#/unit area or #/volume)	↑	Non-project, proximal reference sites measured concurrently	Water temperature and dissolved oxygen	Project-specific monitoring
<b>Tributary Floodplain</b>	<b>H<sub>TribFP4</sub></b>	Growth rate of juvenile salmon	↑	Derived through experimental work using caged fish	Water temperature, secondary productivity	Project-specific monitoring
<b>Tributary Floodplain</b>	<b>H<sub>TribFP5</sub></b>	Number of stranded juvenile salmon as a proportion of the tributary juvenile production estimate (JPE)	↔	(1) Historical estimates of stranding (2) Total population impact based on tributary JPE	N/A	Project-specific monitoring

<b>Tributary Floodplain</b>	$H_{TribFP6}$	Prevalence of native fish community (relative catch of native fishes compared to non-native fishes)	↑	Historical period of record for fish community sampling (seining, electrofishing, rotary screw traps)	N/A	Project-specific monitoring
<b>Tributary Juvenile Salmon Production</b>	$H_{TribWide1}$	Trend # estimated outmigrating juveniles / female spawner ( $\geq 3$ years)	↑	Annual values in historical data record prior to Healthy Rivers and Landscapes Program implementation	Flow, water temperatures and dissolved oxygen	VAKI Riverwatcher <sup>TM</sup> Carcass Mark-Recapture Rotary Screw Traps
<b>Tributary Juvenile Salmon Production</b>	$H_{TribWide2}$	Condition factor of emigrating Chinook salmon	↑	Available historical data for each tributary	N/A	Rotary Screw Traps
<b>Tributary Juvenile Salmon Production</b>	$H_{TribWide3}$	Coefficient of variation in emigration timing and body size	↑	Available historical data for each tributary prior to Healthy Rivers and Landscapes Program implementation	N/A	Rotary Screw Traps



<b>Tributary Adult Chinook Population</b>	$H_{TribPop2}$	Natural origin adult Chinook salmon population estimates by tributary, and trend in abundance (harvest plus escapement)	↑	(1) Tributary adult abundance estimates from AFRP Doubling Goal years (1967 – 1991) (2) Tributary adult abundance since 2010	N/A	VAKI Riverwatcher <sup>TM</sup> Carcass Mark-Recapture Carcass Biometric Surveys
<b>Tributary Adult Chinook Population</b>	$H_{TribPop3}$	Trend in the tributary Cohort Replacement Rate (CRR) for natural origin fish	↑	(1) Trend in the natural origin CRR in the period of record for each tributary (2) CRR since 2010	N/A	VAKI Riverwatcher <sup>TM</sup> Carcass Mark-Recapture Carcass Biometric Surveys
<b>Systemwide Chinook Population</b>	$H_{SWPop1}$	Annual Chinook salmon escapement and harvest for Sacramento and San Joaquin Valleys	↑	(1) Escapement + Harvest for AFRP Doubling Goal years (1967 – 1991) (2) Escapement + Harvest since 2010	N/A	Yuba River will contribute adult escapement estimates to this Systemwide analysis
<b>Systemwide Chinook Population</b>	$H_{SWPop2}$	Trend in CRR for natural origin fish for Sacramento and	↑	(1) CRR for AFRP Doubling	N/A	Yuba River will contribute adult

		San Joaquin Valleys		Goal years (1967 – 1991) 2) CRR for Central Valley since 2010		escapement estimates to this Systemwide analysis
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<sup>1</sup>All hypotheses are explained in detail in the HR&L Science Plan Section 2, Hypotheses, Metrics, and Baselines for Evaluating Outcomes of Voluntary Agreement actions. Cell colors indicate the Hypothesis Tier (Yellow = Local Tier for Non-Flow Measures; Blue = Full Tributary Tier; Light Red = Population-level Tier; colored cells adapted from *Table 1 of the Voluntary Agreement Draft Science Program*).

## Habitat Assessments

### Habitat Accounting

Habitat accounting for tributary spawning, in-channel rearing, and tributary floodplain rearing habitat enhancement measures accounts for the acreage of implemented habitat enhancement measures based on design criteria for specific projects. Design criteria include water depth and water velocity, as well as substrate for spawning measures, and cover for tributary in-channel and tributary floodplain rearing measures.

Habitat accounting is a site-specific assessment that will be conducted at the completion of each individual project construction. Implementation assessments to account for Yuba River HR&L Program habitat enhancement projects will follow the habitat accounting protocols framework identified in the Strategic Plan. YWA will use this information to develop detailed assessment protocols tailored to the specific Non-flow Measures implemented within the lower Yuba River.

Accounting for HR&L Non-flow Measures will be conducted to inform the Systemwide Governance Committee and State Water Board on progress relative to the HR&L Parties' Non-flow Measure commitments as described in the March 2022 Healthy Rivers and Landscapes Program Term Sheet and applicable amendments, summarized in Table 25 of the HR&L Strategic Plan. The Non-flow Measure accounting process is described further in the HR&L Strategic Plan (Section 3.1.4 and Appendix F).

## Habitat Suitability, Utilization, and Effectiveness Assessments

### Habitat Suitability Assessments

Habitat suitability assessments, described in Section 4.1.1 of the HR&L Science Plan, consider habitat suitability design criteria, as well as additional factors (covariates) that may affect species utilization and their ability to feed, grow, avoid predators, and reproduce in the new or enhanced habitat. These covariate suitability metrics are additional to the metrics informing the habitat accounting procedures and often regard water quality (e.g., water temperature). The habitat suitability assessment is separate from the habitat accounting method described in Section 3.1.4 of the Strategic Plan because it considers suitability metrics that may not be possible to control through project design but may affect utilization and biological effectiveness. The results of the habitat suitability assessments will be provided in HR&L Program reports as described in Section 9.4 of the HR&L Term Sheet as well as the ecological outcomes analysis to be provided prior to Year 7 of the HR&L Program, as described in Appendix 4 of the HR&L Term Sheet. The Yuba River Science Program will develop detailed protocols for habitat suitability assessments based on the suitability assessment framework to be developed by the HR&L Science Committee.

### Habitat Utilization and Biological Effectiveness Assessments

Habitat utilization and biological effectiveness assessments, described in Section 4.1.2 of the HR&L Science Plan, will be conducted to determine whether target species are using the new or enhanced habitat areas, are exhibiting expected near-term benefits (e.g., increased densities, increased growth rate) that can be attributed to the completed habitat action, and whether these measures are achieving or are likely to achieve the anticipated ecological outcomes by creating, restoring, or enhancing the habitat of one or more target species and lifestages. The results of the habitat utilization and biological effectiveness assessments will be provided in HR&L Program reports as described in Section 9.4 of the HR&L Term Sheet as well as the ecological outcomes analysis to be provided prior to Year 7 of the HR&L Program, as described in Appendix 4 of the HR&L Term Sheet. The Yuba River Science Program will develop detailed protocols for habitat utilization and biological effectiveness assessments based on the utilization and biological effectiveness assessment framework to be developed by the HR&L Science Committee.

## Reporting

Consistent with the March 29, 2022 MOU Term Sheet for the HR&L Program, the HR&L Science Committee will contribute to Annual Reports and Triennial Reports for Years 3 and 6 of HR&L implementation. Science Committee contributions to these

reports will help fulfill requirements of these reports to do the following from Section 9.4.A of the MOU and Term Sheet:

- Inform adaptive management actions.
- Be technical in nature, identify actions taken, monitoring results, and milestones achieved.
- Document status and trends of native fish.

The Yuba River Science Program will develop annual reports documenting Yuba River HR&L habitat enhancement implementation, monitoring, and assessments and will submit them to the HR&L Science Committee for review and to inform the broader HR&L Science Program analysis and reporting process.

### **References**

- FERC (Federal Energy Regulatory Commission) and USACE (U.S. Army Corps of Engineers). 2019. Final Environmental Impact Statement for Hydropower License. Yuba River Development Project P-2246-065.
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- Yuba County Water Agency [YCWA]. 2017. Yuba River Development Project. FERC Project No. 2246. Amended License Application.
- YCWA. 2021. Technical Memorandum – Modeling Approach. Yuba River Development Project. FERC Project No. 2246. December 2021.
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# **Exhibit C.**

## **Enforcement Agreements**

**Exhibit C.**  
**ENFORCEMENT AGREEMENTS**

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# **Exhibit C1. American River**

# **ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION OF HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE AMERICAN RIVER**

**(April 5, 2024 version)**

This “Enforcement Agreement related to Implementation of Healthy Rivers and Landscapes Program in the American River” is entered into by and between the California State Water Resources Control Board and Carmichael Water District, Citrus Heights Water District, City of Folsom, City of Roseville, City of Sacramento, El Dorado Irrigation District, Fair Oaks Water District, Foresthill Public Utility District, Georgetown Divide Public Utility District, Golden State Water Company, Orangevale Water Company, Placer County Water Agency, Sacramento County Water Agency, Sacramento Suburban Water District, and San Juan Water District (collectively, the “American River Water Providers”) for the purpose of providing for regulatory enforcement of those flow, habitat restoration and other measures stated in Appendix 1 hereto. Defined terms are set forth in Section 2 of this Enforcement Agreement.

## **RECITALS**

**A.** The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

**B.** The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

**C.** The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan.

**D.** The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

**E.** On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural



beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

**F.** The American River Water Providers are subject to regulatory authority for enforcement of their obligations to implement flow, habitat restoration and other measures as specified in Appendix 2.

## **TERMS OF ENFORCEMENT AGREEMENT**

**1. Purpose.** This Enforcement Agreement states the specific obligations of the American River Water Providers for implementation of flow, habitat restoration and other measures for the American River Healthy Rivers and Landscapes Program as specified in Appendix 2. This Enforcement Agreement states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to the American River Water Providers. The Parties intend that the American River Water Providers’ Healthy Rivers and Landscapes Program measures include all of the American River Water Providers’ commitments to contribute to the Program of Implementation.

**1.1. Settlement of Disputed Issues.** This Enforcement Agreement resolves disputed issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to such implementation.

**1.2. Timeliness.** The Parties agree to the terms stated herein in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscapes Agreements. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. American River Healthy Rivers and Landscapes Program** means the American River Water Providers' Healthy Rivers and Landscapes Flow Contribution, habitat enhancement, funding and other measures specified in Appendix 2 of this Enforcement Agreement as the Covered Parties' contribution to the Healthy Rivers and Landscapes Program.

**2.2. Applicable Law** means: state or federal law that: (a) exists independently of this Enforcement Agreement, including a Constitution, statute, regulation, court decision, or common law; and (b) applies to obligations or activities of the State Water Board and the American River Water Providers contemplated by this Enforcement Agreement.

**2.2 AF** means acre-feet.

**2.3 Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

**2.4 CDFW** means: the California Department of Fish and Wildlife.

**2.5 CDWR** means: the California Department of Water Resources.

**2.6 CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.7 Covered Entities** means: entities who hold water rights or contracts for water supplies from the Bay-Delta watershed and are identified as Covered Entities in Appendix 1 to this Enforcement Agreement.

**2.8 Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled "Salmon Protection" as stated in Bay-Delta Plan Table 3, p. 14 ("Narrative Salmon Objective"); and (ii) a new narrative objective to achieve the viability of native fish populations ("Narrative Viability Objective"), as stated in Exhibit A section 1 in the Global Agreement.

**2.9 Enforcement Agreement** means: this Enforcement Agreement for the American River Healthy Rivers and Landscapes Program.

**Enforcement Agreements** means: the agreements signed by non-federal Parties pursuant to Government Code section 11415.60, or with respect to federal Parties, a Government Code section 11415.60 agreement to implement any Healthy Rivers and Landscape Program-related modifications to water rights held by a federal entity and a memorandum of understanding to implement other federal Healthy Rivers and Landscapes Program commitments, and approved by the State Water Board, to provide regulatory authority for enforcement of flow, habitat restoration and other measures in the Healthy Rivers and Landscapes Program.

**2.10 Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” The Global Agreement states the overall structure and content of the Healthy Rivers and Landscapes Program, along with the obligations of the Parties to support implementation of the Healthy Rivers and Landscapes Program.

**2.11 Implementation Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration and other measures in the Tributaries and Delta. In this Enforcement Agreement, the term refers to the Implementation Agreement for the American River. Contemporaneously with the execution of this Enforcement Agreement, the American River Water Providers have entered into the American River Implementation Agreement with CDWR.

**2.12 Material Modification** means: (a) a Regulatory Approval; or (b) an action or inaction with respect to a Party’s ability to perform its obligations under this Enforcement Agreement, that increases the obligations or other costs, reduces assurances or otherwise impairs bargained-for benefits of a Party to a significant extent, in that Party’s reasonable determination. Such conditions may arise from subsequent actions by the State Water Board, FERC, other regulatory agencies or courts, or from other changes in Applicable Law. Sections 8 (Dispute Resolution) and 9 (Remedies) establishes the procedures under this Enforcement Agreement for a response to a potential Material Modification.

**2.13 Parties** means: the State Water Board and the American River Water Providers.

**2.14 Program of Implementation** means: the program of measures, schedule and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242, including measures required from the American River Water Providers under this Enforcement Agreement. The Supported Amendments, as approved, amend this Program of Implementation to authorize implementation of the Healthy Rivers and Landscapes Program.

**2.16 Regulatory Approval** whether in singular or plural, means: any approval required under Applicable Laws for implementation of the American River Healthy Rivers and Landscapes Program, including the Biological Opinion for Long-Term Operations of the Central Valley Project and any other actions that affect a Party's obligations or activities of the Parties under this Enforcement Agreement.

**2.17 State Water Board** means: the State Water Resources Control Board.

**2.18 SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

**2.19 USBR** means: the United States Bureau of Reclamation.

**2.20 Healthy Rivers and Landscapes Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – G. This Enforcement Agreement is Exhibit C1 thereto.

**2.21 Healthy Rivers and Landscapes Agreements** means: the Global Agreement, the Implementation Agreements and the Enforcement Agreements.

**2.22 Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### **3. Obligations of the American River Water Providers.**

**3.1 Implementation.** The American River Water Providers will implement the obligations assigned to them in Appendix 2 in the manner and time specified in Appendix 2, subject to any conditions precedent stated therein. Non-performance of these obligations will be subject to Sections 8 (Dispute Resolution) and 9 (Remedies), which establish the procedures under this Enforcement Agreement.

**3.2 Progress Reports and Inspections.** The American River Water Providers will prepare Annual and Triennial Reports with respect to implementation of the American River Healthy Rivers and Landscapes Program. The American River Water Providers will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D of the Global Agreement, section 1.5).

### **4. Obligations of State Water Board**

**4.1. Execution of Order.** The Executive Officer of the State Water Board will sign the Order approving this Enforcement Agreement (Appendix \_\_\_\_ hereto), concurrent with the signing of this Enforcement Agreement.

**4.2. No Additional Contributions.** The State Water Board will not seek additional contributions from the American River Water Providers or Covered Entities listed in Appendix 2 of this Enforcement Agreement, for the purpose of implementation of the Covered Water Quality Objectives or related purposes. This assurance will be implemented through the procedures, and subject to the requirements in limitations, stated in Exhibit A section 5 as incorporated in the Program of Implementation.

**4.3. Protection of Flows.** The State Water Board will use the protections identified in Exhibit A of the Global Agreement.

- A.** The American River Water Providers will be available to assist the State Water Board in its proceedings to provide these protections. The American River Water Providers will support these protections, provided they agree with the authorities cited by the State Water Board, the scope, and the technical methodology used in a proceeding.
- B.** The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses.

**4.4 Expedited Process.** The State Water Board will undertake an expedited process for considering any petition by any of the American River Water Providers, pursuant to Water Code sections 1700-1725, changing the place and purpose of use for their water rights to implement their obligations hereunder.

## **5. Enforcement.**

**5.1 General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of the American River Water Providers using: administrative civil liability, imposed pursuant to the procedures in Water Code sections 1050 et seq.; a cease-and-desist order adopted pursuant to the procedures stated in Water Code sections 1825 et seq.; or both.

**5.2** The American River Water Providers will not contest an enforcement action brought pursuant to this Section 5 on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to the American River Water Providers in Appendix 2.

**5.3** The State Water Board may not commence an enforcement action pursuant to this Section 5 against the American River Water Providers based on the non-performance of an obligation assigned to other parties under other Enforcement Agreements.

**5.4** The American River Water Providers may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Enforcement Agreement.

## **6. Dispute Resolution.**

**6.1** All disputes among the Parties regarding a potential Material Modification, a Party's performance or compliance with the provisions of this Enforcement Agreement or other dispute regarding interpretation or administration of this Enforcement Agreement will be subject to the dispute resolution process stated herein. Each such dispute will be brought and addressed in a timely manner. Resolution of a dispute will require unanimous consent of the Parties.

**6.2** The Parties may agree to additional or alternative dispute resolution procedures. The Parties will consider, but will not be required to agree to, reasonable alternatives for resolving a dispute, such as providing an opportunity to cure a deficiency in performance of a Party's obligation under this Enforcement Agreement.

**6.3** This dispute resolution process does not preclude a Party from filing and pursuing an action for administrative or judicial relief to enforce an obligation under this Enforcement Agreement. A Party may bring a judicial or other action without exhausting these dispute resolution procedures.

**6.4** The Parties will devote such resources as are needed and as can be reasonably provided to resolve the dispute expeditiously. The Parties will cooperate in good faith to promptly schedule, attend and participate in the dispute resolution process. Unless otherwise agreed to, each Party will bear its own costs for its participation in the dispute resolution process. Time limits specified in this section may be shortened or extended upon agreement of the Parties.

**6.5** A Party claiming a dispute will issue notice of the dispute to the other Party within 7 days of becoming aware of the dispute. Such notice will describe: (a) the matter(s) in dispute; and (b) the specific relief sought.

**6.6** Following issuance of notice of a dispute, each Party will designate a representative to participate in an informal process to resolve the dispute. The informal process will include at least 2 meetings commencing within 20 days after the dispute initiation notice, and concluding within 45 days after the dispute initiation notice. If the representatives of the Parties determine that they are unable to resolve the dispute, then at least one meeting will be held within 20 days after such determination by management-level representatives of the Parties.

**6.7** If the dispute is not resolved in the informal meetings referred to in Section 8.6, then the Parties will decide within 45 days after the dispute initiation notice whether to use a neutral mediator to assist in resolving the dispute. If the Parties decide to use a mediator, then the Parties will select the mediator and determine how to allocate costs of the mediation among the Parties. The mediation process will be concluded within 75 days after the dispute initiation notice.

**6.8** The Party who provided notice of the dispute will provide a report of the results of the dispute resolution process including: (a) describing the dispute; (b) summarizing the approach to resolving the dispute, including alternatives considered; (c) stating whether the dispute was resolved; and (d) if the dispute was resolved, stating the resolution and specific relief granted.

## **7. Remedies.**

**7.1** A Party may terminate this Enforcement Agreement only if the Party has first complied with the dispute resolution procedures set forth in Section 6, and the Parties have not reached agreement on resolving the dispute.

**7.2** The American River Water Providers may terminate this Enforcement Agreement, and specify the effective date of such termination, if the American River Water Providers have reasonably determined that there has been a Material Modification, including without limitation, with respect to any of the following:

**7.2.1** The State Water Board's Program of Implementation for the American River.

**7.2.2.** Any other State Water Board water-quality or water-right action that would affect the American River beyond the actions described in the American River Healthy Rivers and Landscapes Program, or any other actions that would increase any of the American River Water Providers' commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives.

**7.3** As an alternative to withdrawing from this Agreement due to a Material Modification, the American River Water Providers, in their discretion, may modify, suspend, or terminate the American River Water Providers' funding obligations under the American River Healthy Rivers and Landscapes Program.

**7.4** The State Water Board may terminate this Agreement, and specify the effective date of such termination, if the State Water Board has reasonably determined that there has been a Material Modification.

**7.5** The Parties reserve all other existing remedies for a Material Modification of this Agreement, provided that this section will constitute the exclusive procedure by which this Enforcement Agreement can be terminated.

**8. Force Majeure.** No Party will be liable for any failure of, or delay in, the performance of duties under this Enforcement Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any final determination by a court of competent jurisdiction that renders the performance of any duty under this Enforcement Agreement unlawful.

**9. Effective Date and Term.**

**9.1** This Enforcement Agreement takes effect when signed by the Parties and will be binding as to such Parties when signed.

**9.2** Unless otherwise terminated according to its terms, the term of this Enforcement Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Enforcement Agreement will terminate upon that Party's withdrawal from the Global Agreement. The term of this Enforcement Agreement is subject to extension from time to time on terms approved by the Parties.

**10. No Admission of Liability.** The Parties enter into this Enforcement Agreement voluntarily. Nothing contained in this Enforcement Agreement is to be construed as an admission of liability, responsibility or procedural requirement as to any of the parties, other than for purposes of enforcing this Enforcement Agreement. The American River Water Providers do not admit any liability or responsibility under the Fish and Game Code; Water Code; Article X, section 2 of the California Constitution; or the public trust doctrine, for providing the flows, habitat restoration and other measures stated in Appendix 2, or otherwise admit that the enforcement authorities provided in Section 5 would be available against them with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

**11. Compliance with Applicable Laws.** The Parties represent that they believe that this Enforcement Agreement is consistent with their respective statutory, regulatory and other legal obligations for conservation, use or management of affected resources.

**12. Reservations.**

**12.1 Generally.** Nothing in this Enforcement Agreement is intended or will be construed to affect or limit the authority or obligation of the Parties to fulfill their respective constitutional, statutory and regulatory responsibilities or comply



with any judicial decision. Nothing in this Enforcement Agreement will be interpreted to require any public agency to implement any action that is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Enforcement Agreement.

**12.2 Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Enforcement Agreement is intended or will be construed to require the obligation, appropriation reprogramming or expenditure of any funds by any such public agency Party except as otherwise permitted by Applicable Law; provided that the Parties recognize that timely and sufficient funding is necessary to implement the Healthy Rivers and Landscape Program.

**12.3 Federal Appropriations.** Nothing in this Enforcement Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Enforcement Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Enforcement Agreement.

**12.4 Environmental Review.** Nothing in this Enforcement Agreement is intended or will be construed to modify the application of the National Environmental Policy Act, California Environmental Quality Act, or other Applicable Law, to the environmental review of any action under this Enforcement Agreement, including the execution of this Enforcement Agreement.

**13. Notices.** Any Notice required by this Enforcement Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 3. Each Party will provide Notice of any change in the authorized representatives designated in Appendix 3, and [administrative entity] will maintain the current distribution list of such representatives.

**14. Attorneys' Fees and Costs.** The Parties will bear their own attorneys' fees and costs with respect to the negotiation, adoption, and enforcement of this Enforcement Agreement.

**15. Entire Agreement.** This Enforcement Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements between them, whether written or oral.

**16. Construction and Interpretation.** This Enforcement Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Enforcement Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Enforcement Agreement.

**17. Amendment.** This Enforcement Agreement may only be amended in writing by the Parties, including any successors or assigns. The Parties may provide Notice of a proposed amendment at any time. The Parties will meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**18. Additional Parties.** Subject to the consent of the Parties, and an appropriate amendment of this Enforcement Agreement, a non-covered entity may become a party by signing this Enforcement Agreement, the Implementation Agreement for the American River, and other Agreements as applicable, subject to the Parties' approval of the entity's proposed contribution under Appendix 2 hereto.

**19. Successors and Assigns.** This Enforcement Agreement will apply to, be binding on, and inure to the benefit of the Parties and their respective successors and assigns, unless otherwise specified in this Enforcement Agreement. No assignment may take effect without the express written approval of the Parties, which approval will not be unreasonably withheld.

**20. No Third-Party Beneficiaries.** This Enforcement Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Enforcement Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

**21. Elected Officials Not to Benefit.** No elected official will personally benefit from this Enforcement Agreement or from any benefit that may arise from it.

**22. Severability.** This Enforcement Agreement is made on the understanding that each term is a necessary part of the entire Enforcement Agreement. However, if any term or other part of this Enforcement Agreement is held to be unlawful, invalid or unenforceable, the Parties will undertake to assure that the remainder of the Enforcement Agreement will not be affected thereby. The Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid and enforceable and carries out the intention of this Enforcement Agreement to the greatest lawful extent.

**23. Authority to Bind.** Each signatory to this Enforcement Agreement certifies that he or she is authorized to execute this Enforcement Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**24. Counterpart Signatures; Facsimile and Electronic Signature.** This Enforcement Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Enforcement Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**The foregoing is approved by the Parties.**

State of California  
State Water Resources Control Board

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By:

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Dated

Approved as to legal form  
and sufficiency:

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Chief Counsel

Regional Water Agency

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By:

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Dated

Approved as to legal form  
and sufficiency:

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Jennifer T. Buckman, Legal Counsel

[signature blocks for other parties to be inserted]

## **APPENDICES**

**1. COVERED ENTITIES UNDER THE AMERICAN RIVER  
HEALTHY RIVERS AND LANDSCAPES PROGRAM**

**2. THE AMERICAN RIVER HEALTHY RIVERS AND  
LANDSCAPES PROGRAM**

**3. AUTHORIZED REPRESENTATIVES OF PARTIES**

## **APPENDIX 1**

### **COVERED ENTITIES UNDER THE AMERICAN RIVER HEALTHY RIVERS AND LANDSCAPES PROGRAM**

## APPENDIX 2

### AMERICAN RIVER HR&LP

#### 1. American River HR&LP Flow Contribution

##### Implementing Agencies: American River Water Providers

**1.1** The entities listed in Appendix 1 are the parties to this Implementing Agreement (American River Water Providers), who are contributing environmental flows through the components set forth in this Appendix. The American River HR&LP reflects the American River Water Providers' proposal based on the February 27, 2019 *Planning Agreement Proposing Project Description and Procedures for the Finalization Of Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan* (2019 Planning Agreement) as well as the March 29, 2022 *Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions* (2022 MOU). Reclamation will, through a separate agreement with the American River Water Providers, operate Folsom Reservoir in accordance with the timing of flows discussed in Section 1.6. Reclamation will also provide support, where appropriate, to restoration actions in the Lower American River.

**1.1.1** The 2022 MOU, *Appendix 1 - Flow Tables* provides *Table 1a: New Contributions to Tributary Flow and Delta Outflows in Thousand Acre Feet*. A condensed version of this table, specific to the American River, is provided here. The flow contributions provided in this table will be met through the terms provided in Section 1 of this Implementing Agreement.

Source	C (15%)	D (22%)	BN (17%)	AN (14%)	W (32%)
<b>Sacramento River Basin</b>					
American <sup>8</sup>	30	40	10	10	0
<b>Year 1 New Outflow Above Baseline</b>	<b>30</b>	<b>40</b>	<b>10</b>	<b>10</b>	<b>0</b>

<sup>8</sup> Contingent on funding groundwater substitution infrastructure to be completed by a subsequent year. These flows are included in the Year 1 subtotal.

Subject to Section 4 of this agreement, and per the *Funding Agreement Between the State of California (Department of Water Resources) and the Regional Water Authority – Voluntary Agreement Early Implementation for the American River, July 21, 2023* (Appendix 4), the Dry (D) and Critical (C) year contributions of 30 TAF would be provided as soon as the year following adoption of the HR&LP by the State Water Resources Control Board (SWRCB). If the SWRCB does not approve or accept the HR&LP until after May 1, 2025, then the American River Water Providers providing groundwater replenishment shall start doing so as soon as January 1 following the SWRCB's approval or acceptance of the HR&LP. Upstream reservoir operation replenishment of HR&LP flows will be made available after adoption of the HR&LP by the SWRCB, or if approved in January, as soon as that year. If flows are made available in one or more years as provided through the funding agreement discussed in Section 3.2 below, those flows will be credited toward the American River Water Providers' flow

contributions under the HR&LP. That credit will be applied per year, and based on the number of years flows are provided under that funding agreement until such time as the SWRCB adopts the program.

In general, and subject to all other terms of this Agreement, the American River Water Providers will make the flow contributions summarized in the above table as follows: (A) Flow Contribution 1 defined in Section 1.6.1 below will be 10 TAF from reservoir reoperation in up to a combined total of three Below Normal (BN) and Above Normal (AN) years; (B) Flow Contribution 2 defined in Section 1.6.2 below will be 10 TAF from groundwater substitution in up to a combined total of three C and D years; (C) Flow Contribution 3 defined in Section 1.6.3 below will be 20 TAF from groundwater substitution associated with the Sacramento Regional Water Bank in up to a combined total of three C and D years; and (D) In addition to Flow Contributions 1 through 3, Flow Contribution 4 defined in Section 1.6.4 below will be 10 TAF from reservoir reoperation or groundwater substitution in three D years. Depending on the water year types that occur over the eight-year term of the HRLP, there could be six call years. (Consistent with historical averages, two years of the 8-year program period are assumed to be W years; the American River Water Providers have not committed to provide increased flows in W years.)

The American River Water Providers have committed to providing flows (as set forth above) in three C or D years during the eight-year term of the HRLP. This three-year limit was determined based on the American River Water Providers' experience with hydrologic conditions in the watershed and the thresholds for groundwater and reservoir depletion. Should additional D or C years occur during the eight-year term of the HRLP (after the American River Water Providers have provided flows in three C or D years), the American River Water Providers will meet and confer with the California Department of Water Resources (DWR) and Reclamation in good faith to consider whether and to what extent any flows in additional D or C years over the HR&LP term could be made available, subject to principles including, but not limited to, the following:

- In agreeing to meet and confer, DWR, Reclamation, and the American River Water Providers do not commit to any particular outcome, obligation, or condition. DWR, Reclamation, and the American River Water Providers shall consider relevant circumstances at the time of the meet and confer;
- The American River Water Providers shall not be obligated to make any additional groundwater-based flow contribution in a D or C year immediately following three consecutive D or C years in which flows were provided;
- No additional groundwater-based flow contribution will be considered unless the applicable groundwater sustainability agency has determined that the additional groundwater pumping will be consistent with the terms of the applicable groundwater sustainability plan, as demonstrated through the reference operation identified for the flow accounting procedures;
- Quantities of potential groundwater provided to support outflow shall be determined based on then-current capabilities as provided by the American River Water Providers;



- No additional groundwater-based flow contribution will be considered if the flow contribution would substantially deplete cold water pool storage at Folsom Reservoir or have substantial impacts on native fish species, or require Reclamation to alter substantially its intended operations of Folsom Reservoir;
- No American River Water Provider will be required to consider an additional groundwater-based flow contribution if that entity determines that such contribution would interfere with its ability to meet demands within its service area consistent with its adopted water shortage contingency plan, excluding demand reduction actions;
- If, after the meet and confer session, the American River Water Providers, in coordination with DWR and Reclamation, determine that an additional D or C year groundwater-based flow contribution is feasible, such contribution is contingent on funding provided to the American River Water Providers for the actual costs of water production; and
- No American River Water Provider shall be excluded from the meet and confer or any negotiations relating to the American River Water Provider's potential flow contribution.

**1.2** Each year, as further defined in *Section 4 – American River HR&LP Science, Governance, and Adaptive Management*, the American River Water Providers, in coordination with Reclamation, will review the hydrologic conditions and make corresponding operational recommendations to the American River Group (ARG) as to whether flows could be made available in that particular water year<sup>1</sup>. If the American River Water Providers, in coordination with Reclamation, recommend that flows could be made available, then this recommendation will carry forward to the ARG who will meet and consider the flexibility of flow shaping and timing options that will provide biological benefits additive to baseline conditions. The ARG will consider an assessment of biological benefits associated with a range of flow proposals prepared through feedback from the California Department of Fish and Wildlife (CDFW) and National Marine Fisheries Service (NMFS). Water will then be released by Reclamation in the March through May period, or within flexibility brackets identified in Table 1, or through recommendations provided by the ARG for moving flow to another time of year, from Folsom Reservoir to the Lower American River (LAR). The American River Water Providers then will replenish this water as further described in Section 1.6 below.

**1.3** As provided in Section 4, the biological benefits feedback provided by CDFW, NMFS, and the American River Group (ARG) will assist the American River Water Providers in determining the anticipated biological benefits and trade-offs from the shaping and timing of releases to the LAR as part of the HR&LP. The ARG was established in 1996 and is comprised of Reclamation, CDFW, NMFS, the U.S. Fish & Wildlife Service and the Water Forum<sup>2</sup>. The ARG meets at least monthly and more

<sup>1</sup> Water years are determined by the Sacramento River Index.

<sup>2</sup> Water Forum, the City County Office of Metropolitan Water Planning, is an administrative division of the City of Sacramento and the County of Sacramento. The Water Forum's work is

frequently as needed and is open to interested stakeholders. The ARG's functions are described in NMFS's *2019 Biological Opinion on the Coordinated Long-Term Operations of the Central Valley Project and State Water Project* (LTO BiOp).

**1.4** Notwithstanding the HR&LP, it is contemplated that Reclamation will continue to operate Folsom and Nimbus Dams to release flows to the LAR as specified by the; Modified Flow Management Standard (Water Forum, 2017) and as included in the applicable Record of Decision issued by Reclamation accepting any biological opinions for the long-term operation of the Central Valley Project and State Water Project, and through the March 29, 2021 Memorandum of Understanding between the United States of America Department of the Interior, Bureau of Reclamation and Sacramento Water Forum for Coordination of Communication and Information-Sharing Activities Related to Lower American River Operations<sup>3</sup> (Water Forum-Reclamation MOU). The stream flows required by the Minimum Release Requirements (MRR) range from 500 to 2,000 cubic feet-per-second (cfs), based on time of year and annual hydrology and will be adopted and implemented in all water years. As described in more detail below, as part of the HR&LP, the American River Water Providers will further add to the flows released from Folsom Reservoir in certain water year types through groundwater substitution, reservoir reoperation and groundwater banking. This water will be for the purpose of augmenting flows to the LAR in the March through May period of a year determined to need, and be eligible for, the release of flow from Folsom Reservoir, or a different period determined to be biologically preferable as outlined in Section 4.

**1.5** The American River Water Providers anticipate that Reclamation will continue to meet existing regulatory requirements as set forth in the 2019 LTO BiOps, or currently-governing regulatory requirements, including the need to meet water temperature targets.

**1.6** Subject to the process defined in Section 4, Reclamation will release water from Folsom Reservoir in the March through May period for outflow to the LAR, of a year in which flows are made available, which the American River Water Providers' Flow Contributions will later replenish, unless a different period is determined to be biologically preferable, as recommended by the ARG. Based on the American River Water Providers' decades of experience with the Lower American River, the flow assets being provided are likely to contribute to Reclamation's temperature management. These releases are subject to the following:

**1.6.1** Subject to funding from the HR&LP water purchase revolving fund (Water Fund) or public funding, and subject to the process identified in Section 4, American River Water Providers with reservoirs upstream of Folsom Reservoir will reoperate their reservoirs to collectively contribute a total of 10 TAF per year to

implemented in accordance with the Water Forum Agreement (2000) and funded through local water purveyors and local government entities, as well as other local, state, and federal grants.

<sup>3</sup> The Water Forum-Reclamation MOU is in effect through March 2026 and will automatically renew for five years, unless terminated in writing by either party.

augment LAR flows in Above Normal (AN) and Below Normal (BN) water years. Calls for this water, called Flow Contribution 1, may be made in a total of three AN and BN water years during the eight-year term of the HR&LP. Reclamation will augment LAR flows in March-May by the amount of Flow Contribution 1 of applicable call years and reoperation by upstream reservoir operators will occur between March and September of the applicable call year to replenish water that Reclamation releases from Folsom Reservoir. Reclamation will release the volume of Flow Contribution 1 outside of the March-May period if such releases are determined to be biologically preferable through coordination with the American River Water Providers and recommendations from the ARG. [The American River Water Providers plan to discuss with state and federal agencies whether and to what extent refill criteria are appropriate for the in-basin uses contemplated by the HR&LP.]

**1.6.2** Subject to the process identified in Section 4, American River Water Providers who can pump groundwater, or arrange such pumping, will support Reclamation's augmentation of March-May LAR flows through the use of 10 TAF of groundwater substitution replenishment water in Critical (C) or Dry (D) water years as described in this section. This 10-TAF contribution is the American River Water Providers' Flow Contribution 2. Reclamation will release the volume of Flow Contribution 2 outside of the March-May period if such releases are determined to be biologically preferable through coordination with the American River Water Providers and recommendations from the ARG. The pertinent American River Water Providers will pump groundwater: (1) as early as March and be completed within 12 months following the date on which the call for water is made, to replenish water released from Folsom Reservoir by Reclamation; (2) from the North American or the South American Subbasin; and (3) consistent with the applicable groundwater sustainability plan. Calls for this water may be made in three C or D water years during the eight-year term of the HR&LP. The depletion rates, if any, will be determined by Reclamation and the DWR, in consultation with the American River Water Providers, based on local conditions and data developed by those American River Water Providers, or, absent a determination, based on technical conclusions. The total amount of Flow Contribution 2 will be 10 TAF regardless of calculated depletion, if any.

**1.6.3** Subject to the process identified in Section 4, American River Water Providers who can pump groundwater, or arrange such pumping, will support augmentation of March-May LAR flows up to an additional 20 TAF in C or D water years through groundwater substitution replenishment made possible through the Sacramento Regional Water Bank (SRWB). This is Flow Contribution 3. Reclamation may release the water in a different period from the March-May period if such releases are determined to be biologically preferable through coordination with the American River Water Providers and recommendations from ARG. The groundwater will be pumped: (1) as early as March and be completed within 12 months following that period to replenish water released from Folsom Reservoir by Reclamation; (2) from the North American or South American Subbasin; and (3) pursuant to the applicable groundwater sustainability plan. Calls for Flow

Contribution 3 may be made in three C or D water years during the eight-year term of the HR&LP. The depletion rates, if any, will be determined by Reclamation and DWR, in consultation with the American River Water Providers, based on local conditions and data developed by the American River Water Providers, or, absent a determination, based on technical conclusions. The total amount of Flow Contribution 3 will be 20 TAF regardless of calculated depletion, if any. The storage management and recharge of water in the SRWB is anticipated to result in minimal to no depletion.

**1.6.4** Subject to funding from the Water Fund or public funding, the American River Water Providers will support augmentation of LAR flows in the March-May period of up to an additional 10 TAF in up to three D years from: (1) upstream reservoir reoperation; (2) groundwater substitution replenishment by American River Water Providers who can pump groundwater or arrange such pumping; or (3) a combination of those sources. This is Flow Contribution 4. Reclamation may release the water in a different period than the March-May period if such releases are determined to be biologically preferable through coordination with the American River Water Providers and recommendations from the ARG. The sources of Flow Contribution 4 will depend on hydrology and related operations in immediately preceding water years. American River Water Providers' reservoir reoperations to support Flow Contribution 4 will be subject to the same terms as for reservoir reoperations associated with Flow Contribution 1 described above. Groundwater substitution replenishment to support this flow contribution will be subject to the same terms as for Flow Contributions 2 and 3 described above.

**1.7** As a default plan, and consistent with the Draft Strategic Plan, in call years, Reclamation will release water associated with the American River Water Providers' various Flow Contributions on the following schedule, in consideration of a range of flexibility, discussed in Table 1. This default plan shall maintain maximum flexibility to further intended biological benefits related to flow shape and timing, as recommended by the ARG and regulatory agencies.

**1.7.1** In AN, BN years: 5 TAF released in March and 5 TAF released in April. These releases will be replenished through Flow Contribution 1.

**1.7.2** In D years: 10 TAF released in March, 10 TAF released in April, and 10 TAF in May. These releases will be replenished from Flow Contributions 2 and 3.

**1.7.3** In D years: An additional 3.3 TAF released in March, 3.3 TAF released in April, and 3.3 TAF in May. These releases will be replenished through Flow Contribution 4, namely from upstream storage, groundwater substitution, or a combination of sources. As described in Section 4, if a D year is anticipated by the American River Water Providers in coordination with Reclamation, a determination of the source of replenishment water will be determined before Reclamation releases HR&LP flow.

**1.7.4** In C years: 15 TAF released in March and 15 TAF released in April. These releases will be replenished from Flow Contributions 2 and 3.

**1.8** Table 1 provides the default plan and flexibility bracket for the American River HR&LP flow measures:

**Table 1: Timing of HR&LP Flow Measures from American River water source.** (*Bolded numbers represent the default plan for HR&LP flow measures and numbers in parentheses represent the flexibility bracket for any given year. The American River does not have HR&LP flow measures in wet years.*)

<b>Water Year</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>
<b>Above Normal and Below Normal</b>	<b>50%</b> (33-66%)	<b>50%</b> (33-66%)	<b>0%</b> (0-33%)
<b>Dry</b>	<b>33.3%</b> (20-40%)	<b>33.3%</b> (20-40%)	<b>33.3%</b> (20-40%)
<b>Critical</b>	<b>50%</b> (33-66%)	<b>50%</b> (33-66%)	<b>0%</b> (0-33%)

**1.9** The default plan and flexibility bracket are consistent with science gathered on the American River and knowledge of suitable flow for outmigrating fish.

**1.10** Flow pulses for the HR&LP will potentially complement flows made consistent with the Modified Flow Management Standard (MFMS), which provides protections against redd dewatering via a minimum release requirement. Additionally, HR&LP flows could complement the MFMS's spring pulse flows from March 15 to April 15 to help provide an emigration cue before lower flow conditions and thermal warming later in the spring.

**1.11** In D and C years, there may be advantages to fish in shifting the timing of deployment of HR&LP flow measures from the March-May period to other seasons, such as holding water in Folsom Reservoir for cold water pool formation and maintenance and deploying water in fall for adult migration; or holding water in Folsom Reservoir through the following winter for temperature control. Keeping water in Folsom Reservoir over the winter will build a larger pool of cold water for the spring and following summer, particularly if there are consecutive dry years.

**1.12** Any deployment of water made available for any or all of Flow Contributions 1 through 4 outside of the flexibility bracket defined in Table 1 will be subject to SWRCB approval annually and will be considered on a case-by-case basis in coordination with the American River Water Providers, in coordination with Reclamation, and ARG, and in consideration of flows made through the MFMS.

## **2. American River HR&LP Non-Flow Contribution**

**Implementing Agencies: American River Water Providers, including Sacramento Water Forum**

**2.1** Subject to sufficient funding and the issuance of necessary permits, and following the process in Section 4, Reclamation and the American River Water Providers will, through funding, permitting support, technical expertise, or other means, work to provide an additional 25 acres of anadromous fish spawning habitat, and an additional 75 acres of rearing habitat, in the LAR at the most beneficial locations. The baseline for accounting for this additional habitat is the physical conditions and regulatory requirements existing as of December 2018. To achieve the habitat enhancement commitments, American River Water Providers will, in cooperation and coordination with other American River Water Providers, pursue all available funding sources including State, federal, and grant sources and the issuance of all necessary permits and approvals. Funding collected under sections 3.3.4 and 3.3.5 will be used first to create 25 acres of spawning habitat, and may be used to contribute to juvenile rearing habitat after the spawning habitat obligation is discharged. The Parties anticipate that public funding will be needed to complete 75 acres of juvenile rearing habitat. If public funding for the juvenile rearing habitat (including any funding provided by the HRLP's Science Fund) is secured, the American River Water Providers will ensure that juvenile rearing habitat is provided, subject to: the amount of funding available, any necessary participation by Reclamation, and any necessary permitting. If public funding sufficient for the full amount of the juvenile rearing habitat is not secured, the American River Water Providers will not be under any obligation to create that habitat, nor will the American River Water Providers be considered to be in breach of their obligations, or subject to enforcement, under this Agreement.

**2.2** Following execution of the March 1, 2019 Planning Agreement, and prior to the January 1, 2024 conclusion of the HR&LP Early Implementation Project period, the Water Forum's activities will have fulfilled the American River Water Providers' HR&LP habitat commitments by constructing 25 acres of spawning habitat. Additionally, during this period, the Water Forum has also constructed 26 acres of in-stream rearing habitat. The Parties intend both the 25 acres of spawning habitat and the 26 acres of in-stream rearing habitat will be credited to the American River Water Providers under the HR&LP, subject to Section 2.6. These actions have been taken in good faith and are consistent with the understanding that implementing this additional habitat as soon as possible will maximize its biological value. Funding for the early implementation actions has been through federal appropriations and State Proposition 68 early implementation funding sources.

**2.3** The Water Forum has a track record of successfully implementing habitat projects on the LAR as a result of federal and state support and the implementation of the Water Forum Agreement (2000). It is anticipated that the American River Water Providers will continue to rely on the Water Forum's ability to deliver habitat projects for the purposes of HR&LP implementation. The Water Forum's currently permitted combination spawning/rearing program sites consist of 10 separate implementation areas concentrated in the upper portion of the LAR (where temperatures are most favorable for the cold water fishery). These spawning/rearing sites are planned to be used to fulfill some or all of the HR&LP habitat implementation set forth in Section 2.1, above.

**2.4** Subject to the funding conditions set forth in Section 2.1, above, design, permitting, and implementation of additional rearing-only sites in the LAR will be advanced under the HR&LP. As set forth in Section 2.1, above, habitat planned during the HR&LP term includes both spawning habitat and in-stream rearing habitat (side channels/grading/plantings).

**2.5** Table 2 presents the default implementation schedule for the American River Water Providers' habitat enhancement measures:

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**Table 2: Default implementation schedule for non-flow measures on the Lower American River**

<b>Description of Measures</b>	<b>Early Implementation (Dec 2018 2024)</b>	<b>Years 1 3<sup>1</sup> (2025 2027)</b>	<b>Years 4 6<sup>1</sup> (2028 2031)</b>	<b>Years 7 8<sup>1</sup> (2032 2033)</b>	<b>Total Acres for HR&amp;LP<sup>2</sup></b>
Spawning <sup>3</sup>	25 [Additional acres have been constructed in these years above HR&LP requirements and are not included in the total quantities here]	[Additional acres will be constructed in these years above HR&LP requirements and are not included in the total quantities here]			25
Rearing: In-Channel <sup>4</sup>	26 (as of January 1, 2024)	13	23	13 [Additional acres will be constructed in these years above HR&LP requirements and are not included in the total quantities here]	75

<sup>1</sup> Assumes adequate funding exists at the time of implementation.

<sup>2</sup> Table includes all likely feasible acreage planned for implementation and/or maintenance under existing and ongoing habitat program, based on the current implementation cadence. More habitat may be constructed during the HR&LP timeframe above that required. The HR&LP commitment includes 75 acres of rearing and 25 acres of spawning habitat. Any acreages created during the HR&LP term above those obligations will not be subject to HR&LP governance or State Water Resources Control Board oversight.

<sup>3</sup> Includes implementation of current programmatically permitted and designed spawning/rearing combination sites and ongoing maintenance of spawning sites, to ensure continued habitat function at early implementation program (EIP) funded sites through the period of performance for the Voluntary Agreements.

<sup>4</sup> Includes implementation of current programmatically permitted rearing and spawning combination habitat sites, and implementation of new rearing-only sites that have not yet been permitted and for which designs are currently at the conceptual level. Implementation of new rearing-only sites is contingent on securing funding, as noted in Section 2.1.

**2.6** Habitat projects in the LAR will be consistent with the Sacramento Water Forum’s historic practices, which will be included in and subject to the habitat accounting procedures and methodology developed for the HR&LP.

**2.7** By the end of the HR&LP term and subject to appropriations, it is contemplated that Reclamation will make physical and operational improvements to the Nimbus fish hatchery.



### **3. American River HR&LP Funding**

#### **Implementing Agencies: American River Water Providers**

**3.1 Compensation to American River Water Providers.** Subject to Section 3.2, the American River Water Providers will be compensated for their Flow Contributions above as follows:

**3.1.1** For Flow Contributions 1 and 4, by payment from the Water Fund or another source for \$290 per acre-foot of contribution.

**3.1.2** For Flow Contribution 2, by funding of \$15 million from a public source for investments in groundwater supply infrastructure.

**3.1.3** For Flow Contribution 3, by funding \$40 million from a public source for SRWB enhancements.

**3.2** Through the *Funding Agreement Between the State of California (Department of Water Resources) and the Regional Water Authority – Voluntary Agreement Early Implementation for the American River, July 21, 2023*, the American River Water Providers acknowledge that Flow Contributions 2 and 3 are compensated for eight years from the date of approval of the HR&LP by the State Water Resources Control Board or beginning January 1, 2025, whichever is the earlier date. If the HR&LP extends beyond the anticipated eight-year term, additional public funding contributions would be needed for all of the American River Water Providers' continued Flow Contributions 1 through 4.

#### **3.3 Contributions from American River American River Water Providers.**

**3.3.1** Other than pre-1914 water-right water delivered under a Warren Act contract, the American River Water Providers will contribute, to the Water Fund or equivalent funding mechanism, \$5 per acre-foot (AF) for all water that Reclamation actually delivers to them under a CVP water-service contract, a CVP repayment contract or a Warren Act contract.

**3.3.2** In recognition of the American River Water Providers' longstanding and on-going financial commitments to regional water facilities to reduce reliance on the American River, the American River Water Providers may make the \$5 per AF contribution described in Section 3.3.1 above by instead legally obligating themselves to make a contribution to support additional regional self-reliance. This fund is created to offset anticipated financial liabilities beyond those offset by public funding for HR&LP implementation. Regional self-reliance includes projects such as planning, permitting, studies, and the development of infrastructure to improve connections, improve regional flexibility between water agencies in the American River region, or other projects to further the region's resilience. This funding is anticipated to be dedicated within the eight-year time frame of the HR&LP and spent on self-reliance projects within three years following the conclusion of year eight. Disbursements from that fund will not be subject to federal or state budget

processes or appropriations. The fund may be used for any legal purpose of the American River Water Providers. The American River Water Providers will annually account for all locally-collected and locally-disbursed funds, through the Regional Water Authority, and provide an accounting to the HR&LP statewide governance program or appropriate entity.

**3.3.3** Under the 2019 Planning Agreement and the 2022 MOU, other than pre-1914 water-right water delivered under a Warren Act contract, the American River Water Providers will contribute to the Water Fund or equivalent funding mechanism an additional \$3 per acre-foot (AF) for all water that Reclamation actually delivers to them under a CVP water-service contract, a CVP repayment contract or a Warren Act contract. The American River Water Providers collectively will pay this fee based on the total annual amount of actual deliveries under CVP water-service and repayment contracts. The American River Water Providers will allocate this total payment obligation among themselves by a separate agreement or other instrument.

**3.3.4** Contributions will be made in the amount of \$2 per AF for all surface water diverted for consumptive use in the service areas of the American River Water Providers to the Structural Habitat and Science Fund, or an equivalent funding mechanism that the American River Water Providers establish to fund habitat and science programs under the HR&LP program. To continue to support the Water Forum's efforts in the LAR, \$1.75 in benefits for each \$2 contribution by the American River Water Providers will stay within the American River region for the purpose of funding local science and habitat by the Regional Water Authority, with the remaining \$0.25 being directed to statewide science and habitat efforts. The American River Water Providers, through the Regional Water Authority, will account for all locally-collected and locally-disbursed funds. The Water Forum has, for many years, worked with regulatory agencies such as CDFW, NMFS, and Reclamation to build habitat, collect data, and monitor riverine conditions. Funding received from the HR&LP will continue these efforts and ongoing coordination with appropriate state and federal agencies.

**3.3.5** The American River Water Providers, in coordination with Reclamation, will seek federal funding for habitat contributions, though the American River Water Providers understand that Reclamation's ability to commit funds is subject to applicable legal requirements including appropriations. The American River Water Providers and Reclamation may seek, and will support the acquisition of, other sources of public funding. American River Water Providers will continue to expend funding set aside for science and habitat actions for the Lower American River, as provided in Section 3.3.4, regardless of state, federal, or grant funding.

**3.3.6** The American River Water Providers' habitat contributions will be funded from the Structural Habitat Science Fund, from public or private sources, or from a combination of these sources and are contingent on that additional funding.

#### **4. American River HR&LP Science, Governance, and Adaptive Management**

**4.1** In addition to existing science, governance, and adaptive management processes already occurring at a tributary level, the American River Water Providers will consult with various state, local, and federal experts to make recommendations based on current and anticipated conditions.

**4.1.1** By mid-February of each year of the HR&LP term, the American River Water Providers, in coordination with Reclamation, will evaluate various potential scenarios for the forthcoming water year, which will include the review of current information and forecasts, and discussion of potential risks that could cause changes to planned flow releases or replenishment.

**4.1.2** If, by February 10, it appears to be an AN, BN, C, or D year type, the American River Water Providers, in coordination with Reclamation, will discuss whether one or more of Flow Contributions 1 through 4 could be made in that year. Depending on current conditions, whether calls of a certain year type were made in prior years, whether future potential years may have more favorable conditions for flow releases, initial Central Valley Project allocations, or other varying factors, the American River Water Providers, in coordination with Reclamation, may recommend calling one or more of Flow Contributions 1 through 4 that year or to hold off on providing such a call until a future year.

**4.1.3** The American River Water Providers will, within three business days of making a determination on whether flows will be made available, provide in writing to CDFW and NMFS their recommendations. CDFW and NMFS may provide, if desired, written feedback to the American River Water Providers within three business days of receipt of the recommendations. that provides an assessment of biological benefits associated with the American River Water Providers' recommendations. This feedback may inform but will not supersede or override the American River Water Providers' recommendations.

**4.1.4** If the American River Water Providers, in coordination with Reclamation, recommend that one or more of Flow Contributions 1 through 4 should be provided, then a general flow release schedule will be provided by Reclamation, and the American River Water Providers will develop a replenishment schedule. These recommendations will be provided to the ARG to assess biological conditions in the LAR to determine optimum timing and volumes of releases, preferably within the default schedule. The ARG shall have one week in which to provide recommendations, in writing, for flow shape and timing to the American River Water Providers and to Reclamation.

**4.1.5** After the ARG meeting, CDFW and NMFS may provide their own written feedback, if desired, to the American River Water Providers and to Reclamation on flow shape and timing. and its biological benefits over a range of

flow proposals. The American River Water Providers and Reclamation may use this feedback to inform their recommendations.

**4.1.6** By February 22, the American River Water Providers and Reclamation will then provide recommendations for the year's actions, from both the operational discussions and the ARG, to the statewide HR&LP Governance Program for informational purposes and discussion.

**4.2** In cooperation with state and federal agencies, the American River Water Providers and the Water Forum have implemented multiple science, governance and adaptive management measures for many years. These measures will continue during the HR&LP term in order to ensure appropriate management of American River flows, temperatures and habitat. These processes are as follows:

**4.2.1** The ARG will provide input on biological conditions if one or more of Flow Contributions 1 through 4 are called in a year. Subject to Reclamation's operational discretion and any applicable biological opinion terms, the ARG generally operates collaboratively and makes recommendations regarding, among other things, potential cold water management alternatives.

**4.2.2** The Habitat Team (formerly known as the Gravel Team) was formed in about 2006 and consists of: (a) the Water Forum, which convenes the group; (b) Reclamation; (c) CDFW; (d) National Marine Fisheries Service (NMFS); (e) U.S. Fish and Wildlife Service (USFWS); (f) the Sacramento Area Flood Control Agency (SAFCA); and (g) the Sacramento County Regional Parks Department. This team informs selection of habitat enhancement sites for gravel augmentation projects and consults on details of project designs and monitoring. Decisions are made by consensus and informed by recent monitoring information and best-available science. This team meets quarterly and will be involved in the selection of projects to implement Lower American River habitat contributions discussed above. This team uses existing bodies for public outreach, including the Lower American River Task Force and the Sacramento County Regional Parks and Recreation Commission but also conducts targeted outreach to specific stakeholder groups.

**4.2.3** The Water Forum and their technical team of hydrologists, fishery biologists and other experts provides technical support to all of the American River science and adaptive management groups through existing funding arrangements, primarily among the American River Water Providers.

## **APPENDIX 3**

### **AUTHORIZED REPRESENTATIVES OF PARTIES**

**For the State Water Board**

**For the American River Water Providers**

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**Exhibit C2.**  
**Delta (CVP/SWP Export Reduction) and**  
**CCWD Contributions**

**ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION OF THE  
HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE DELTA BY THE  
CALIFORNIA DEPARTMENT OF WATER RESOURCES**

**March 29, 2024 Draft**

This “Enforcement Agreement related to Implementation of the Healthy Rivers and Landscapes Program in the Delta” by the California Department of Water Resources” is entered into by and between the California State Water Resources Control Board and the California Department of Water Resources for the purpose of providing for regulatory enforcement of those flow, habitat restoration and other measures stated in Appendix 1 hereto. Defined terms are set forth in Section 2 of this Enforcement Agreement.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta

watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. DWR is subject to regulatory authority for enforcement of DWR's obligations to implement flow, habitat restoration and other measures as specified in Appendix 1.

### **TERMS OF ENFORCEMENT AGREEMENT**

1. **Purpose.** This Enforcement Agreement states the specific obligations of DWR for implementation of flow, habitat restoration and other measures for the Delta Healthy Rivers and Landscapes Programs as specified in Appendix. This Enforcement Agreement states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to DWR. The Parties intend that DWR’s Delta Healthy Rivers and Landscapes Program measures include all of DWR’s commitments to contribute to the Program of Implementation for the Delta.

1.1. **Settlement of Disputed Issues.** This Enforcement Agreement resolves disputed issues related to the Bay-Delta Plan and specifically resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to such implementation.

1.2. **Timeliness.** The Parties agree to the terms stated herein in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

2. **Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscapes Agreements. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

2.1. **2023 BA** means: the Biological Assessment for the Long-Term Operation of the Central Valley Project and State Water Project, dated November 7, 2023.

2.2. **2023 ITP Application** means: the Incidental Take Permit Application for Long-Term Operation of the State Water Project (2081-2023-054-00), dated November 1, 2023

2.3. **Agreement** means: this Enforcement Agreement for the Healthy Rivers and Landscapes Program.

2.4. **Applicable Law** means: state or federal law that: (a) exists independently of this Enforcement Agreement, including a Constitution, statute, regulation, court decision, or common



law; and (b) applies to obligations or activities of the State Water Board and DWR contemplated by this Enforcement Agreement.

**2.2 Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

**2.3 CESA** means: the California Endangered Species Act.

**2.4 CDFW** means: the California Department of Fish and Wildlife.

**2.5 Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.6 CCWD** means: the Contra Costa Water District.

**2.7 Covered Entities** means: entities who hold water rights or contracts for water supplies from the Bay-Delta watershed and are identified as Covered Entities in Section 6 of this Enforcement Agreement.

**2.8 Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as stated in Exhibit A section 1 in the Global Agreement.

**2.9 Delta Implementation Agreement** means: the “Implementation Agreement for the Healthy Rivers and Landscapes Program in the Delta by and between the California Department of Water Resources, the United States Bureau of Reclamation, and Contra Costa Water District.” (Insert date when signed/effective)

**2.10 Dispute Resolution MOU** means: the Memorandum of Understanding between the California State Water Resources Control Board and Reclamation to establish “dispute resolution and other procedures.” (Insert date when signed/effective)

**2.11 DWR** means: the California Department of Water Resources.

**2.12 Enforcement Agreement** means: this Enforcement Agreement for DWR’s Delta Healthy Rivers and Landscapes Program.

**2.13 Enforcement Agreements** means: the agreements signed by non-federal Parties pursuant to Government Code section 11415.60, or with respect to federal Parties, a Government Code section 11415.60 agreement to implement any HR&L Program-related modifications to water rights held by a federal entity and a memorandum of understanding to implement other federal HR&L Program commitments, and approved by the State Water Board, to provide

regulatory authority for enforcement of flow, habitat restoration and other measures in the HR&L Program.

**2.14 ESA** means: the Endangered Species Act as Amended by Public Law 97-304.

**2.15 Global Agreement** means: the “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” The Global Agreement states the overall structure and content of the HR&L Program, along with the obligations of the Parties to support implementation of the HR&L Program.

**2.16 Healthy Rivers and Landscapes Program or HR&L Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Enforcement Agreement is Exhibit C.1.A thereto.

**2.17 Implementation Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration and other measures in the Tributaries and Delta. In this Enforcement Agreement, the term refers to the Delta Implementation Agreement. Contemporaneously with the execution of this Enforcement Agreement, DWR has executed the Delta Implementation Agreement.

**2.18 LTO** means: the coordinated long term operations of the CVP and SWP.

**2.19 LTO BiOps** means: the Biological Opinions governing the long term operations of the CVP and SWP issued under the ESA by the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service and the United States Fish and Wildlife Service. (Date and identification numbers to be inserted upon completion of consultations related to the 2023 BA.)

**2.20 LTO ITP or ITP** means: the CESA Incidental Take Permit governing the Long-Term Operation of the SWP issued by the California Department of Fish and Wildlife. (Date and permit number to be inserted upon completion of the consultation related to the Incidental Take Permit Application for Long Term Operations of the State Water Project [2081-2023-054-00], dated December 1, 2023.)

**2.21 Material Modification** means: a change in Applicable Law, or a new or amended regulatory action similar in character to pending actions described in Section 12.6(A), that imposes additional constraints on water supply operations, increases contributions of water for instream flow or Delta outflow, increases required habitat restoration, or increases contributions of funds, to an extent that materially impairs the bargained-for benefits of this Agreement. Section 14.2(A) establishes the criteria and procedures for response to a potential Material Modification.

**2.22 NMFS** means: the National Marine Fisheries Service.

**2.23 Parties** means: the State Water Board and DWR.

**2.24 Program of Implementation** means: the program of measures, schedule and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242, including measures required from DWR under this Enforcement Agreement. The Supported Amendments, as approved, amend this Program of Implementation to authorize implementation of the HR&L Program.

**2.25 Reclamation** means: the United States Bureau of Reclamation.

**2.26 Record of Decision or ROD** means: Reclamation's final agency action to implement the long term operations of the CVP and SWP based on Reclamation's Final Environmental Impact Statement. (Date to be inserted when LTO BiOps related to the 2023 BA and ROD have issued.)

**2.27 State Water Board** means: the State Water Resources Control Board.

**2.28 State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by DWR, for water supply, power, flood control and other purposes.

**2.29 TAF** means: thousand acre-feet.

**2.30 USFWS** means: the United States Fish and Wildlife Service.

**2.31 VA Memorandum of Understanding and Term Sheet or VA MOU** means: the March 29, 2022, Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions, between VA Parties' signatories thereto, and the attached Term Sheet, including subsequent amendments.

**2.32 Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

**2.33 Water Year Type or WYT** means: the water year type based on the Sacramento Valley Index as published in DWR Bulletin 120.

### **3. Obligations of DWR.**

**3.1 Implementation.** DWR will implement the obligations assigned to DWR in Appendix 1 in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance of these obligations will be subject to Sections 8 (Dispute Resolution) and 9 (Remedies).

**3.2 Progress Reports and Inspections.** DWR will cooperate and coordinate with Reclamation and CCWD to prepare Annual and Triennial Reports with respect to implementation of the Delta Healthy Rivers and Landscapes Program, including DWR's actions in furtherance

thereof. DWR will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D of the Global Agreement, section 1.5).

#### **4. Obligations of State Water Board**

**4.1. Execution of Order.** The Executive Officer of the State Water Board will sign the Order approving this Enforcement Agreement (Appendix B hereto), concurrent with the signing of this Enforcement Agreement.

**4.2. No Additional Contributions.** The State Water Board will not seek additional contributions from DWR or Covered Entities listed in Appendix 2 of this Enforcement Agreement, for the purpose of implementation of the Covered Water Quality Objectives or related purposes. This assurance will be implemented through the procedures, and subject to the requirements in limitations, stated in Exhibit A section 5 of the Global Agreement as incorporated in the Program of Implementation.

**4.3. Protection of Flows.** The State Water Board will use the protections identified in Exhibit A of the Global Agreement [*TBD – expand to include specific protections agreeable to SWRCB and Parties*].

- A. DWR will be available to assist the State Water Board in its proceedings to provide these protections. DWR will support these protections, provided they agree with the authorities cited by the State Water Board, the scope and the technical methodology, used in a proceeding.
- B. The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses. [*TBD – more specifics on such reporting.*]

**4.4 Expedited Process.** The State Water Board will undertake an expedited process for considering any petition by DWR pursuant to Water Code sections 1700-1725, changing the place and purpose of use for its water rights to implement its obligations hereunder.

#### **5. Guiding Principles for the Administration, Interpretation and Extension of this Enforcement Agreement.**

**5.1** The following principles will guide the Parties in the administration, interpretation and potential extension of the term of this Enforcement Agreement:

- a. Additional contributions to Delta inflow, Delta outflow, habitat enhancement, funding and other measures from DWR in implementing the Bay-Delta Plan should be comparable and proportionate to the contributions required of water users in the Delta, except as otherwise agreed to by DWR.
- b. Additional contributions to Delta inflow, Delta outflow, habitat enhancement, funding and other measures from water users in the Delta should be comparable

and proportionate to their respective diversions of unimpaired flow from the Delta.

- c. DWR will provide the Delta flow contribution as described in Appendix 1 during the term of this Agreement in order to advance the overall objectives of the Healthy Rivers and Landscapes Program, and not as a comparable and proportionate share of contributions to Delta inflow or outflow.
- d. The State Water Board will not assert that DWR providing the Delta flow contribution as described in Appendix 1 for Delta inflow and outflow should be a precedent for future regulatory proceedings.
- e. The State Water Board will not assert that DWR is responsible for providing flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than DWR and the Covered Entities.

## **6. Covered Entities.**

**6.1** This Enforcement Agreement covers the contribution of DWR and Covered Entities, as specified in Appendix 2, to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation.

**6.2** This Enforcement Agreement does not cover the contribution of other water users in, or diverters of water from, the Delta to achieving the water quality objectives in the Bay-Delta Plan.

**6.3** Nothing in this Enforcement Agreement will require or be construed to require DWR to provide flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than DWR and the Covered Entities specified in Appendix 2.

## **7. Enforcement.**

**7.1 General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of DWR using: administrative civil liability, imposed pursuant to the procedures in Water Code sections 1050 et seq.; a cease-and-desist order adopted pursuant to the procedures stated in Water Code sections 1825 et seq.; or both.

**7.2** DWR will not contest an enforcement action brought pursuant to this Section 7.1 on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to it in Appendix 1.

**7.3** The State Water Board may not commence an enforcement action pursuant to this Section 7 against DWR based on the non-performance of an obligation assigned to other parties under other Enforcement Agreements.

7.4 DWR may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Enforcement Agreement.

## **8. Dispute Resolution.**

8.1 All disputes among the Parties regarding a potential Material Modification, a Party's performance or compliance with the provisions of this Enforcement Agreement or other dispute regarding interpretation or administration of this Enforcement Agreement will be subject to the dispute resolution process stated herein. Each such dispute will be brought and addressed in a timely manner. Resolution of a dispute will require unanimous consent of the Parties.

8.2 This dispute resolution process does not preclude a Party from filing and pursuing an action for administrative or judicial relief to enforce an obligation under this Enforcement Agreement. A Party may bring a judicial or other action without exhausting these dispute resolution procedures.

8.3 A Party claiming a dispute will issue notice of the dispute to the other Party within 7 days of becoming aware of the dispute. Such notice will describe: (a) the matter(s) in dispute; and (b) the specific relief sought.

8.4 Following issuance of notice of a dispute, authorized representatives for each Party will cooperate in good faith to promptly schedule, attend and participate in an informal process to resolve the dispute. If the representatives of the Parties determine that they are unable to timely resolve the dispute, then the dispute will be elevated to the Director of DWR and the Executive Director of the SWRCB for resolution.

## **9. Remedies.**

9.1 A Party may terminate this Enforcement Agreement only if the Party has first complied with the dispute resolution procedures set forth in Section 8, and the Parties have not reached agreement on resolving the dispute.

9.2 DWR may terminate this Enforcement Agreement, and specify the effective date of such termination, if DWR has reasonably determined that there has been a Material Modification.

9.3 The State Water Board may terminate this Agreement, and specify the effective date of such termination, if the State Water Board has reasonably determined that there has been a Material Modification.

9.4 The Parties reserve all other existing remedies for a Material Modification of this Agreement, provided that this section will constitute the exclusive procedure by which this Enforcement Agreement can be terminated.

**10. Force Majeure.** No Party will be liable for any failure of, or delay in, the performance of duties under this Enforcement Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any final determination by a court of competent jurisdiction that renders the performance of any duty under this Enforcement Agreement unlawful.

**11. Effective Date and Term.**

**11.1** This Enforcement Agreement takes effect when signed by the Parties and will be binding as to such Parties when signed.

**11.2** Unless otherwise terminated according to its terms, the term of this Enforcement Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Enforcement Agreement will terminate upon that Party's withdrawal from the Global Agreement. The term of this Enforcement Agreement is subject to extension from time to time on terms approved by the Parties.

**12. No Admission of Liability.** The Parties enter into this Enforcement Agreement voluntarily. Nothing contained in this Enforcement Agreement is to be construed as an admission of liability, responsibility or procedural requirement as to any of the parties, other than for purposes of enforcing this Enforcement Agreement. DWR does not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or the public trust doctrine, for providing the flows, habitat restoration and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in Section 7 would be available against DWR with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

**13. Compliance with Applicable Laws.** The Parties represent that they believe that this Enforcement Agreement is consistent with their respective statutory, regulatory or other legal obligations for conservation, use or management of affected resources.

**14. Reservations.**

**14.1 Generally.** Nothing in this Enforcement Agreement is intended or will be construed to affect or limit the authority or obligation of the Parties to fulfill their respective constitutional, statutory and regulatory responsibilities or comply with any judicial decision. Nothing in this Enforcement Agreement will be interpreted to require any public agency to implement any action that is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized or relinquished in this Enforcement Agreement.

**14.2 Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Enforcement Agreement is intended

or will be construed to require the obligation, appropriation reprogramming or expenditure of any funds by any such public agency Party except as otherwise permitted by Applicable Law; provided that the Parties recognize that timely and sufficient funding is necessary to implement the HR&L Program.

**14.3 Federal Appropriations.** Nothing in this Enforcement Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Enforcement Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Enforcement Agreement.

**14.4 Environmental Review.** Nothing in this Enforcement Agreement is intended or will be construed to modify the application of the National Environmental Policy Act, California Environmental Quality Act, or other Applicable Law, to the environmental review of any action under this Enforcement Agreement, including the execution of this Agreement.

**15. Notices.** Any Notice required by this Enforcement Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice transmitted via email or other electronic means will be effective upon acknowledgment of receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. A Party may notify the other Parties in writing of a change in its designated representatives, without requiring an amendment to this Agreement. Notices will be provided as follows:

To DWR:

To SWRCB:

**16. Attorney's Fees and Costs.** The Parties will bear their own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Enforcement Agreement.

**17. Entire Agreement.** This Enforcement Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements between them, whether written or oral.

**18. Construction and Interpretation.** This Enforcement Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Enforcement Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Enforcement Agreement.

**19. Amendment.** This Enforcement Agreement may only be amended in writing by the Parties, including any successors or assigns. The Parties may provide Notice of a proposed amendment at any time. The Parties will meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.



20. **Additional Parties.** Subject to the consent of the Parties, and an appropriate amendment of this Enforcement Agreement, a non-covered entity may become a party by signing this Enforcement Agreement and the other HR&L Agreements, subject to the Parties' approval of the entity's proposed contribution under Appendix 1 hereto.

21. **Successors and Assigns.** This Enforcement Agreement will apply to, be binding on, and inure to the benefit of the Parties and their respective successors and assigns, unless otherwise specified in this Enforcement Agreement. No assignment may take effect without the express written approval of the Parties, which approval will not be unreasonably withheld.

22. **No Third-Party Beneficiaries.** This Enforcement Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto or Covered Entities specified in Appendix 2, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Enforcement Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

23. **Elected Officials Not to Benefit.** No elected official will personally benefit from this Enforcement Agreement or from any benefit that may arise from it.

24. **Severability.** This Enforcement Agreement is made on the understanding that each term is a necessary part of the entire Enforcement Agreement. However, if any term or other part of this Enforcement Agreement is held to be unlawful, invalid or unenforceable, the Parties will undertake to assure that the remainder of the Enforcement Agreement will not be affected thereby. The Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid and enforceable and carries out the intention of this Enforcement Agreement to the greatest lawful extent.

25. **Authority to Bind.** Each signatory to this Enforcement Agreement certifies that he or she is authorized to execute this Enforcement Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

26. **Counterpart Signatures; Facsimile and Electronic Signature.** This Enforcement Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Enforcement Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

[Signature Blocks]

## APPENDIX 1

### I. Responsibilities for Implementation in the Delta (Flow and Non-Flow Measures)

CCWD, DWR, and Reclamation are the Implementing Entities to the Delta Implementation Agreement. DWR and Reclamation will manage and supplement environmental flows through several components and implement other non-flow measures, and Contra Costa will contribute funding, as specified below. The Delta Healthy Rivers and Landscapes Program reflects the Implementing Entities' commitments based on the *Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions*.

#### A. CVP and SWP Flow Measures (Export Reductions)

1. **Export Reductions: Volumes, Timing and Flexibility.** For the term of this Agreement, and consistent with the Record of Decision on the coordinated long term operations of the CVP and SWP and the ITP for the Long-Term Operation of the SWP, the CVP and SWP will forego exports<sup>1</sup> to provide flow contributions of 175 TAF in Above Normal water year types and 125 TAF in Dry and Below Normal water year types, as reflected in Table I.A.1, based on the process described in the [Delta accounting reference]. Bold percentages in Table I.A.2 represent the default plan and the percentage range in the parentheses represent the flexibility bracket for potential CVP and SWP Export Reductions for each month and water year type. The CVP and SWP Export Reductions will be implemented as provided in the default plan unless a different flow contribution schedule, consistent with the flexibility bracket, is decided through the Delta Implementation Agreement Governance process described in Section II, below.

Table I.A.1 – CVP and SWP Export Reductions (TAF)

Water Year	C	D	BN	AN	W
<b>Export Reduction</b>	0	125	125	175	0

Table I.A.2 – Timing and Flexibility Bracket

Water Year	Mar	Apr	May	Jun
<b>Above Normal</b>	<b>0%</b> (0-40%)	<b>50%</b> (30-70%)	<b>50%</b> (30-70%)	<b>0%</b> (0-30%)
<b>Below Normal and Dry</b>	<b>33%</b> (20-80%)	<b>33%</b> (20-80%)	<b>33%</b> (0-50%)	<b>0%</b> (0-30%)

2. **Health and Safety Off-Ramp:** The CVP and/or SWP shall be authorized to maintain a minimum export flow rate of up to 1,500 cfs if needed to ensure minimum M&I Public Health and Safety supplies. The CVP and/or SWP shall have no

<sup>1</sup> CVP and SWP exports are the combined diversions at CVP Jones Pumping Plant and SWP Banks Pumping Plant.

obligation to meet the Export Reduction water volumes specified in Section I.A.1 and Table I.A.1, with the timing specified in Table I.A.2, if doing so would preclude ensuring minimum M&I Public Health and Safety supplies. Notwithstanding any such reduction in the volume of flow contributions otherwise required pursuant to Section I.A.1 and Table I.A.1, neither the CVP nor the SWP will be required to provide any additional water volumes outside of the timing and flexibility specified in Table I.A.2, and neither the CVP nor the SWP will be required to provide any additional HR&L Program flow measures in subsequent years to offset such reductions.

3. **Flow Accounting.** The CVP and SWP Export Reduction are provided in addition to the baseline described in the VA MOU Term Sheet section 4.1. Flows made available through foregone exports will be subject to the accounting procedures adopted and approved as a part of the LTO ITP, the LTO ROD and [Placeholder for Accounting Reference] and all flows will be verified as a contribution above baseline using these accounting procedures.

4. **Allocation of Responsibility.** Reclamation and DWR shall split the total responsibility for the CVP/SWP Export Reductions, shown in Table I.A.1, by a ratio of 50:50.

## B. PWA Fixed Price Water Purchase Program

1. **Export Reductions: Volumes, Timing and Flexibility.** For the duration of this Agreement, and consistent with the LTO ROD for the CVP and SWP, and LTO ITP for the SWP, the CVP and SWP will forego exports of purchased water under the PWA Fixed Price Water Purchase Program. The PWA Fixed Price Water Purchase Program specifies Fixed Price water purchases in Table I.B.1 below. The CVP and SWP shall coordinate and cooperate to forego exports associated with the purchased water. The volumes specified in Table I.B.1 will be deployed with the timing and flexibility shown in Table I.A.2.

Table I.B.1 – Fixed Price Water Purchases – Export Reductions (TAF)

Water Year	C	D	BN	AN	W
<b>CVP SOD</b>	0	12.5	24.5	35	0
<b>WWD SOD</b>	3	6	15	19.5	27
<b>Add CVP SOD</b>	0	5	5	5	0
<b>SWP SOD</b>	0	30	30	30	0

## C. Delta Habitat Restoration

During the term of this Agreement and consistent with Applicable Law and the VA MOU Term Sheet, including the provision for Early Implementation of habitat projects, the Delta Habitat Restoration action identifies restoration of 5,227.5 acres of tidal wetland and associated floodplain habitats in the North Delta Arc and Suisun Marsh, 50 acres of instream habitat and 100 acres of floodplain habitat for juvenile Chinook salmon rearing. DWR and Reclamation, subject to appropriations, will design and construct habitat features to contribute toward

achieving the Covered Water Quality Objectives, consistent with the best available science and applicable environmental requirements. To achieve the habitat enhancement commitments, DWR and Reclamation will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals. As part of Early Implementation, Reclamation and DWR have already implemented several habitat projects, as identified below, crediting XXXX acres. [Placeholder for reference to completed habitat projects at time of agreement signing]

#### **D. CVP and SWP Funding Component**

DWR and Reclamation will provide all applicable funds received or budgeted by them to support implementation of the HR&L Program during the term of this Agreement, consistent with the VA MOU, the Dispute Resolution MOU and the Healthy Rivers and Landscapes Strategic Plan, and authorizing authorities.

All commitments made by Reclamation are subject to the availability of appropriated funds, as specified in Section 9 “Reservations,” and budget priorities. Nothing in the Delta Implementation Agreement obligates Reclamation to expend appropriations or to incur other financial obligations.

#### **E. Conditions**

1. During the term of this Agreement, DWR’s and Reclamation’s individual commitments specified herein above will be subject to suspension or termination if the State Water Board takes action to require additional commitments as a requirement of Bay-Delta Plan implementation that constitute a Material Modification of the commitments specified herein above. Prior to any such suspension or termination, DWR and/or Reclamation will seek to meet and confer with the State Water Board and undertake the dispute resolution process specified in the Dispute Resolution MOU and/or the DWR Delta Enforcement Agreement, as applicable.

2. During the term of this Agreement, DWR’s and Reclamation’s commitments to implement the PWA Fixed Price Water Purchase Program measures specified in Section I.B are subject to funding being provided from the [VA Funding Entity] to DWR and/or such funding being provided, with the concurrence of DWR and Reclamation, to specific CVP and/or SWP contractors participating in the Fixed Price Water Purchase Program.

3. Nothing herein shall be interpreted to modify, change or otherwise obviate any legal requirement for DWR to fully implement minimization and mitigation measures specified in the LTO ITP.

### **II. Delta Implementation Agreement Governance**

#### **A. Delta Implementation Entities and Regulatory Assurances.**

CCWD, Reclamation and DWR are the Implementing Entities for the Delta Implementation Agreement and CCWD, Reclamation, DWR, and their Covered Entities, specified in

Appendix 2, are the only entities that are intended to receive regulatory assurances for implementation of the measures described herein.

## **B. Obligations of Reclamation and DWR**

### **1. CVP and SWP Export Reduction Flow Measures Governance.**

Consistent with the LTO ROD for the CVP and SWP, and LTO ITP for the SWP, Reclamation and DWR will implement the CVP and SWP Export Reductions as described in Section I.A, above, and will consider the recommendations of the Systemwide Governance Committee related to flow contribution volumes and timing. Except as provided in subsections II.B.3 and II.B.4, below, for flow contributions relied upon for ESA or CESA compliance, Reclamation and DWR will retain sole discretion over the volumes specified in Tables I.A.1 and I.B.1 and timing of flow contributions within the flexibility bracket specified in Table I.A.2, subject to operation and maintenance activities to protect CVP and SWP facilities as determined by Reclamation and DWR, respectively.

**2. Coordination.** Starting each January, Reclamation and DWR, through the Water Operations Management Team, as described in the LTO BiOps and LTO ITP, will review the hydrologic conditions and develop schedules for the timing and volume of water resulting from the CVP and SWP Export Reductions and PWA Fixed Price Water Purchase Program.

Reclamation and DWR will coordinate operations to implement the CVP/SWP Export Reductions and PWA Fixed Price Water Purchase Program volumes and will ensure that CVP and SWP operations do not result in the export of any volumes of water produced through HR&L Program implementation.

### **3. Implementation Measures and Other Regulatory Proceedings.**

Consistent with VA MOU Term Sheet section 11, CVP and SWP flow and non-flow measures are intended to be recognized in other regulatory proceedings, to the maximum extent allowable under law, including in the LTO ITP and LTO BiOps. The timing and mechanism of deployment of CVP and SWP Export Reductions within the flexibility brackets specified in Section I.A.2, above, and of flows generated from fees collected from CVP and SWP contractors, shall be subject to ESA and CESA, as applicable, permit requirements governing decisions related to planning, deployment and accounting. Nothing in this agreement shall be construed as subjecting Reclamation to CESA permit requirements.

**4. Spring Outflow and ITP for Long Term Operations of SWP.** SWP Export Reductions and diversion fees collected from SWP contractors used for fixed price water purchases are expected to result in increased Delta outflow during the spring period in comparison to the baseline described in the VA MOU Term Sheet section 4.1. Delta outflow provided through the SWP Export Reductions and SWP SOD fixed price water purchases are intended, in part, to achieve DWR's compliance with Spring Outflow requirements under the LTO ITP. To ensure consistency between HR&L Program and LTO ITP flow deployment decision making each year, DWR and CDFW in coordination with Reclamation, NMFS, and USFWS will confer to develop a plan that will include deployment of the SWP Export

Reductions and flows generated from SWP diversion fees, including mechanisms and timing. The plan is subject to CDFW approval and may be revised, with CDFW concurrence, to account for updated hydrologic conditions.

### **C. Obligations of and Related to Contra Costa Water District**

1. **[Placeholder for protection of CVP and SWP Export Reductions, other flows generated through HR&L Program implementation, and CCWD's Permitted Diversions]**

2. **Contribution to HR&L Program.** CCWD will contribute funding to the HRLP, as set forth in [cross references to funding agreement and any other appropriate documents], for the total volume of water CCWD receives under its repayment contract with Reclamation, Contract I75r-3401A-LTR1-P, as well as the amount of water it diverts under the following appropriative water rights: Application 5941 (Permit 3167, License 10514), Application 20245 (Permit 20749), and Application 27893 (Permit 19856).

### **III. Delta Science Program**

[The Delta Science Program components are still under development.

The HR&L Science Plan will provide the framework and specific approach for evaluating the outcomes of the Flow and Non-flow Measures and ultimately to inform the State Water Board's assessment in Year 8 of the HR&L Program as described in Exhibit A to the Global Agreement, "Supported Amendments to the Bay-Delta Plan". The Delta Implementing Entities will contribute to syntheses of the data produced through the HR&L Science Program in Annual Reports, Triennial Reports for Years 3 and 6 of HR&L Program implementation, and an ecological outcomes report prior to Year 7, as described in Section 9.4 of the Global Agreement. Information collected by the HR&L Science Program will serve to track and report progress relative to metrics identified in the HR&L Science Plan and will inform the biological and ecological outcomes of the HR&L actions.

To achieve the comprehensive HR&L Science Program described in Section 10 of the Global Agreement, the Delta Implementing Entities will participate in the HR&L Science Committee to advance consistency and coordination across Governance Area Entity activities. The Parties will conduct science activities to inform the Science Plan hypotheses to produce results that inform recommendations to the Systemwide Governance Committee regarding adaptive management of Flow and Non-flow Measures, and priorities for further investment in the Science Program. Additionally, coordinated by the HR&L Science Committee, the Delta Implementing Entities will develop detailed assessment protocols tailored to the specific measures implemented in the Delta. The results of the assessments will be provided in HR&L Program reports as described in Section 9.4 of the Global Agreement as well as the ecological outcomes analysis to be provided prior to Year 7 of the HR&L Program, as described in Section 10.1 of the Global Agreement.]

## **Appendix 2.**

### **Delta Covered Entities**

[This appendix will further define the Delta Covered Entities, including, as applicable, specific water rights holders and/or geographic regions receiving regulatory assurances hereunder and intended to be Covered Entities under the Dispute Resolution MOU and applicable DWR and CCWD Enforcement Agreements]





**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE CALIFORNIA STATE WATER RESOURCES CONTROL BOARD AND**  
**THE UNITED STATES BUREAU OF RECLAMATION**

**March 29, 2024**

This “Memorandum of Understanding” (MOU) is signed by the California State Water Resources Control Board (State Water Board) and the United States Bureau of Reclamation (Reclamation), an agency within the United States Department of the Interior, to establish dispute resolution and other procedures that Reclamation and the State Water Board will follow to ensure that Reclamation is accountable for its commitments to facilitate the implementation of Implementing Agreements identified below.

**RECITALS**

**A.** The State Water Resources Control Board (State Water Board) and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) (Porter-Cologne Act) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

**B.** The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

**C.** The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta watershed), establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

**D.** The State Water Board has adopted a Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan). It first adopted the plan in 1978, amending it in 1995, 2006, and 2018. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan. Flow-dependent objectives in the Bay-Delta Plan, such as minimum instream flows, are implemented through the State Water Board’s water right authority. Traditionally, the State Water Board has imposed responsibility for meeting flow objectives primarily through the CVP and State Water Project (SWP) water rights terms and conditions. One purpose of the Healthy Rivers and Landscapes Program (also known as “Voluntary Agreements” or “VAs”) is to include additional water right holders, diverters and legal users of water to also contribute to instream flow and habitat needs under the Bay-Delta Plan.

**E.** In May 2017 then-Governor Edmund G. Brown, Jr. issued “Principles for Voluntary Agreements,” stating in relevant part: “The goal is to negotiate durable and enforceable Voluntary Agreements that will be approved by applicable regulatory agencies, will represent the program of implementation for the water quality objectives for the lower San Joaquin and Sacramento Rivers and Delta, will forego an adjudicatory proceeding related to water rights, and will resolve disputes among the parties regarding water management in the Sacramento-San Joaquin-Bay-Delta Watershed.” In accordance with the VA Principles, interested parties undertook extensive efforts in 2017 and 2018 to negotiate the Voluntary Agreements.

**F.** On December 12, 2018, the Directors of the California Department of Fish and Wildlife (CDFW) and California Department of Water Resources (CDWR) appeared before the

State Water Board and presented the results of the Voluntary Agreement negotiation process to date. The negotiation process included numerous stakeholders, including Central Valley Project (CVP) contractor representatives. Specifically, the Directors presented a “Framework Proposal for Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan” (Agreement Framework). Appendix 1 to the Agreement Framework contained proposed term sheets.

**G.** On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

**H.** In January 2019, the Newsom Administration confirmed its intention to complete the efforts to reach Voluntary Agreements. On March 1, 2019, the Directors of CDFW and CDWR entered into a “Planning Agreement Proposing Project Description and Procedures for the Finalization of the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan” (Planning Agreement). The purposes of this Planning Agreement were to propose (1) a project description; (2) the process by which the parties would recommend the State Water Board analyze the project description; and (3) the process for developing appropriate terms for, and subsequent implementation of, Voluntary Agreements, in accordance with the State Water Board’s directive quoted in Recital G above as well as the Agreement Framework.

**I.** From 2019 through 2022, CDFW, CDWR, Reclamation, and other interested entities undertook extensive efforts to develop a potential VA Program.

**J.** On March 29, 2022, certain of the Parties, including Reclamation, signed a “Memorandum of Understanding Advancing a Term Sheet for The Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions” (“VA MOU” and “Term Sheet,” respectively). VA MOU section 2.1 provides:

“This [VA] MOU is signed by executive leadership for the Parties. For each party, implementation is conditioned upon and subject to review and approval by the decisional body of the Party, if required. By signing this [VA] MOU, the Parties agree to advance the VA Program as reflected in the Term Sheet to the decisional body, if any, for consideration as outlined in the Term Sheet.”

**K.** Certain of the Parties submitted the Term Sheet to the State Water Board, as provided in VA MOU section 1.2:

“The Parties intend to cooperate to submit the Term Sheet to the State Water Board, so that it may consider including the Voluntary Agreements Program, consistent with Resolution 2018-0059, as the pathway to implement the Narrative Salmon Objective and a proposed Narrative Viability Objective for the Parties. The Parties further intend to undertake a process to assist the State Water Board in its independent analysis of that pathway.”

**L.** Voluntary Agreements have now been reached and submitted to the State Water Board as a pathway for implementation of the Bay-Delta Plan.

**M.** Using its independent authority, the State Water Board has amended the Bay-Delta Plan.

**N.** Reclamation operates the CVP pursuant to the Act of June 17, 1902 (82 Stat. 388) and acts amendatory thereof or supplemental thereto (Reclamation Law), and other applicable federal laws (including the federal Endangered Species Act (ESA) and applicable state law). The CVP is a complex, multi-purpose network of dams, reservoirs, canals, hydroelectric powerplants and other facilities.

**O.** Pursuant to Reclamation Law, the CVP is operated to make water available to more than 250 contractors in the Sacramento Valley, the San Joaquin Valley, and the San Francisco Bay Area for irrigation, municipal and industrial uses, as well as fish and wildlife uses. The CVP is also operated to maintain water quality, including certain minimum instream flows, in the Sacramento-San Joaquin Delta under terms and conditions in State-granted water rights issued to the United States for the CVP.

**P.** Some of the contributions of water, including water in the Sacramento River, the American River, and Delta, to provide tributary flow and Delta outflow committed to by Parties will require Reclamation to facilitate instream flow commitments using CVP water initially, but being repaid in equivalent amounts of water later in the year. For this reason, successful implementation of the actions described in some of the VAs, on which the State Water Board based its amendment of the Bay-Delta Plan, will depend on the reoperation of CVP facilities and administration of contracts between the United States and certain CVP contractors.

**Q.** Other Parties that are responsible for implementing flow and non-flow measures described in the VA Program, including parties that contract with the United States for the delivery of CVP water, are contemporaneously entering into agreements with the State Water Board pursuant to California Government Code section 11415.60 to enable expedited enforcement of the VA Program. Reclamation is entering into this MOU to express its intent to facilitate the Implementing Agreements by entering MOUs with other Implementing Entities and by being a signatory to the Delta (export reduction) Implementing Agreement.

**R.** Because one purpose of the VAs is to create a path of implementation of the Bay-Delta Plan which foregoes a lengthy and complicated adjudicatory proceeding related to water rights and responsibility for instream flow-dependent objectives, and to resolve certain disputes among the parties regarding water management in the Sacramento-San Joaquin-Bay-Delta Watershed, Reclamation recognizes that its obligations under this MOU to facilitate certain Implementing Agreements, and as a party to the Delta Implementing Agreement, are equivalent to, and in-lieu of, legal obligations under the terms and conditions of its CVP water rights, albeit enforced primarily through the dispute resolution process in this MOU. In addition, the obligations under this MOU and under the Delta Implementation Agreement are not intended to be mitigation of CVP-only impacts.

S. The Parties understand that if special authorizing legislation is not passed by Congress in the near term, the preferred option is for collection of funds in Paragraph 7 of this MOU to be carried out through a fiscal agent in collaboration with the Covered Entities within the CVP.

### **TERMS OF UNDERSTANDING**

**NOW, THEREFORE,** the State Water Board and Reclamation enter into this MOU as follows:

1. **Purpose.** The State Water Board and Reclamation are entering into this MOU to establish dispute resolution and other procedures that Reclamation and the State Water Board will follow to ensure that Reclamation is accountable for its commitments to facilitate the implementation of certain Implementing Agreements identified in Section 4 below.

2. **Definitions.**

2.1. **Applicable Law** means state or federal law, including a Constitution, statute, regulation, court decision, precedential adjudicative decision, or common law, that applies to obligations or activities of the State Water Board and Reclamation contemplated by this MOU. Biological Opinions under the federal ESA expressly fall within this definition of “Applicable Law.”

2.2. **Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (2018, as amended [date of Final Action]).

2.3. **Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

2.4. **Covered Entities** means entities who hold water rights within, or contracts for water supplies from, Bay-Delta watershed and are identified as Covered Entities in the applicable Enforcement Agreement.

2.5. **Covered Water Quality Objectives** means: the objectives that the VA Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as defined below.

2.6. **Enforcement Agreements** means: the agreements executed pursuant to Government Code section 11415.60 to specify regulatory authority for enforcement of flow, habitat restoration, and other measures for the VA Program, or with respect to Reclamation, this MOU.

2.7. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the VA Program, along with the obligations of parties to that agreement to support implementation.

**2.8. Implementing Agreements** means: tributary-specific and Delta-specific agreements to implement flow, habitat restoration, and other VA Program measures.

**2.9. Implementing Entities** means: those entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementing Agreements.

**2.10. MOU Parties** means: State Water Board and Reclamation, as signatories hereto.

**2.11. Parties** means: signatories to the Global Agreement.

**2.12. VA MOU** means: the Memorandum of Understanding Advancing a Term Sheet for The Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions, which was signed on or after March 29, 2022.

**2.13. VA Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – G.

**2.14. Voluntary Agreements or VAs** means: the Global Agreement, the Implementing Agreements, and the Enforcement Agreements, including this MOU.

**3. Effective Date and Term.** This MOU shall become effective when signed by the State Water Board and Reclamation, and its term will be concurrent with the term of the Global Agreement, unless terminated pursuant to article 7.4 of this MOU.

**4. Flow and Outflow Commitments.** Reclamation will facilitate commitments made by the Implementing Entities to implement flow measures specified in the Implementing Agreements listed below, provided that such obligations are required to be met only to the extent that they do not conflict with Applicable Law and that Reclamation continues to be fully replenished, or repaid in equivalent water, as applicable under the Implementing Agreements, listed below.

**4.1. Sacramento River.**

**4.2. American River.**

**4.3. Upper San Joaquin (Friant).**

**5. Delta Implementing Agreement.** As a party to the Delta (export reduction) Implementing Agreement with California Department of Water Resources, Reclamation agrees that enforcement of the Delta Implementation Agreement shall be as set forth in this MOU.

**6. Enforcement of CVP Replenishment Water.** If at any time Reclamation does not receive an equivalent amount of water from the American River and Sacramento River Implementation Entities to replenish any CVP water used to facilitate flow obligations in those Implementation Agreements, Reclamation shall report to the State Water Board that a violation of either of those Agreements has occurred. The State Water Board shall take immediate and appropriate action under the appropriate Enforcement Agreements.

**7. Collection and Use of Fees.** Reclamation, or its designated fiscal agent, will collect from public water agencies, water user organizations, or persons that have entered into a water service

contract, repayment contract, water rights settlement contract, or exchange contract with the United States for water service from the CVP fees or surcharges in amounts established by the [name of agreements]. Funds collected by Reclamation will be deposited into [Funding Entity Account Name] and may be used at the discretion of the [Global Governance Entity], unless otherwise prescribed by a tributary implementing agreement, to implement the water acquisition, habitat and other non-flow, and science elements of the VA Program.

**8. Reservation of Authorities.** Both Reclamation and the State Water Board acknowledge that the other is vested by either federal or state law with authority to undertake actions which may affect the interests of the other, and nothing in this MOU is intended to or will be construed to alter, limit, or expand in any way the statutory or regulatory authority or legal responsibilities of either Reclamation or the State Water Board. The Parties to this MOU further acknowledge that it may be necessary for the other party to make determinations that may affect the implementation of this MOU. Each party will endeavor to make such determinations in consultation with the other party, and both Reclamation and the State Water Board will, to the extent reasonably practicable and consistent with Applicable Law, exercise their respective authorities in a manner consistent with this MOU.

**9. Additional Contributions.** The State Water Board will not seek additional contributions from Reclamation or Covered Entities for the purpose of implementing the Covered Water Quality Objectives or related purposes outlined in the Sacramento River, American River, Upper San Joaquin (Friant) or Delta Implementing Agreements.

**10. Protection of Flows.** The State Water Board will use the protections identified in Exhibit A [Under Development].

**11. Dispute Resolution.** In the event a dispute arises under this MOU that cannot resolved informally by the MOU Parties, the complaining MOU Party may pursue the following dispute resolution procedure:

**11.1. Written Statement.** The complaining MOU Party will provide a written statement of its dispute to the Regional Director, California-Great Basin for Reclamation and the Executive Director of the State Water Board, who will engage in discussions to arrive at a resolution, with a copy to the other party.

**11.2. Review by Secretaries.** If no resolution is reached within thirty (30) calendar days of receipt of the statement of dispute by the other MOU Party, the dispute will be elevated to the Commissioner of Reclamation and the Secretary of the California Environmental Protection Agency, who will engage in good faith discussions to resolve the dispute.

**11.3. Mediation.** At any time after receipt of the statement of dispute by the other MOU Party, the State Water Board and Reclamation may mutually elect to submit the dispute to a neutral mediator to assist in resolving the dispute. In such event, the State Water Board and Reclamation will share equally the cost of the neutral mediator. The mediation will be conducted without discovery, and the neutral mediator shall not be required to issue an opinion or decision;

provided, however, if the neutral mediator issues an opinion or decision, it shall not be binding on the State Water Board or Reclamation.

**11.4. Termination.** If no resolution is reached within one-hundred, eighty (180) calendar days of receipt of the statement of dispute, the complaining MOU Party may elect to terminate this MOU, provided that the option to terminate the MOU shall not extend beyond three-hundred, sixty-five days of receipt of the statement of dispute.

**11.5. Best Efforts.** The State Water Board and Reclamation acknowledge that a failure to resolve a dispute arising under this MOU and the termination of this MOU will put the viability of the VA Program at significant risk, and for this reason, the State Water Board and Reclamation commit to use their best efforts to resolve any dispute utilizing the process described in this Article 11.

**12. No Admission of Liability.** The Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the Parties, other than for purposes of enforcing this Agreement. By entering this agreement, Reclamation does not admit any liability or responsibility under the California Water Code, including the Porter-Cologne Act, Fish and Game Code, Article X, section 2 of the California Constitution, or public trust doctrine, for the purposes of this MOU. .

**13. Amendment of Permits or Licenses.** Reclamation and the State Water Board acknowledge that among the purposes of this MOU is avoidance of formal proceedings to amend permits and licenses to appropriate water held by Reclamation for operations of the CVP to implement amendments to the Bay-Delta Plan. In the event Reclamation determines that amendments to its water right permits and licenses are necessary or appropriate to implement its commitments under the VA Program, then Reclamation will petition the State Water Board for such changes. If such change petitions are granted by an order of the State Water Board, the State Water Board may enforce any such order under the California Water Code, consistent with Section 8 of Reclamation Law of 1902.

**14. Antideficiency.** All commitments made by the State Water Board and Reclamation are subject to the availability of appropriated funds and budget priorities. Nothing in this MOU obligates either Reclamation or the State Water Board to expend appropriations or to incur other financial obligations.

**15. No Private Right of Action.** This MOU is not intended to and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by any person against either Reclamation or the State Water Board.

**16. Amendment.** This MOU may be amended or extended upon the agreement of Reclamation and the State Water Board, provided such amendment or extension shall be evidenced in writing.

**17. Covered Entities.** [Under Development. Some adjustments may be needed to ensure consistency with other Enforcement Agreements and/or Implementing Agreements and to avoid redundancy.]

<b>CVP CONTRACTORS BY SERVICE AREA<sup>1</sup></b>	
<b>Sacramento River Division – Black Butte Dam &amp; Res.</b>	<b>Maximum Contract Amount</b>
4-E Water District	35
Stony Creek Water District	3,345
U.S. Forest Service (Salt Creek)	45
Whitney Construction, Inc.	25
U.S. Forest Service	10
Colusa, County of (Stonyford)	40
<b>Black Butte Dam &amp; Res. Total</b>	<b>3,500</b>
<b>Sacramento River Division – Colusa Basin Drain</b>	<b>Maximum Contract Amount</b>
Colusa Basin Drain Mutual Water Company	70,000
<b>Colusa Basin Drain Total</b>	<b>70,000</b>
<b>Sacramento River Division – Corning Canal</b>	<b>Maximum Contract Amount</b>
Corning Water District	20,000
Proberta Water District	3,500
Thomes Creek Water District	6,400
<b>Corning Canal Total</b>	<b>29,900</b>
<b>Sacramento River Division – Tehama-Colusa Canal</b>	<b>Maximum Contract Amount</b>
Colusa County Water District	62,200
Colusa, County of	20,000
4-M Water District	5,415
Colusa County Water District	5,666
Cortina Water District	1,615
Glenn Valley Water District	1,730
Holthouse Water District	2,327
La Grande Water District	2,090
Myers-Marsh Mutual Water District	242
Davis Water District	4,000
Dunnigan Water District	19,000
Glide Water District	10,500
Kanawha Water District	45,000
Kirkwood Water District	2,100
La Grande Water District	5,000
Orland-Artois Water District	53,000
Westside Water District	65,000
Feather Water District	20,000
<b>Tehama-Colusa Canal Total</b>	<b>324,885</b>
<b>Sacramento River Division – Shasta Dam &amp; Res.</b>	<b>Maximum Contract Amount</b>
Centerville Community Services District	2,900

<sup>1</sup> Note: This list of CVP Contractors for the purposes of this MOU is subject to change. Covered Entities under this MOU may ultimately be determined by other applicable Enforcement Agreements or Implementing Agreements.



Mountain Gate Community Services District	1,350
Redding, City of	6,140
Shasta County Water Agency	1,022
Shasta Lake, City of	4,400
<b>Shasta Dam &amp; Res Total</b>	<b>15,812</b>
<b>Sacramento River Division – Trinity River Division</b>	<b>Maximum Contract Amount</b>
Bella Vista Water District	24,578
Clear Creek Community Services District	15,300
Shasta Community Services District	1,000
<b>Trinity River Division Total</b>	<b>40,878</b>
<b>Sacramento River Division – Sacramento River Settlement Contractors</b>	<b>Maximum Contract Amount</b>
Alexander, Thomas & Karen	22
Anderson, Arthur L., et al.	490
Anderson, R. & J., Properties, L.P.	47
Anderson, R. & J., Properties, L.P.	190
Anderson-Cottonwood Irrigation District	125,000
Andreotti, Beverly F., et al	3,620
B & D Family Partnership	60
Baber, Jack W., et al.	6,260
Butler, Dianne E., Revocable Intervivos Trust	434
Butte Creek Farms, Inc.	204
Butte Creek Farms, Inc.	36
Butte Creek Farms, Inc.	95
Butte Creek Farms, Inc.	640
Byrd, Anna C. & Osborne, Jane	850
Byrd, Anna C. & Osborne, Jane	415
Cachil Dehe Band of Wintun Indians	180
Carter Mutual Water Company	7,122
Charter, Kristine	300
Chesney, Adona, Trustee	700
Churkin, Michael, Jr., et al.	130
Conaway Preservation Group, LLC	40,862
Cummings, William C	300
Daniell, Harry W.	20
Davis, Ina M	85
Driscoll Strawberry Associates, Inc.	820
Driver, Gary, Jr., et al.	30
Driver, Gregory E.	20
Driver, John A. & Clare M. Trustees	230
Driver, John A. & Clare M. Trustees	16

Driver, William A., et al.	160
Dyer, Jeffrey E. & Wing-Dyer, Jan	520
Eastside Mutual Water Company	2,804
Eggleston, Ronald H., et ux.	65
Ehrke, Allen A. & Bonnie E.	380
Empire Group, LLC	181
Exchange Bank, Trustee of the California State Controller Environmental Trust	780
Fedora, Sibley G. & Margaret L., Trustees	210
Forry, Laurie & Adams, Lois	2,285
Four Corners Farmland Fund Yolo, LLC	520
Gillaspy, William F., Trustee	210
Giusti, Richard J. & Sandra A., Trustees	1,610
Gjermann, Hal	12
Glenn-Colusa Irrigation District	825,000
Gomes, Judith A., Trustee	246
Green Valley Corporation	890
Griffin, Joseph & Prater, Sharon	2,760
Hale, Juith A. & Marks, Alice K.	75
Hale, Juith A. & Marks, Alice K.	130
Hatfield, Paul and Crystal	26
Heidrick & McGinnis Properties, LP	560
Heidrick, James E and Terry E, Trustees	85
Heidrick, James E and Terry E, Trustees	430
Henle, Thomas N., Trustee	935
Howald Farms, Inc.	2,760
Howard, Theodore W. & Linda M.	76
J.B. Unlimited, Inc.	510
Jaeger, William L. & Patricia A.	870
Jansen, Peter & Sandy	190
Kary, Carol, Trustee	610
Kary, Carol, Trustee	390
King, Benjamin & Laura	19
King, Laura	26
KLSY, LLC	170
Knights Landing Investors, LLC	3,640
Knights Landing Properties, LLC	200
Lake California Property Owners Association, Inc.	780
Lauppe, Alan, Joan Johnson, and Warren Lauppe	20
Lauppe, Burton H. & Kathryn L.	950
Lauppe, Burton H. & Kathryn L.	350
Leonard, James C.	53

Leviathan, Inc.	700
Lockett, William P. & Jean B.	417
Lomo Cold Storage & Micheli, Justin J.	7,110
Lonon, Michael E	1,155
Maxwell Irrigation District	17,980
MCM Properties, Inc.	1,470
Meridian Farms Water Company	35,000
McClatchy Partners, LLC and Riveryby Limited, LLC	500
Micke, Daniel H. & Nina J.	100
Morehead, Joseph A. & Brenda	255
Natomas Basin Conservancy	490
Natomas Central Mutual Water Company	120,200
Nelson, Henry E., Trustee	136
O'Brien, Janice C., Trustee	839
Odysseus Farms Partnership	630
Oji Brothers Farms, Inc.	3,200
Oji, Mitsue, Family Partnership, et al.	4,740
Otterson, Mike, Trustee	1,815
Pacific Realty Associates, L.P. (dba M&T Chico Ranch, Inc.)	17,956
Pelger Mutual Water Company	8,860
Pelger Road 1700, LLC	10,070
Penner, Roger & Leona	180
Pleasant Grove Verona Mutual Water Company	26,290
Princeton-Codora-Glen Irrigation District	67,810
Provident Irrigation District	54,730
Quad-H Ranches, Inc.	500
Reclamation District Nos. 900 & 1000	404
Reclamation District No. 1004	71,400
Reclamation District No. 108	232,000
Redding Rancheria Tribe	205
Redding, City of	21,000
Reische, Eric L.	90
Reische, Laverne C., et al.	450
Richter, Henry D., et al.	2,780
River Garden Farms Company	29,800
Riverview Golf & Country Club	280
Roberts Ditch Irrigation Company, Inc.	4,440
Rubio, Exequiel P. & Elsa A.	16
Sacramento River Ranch, LLC	4,000
Sacramento, County of	750
Saeed, Faraz A.	3,160

Seaver, Charles W. & Barbara J., Trustees	480
Sooch, Jagar S., et al.	155
Sutter Mutual Water Company	226,000
Swenson Farms, LLC	880
Sycamore Mutual Water Company	31,800
T & P Farms	1,560
Tarke, Stephen E. & Debra F., Trustees	2,700
Tisdale Irrigation & Drainage Company	9,900
Tuttle, Charles, Jr. & Noack, Sue T., Trustees	390
Van Ruiten Bros.	160
Van Ruiten Bros.	325
Van Ruiten Bros.	584
Van Ruiten Bros.	1,486
Wallace, Kenneth L. Living Trust	867
West Sacramento, City of	23,600
Willey, Edwin A. & Marjorie E.	95
Wilson Ranch Partnership	370
Wallace, Joseph V. & Janice C.	355
Windswept Land & Livestock Company	4,040
Wisler, John W., Jr.	35
Woodland - Davis Clean Water Agency	10,000
Yolo Land Trust	630
Young, Troy Brady and Susan Elizabeth	10
Zelmar Ranch, Inc.	164
<b>Sacramento River Settlement Contractor Total</b>	<b>2,112,160</b>
<b>Sacramento River Division – Sacramento River Settlement/Shasta</b>	<b>Maximum Contract Amount</b>
Anderson-Cottonwood Irrigation District	3,000
<b>Sacramento River Settlement/Shasta Total</b>	<b>3,000</b>
<b>American River Division – Folsom Dam &amp; Res.</b>	<b>Maximum Contract Amount</b>
El Dorado Irrigation District	7,550
Folsom, City of	7,000
Roseville, City of	32,000
Sacramento County Water Agency	15,000
San Juan Water District	24,200
El Dorado County Water Agency	15,000
<b>Folsom Dam &amp; Res. Total</b>	<b>100,750</b>
<b>American River Division – Folsom South Canal</b>	<b>Maximum Contract Amount</b>
East Bay Municipal Utility District	133,000
Sacramento Municipal Utility District	30,000

Sacramento County (assignment from SMUD)	30,000
<b>Folsom South Canal Total</b>	<b>193,000</b>
<b>American River Division – Upper American River</b>	<b>Maximum Contract Amount</b>
Placer County Water Agency	35,000
<b>Upper American River Total</b>	<b>35,000</b>
<b>Delta Division – Delta Mendota Canal</b>	<b>Maximum Contract Amount</b>
Banta-Carbona Irrigation District	20,000
Byron-Bethany Irrigation District	20,600
Del Puerto Water District	140,210
Eagle Field Water District	4,550
Mercy Springs Water District	2,842
Oro Loma Water District	600
Santa Clara VWD, Westlands WD	6,260
Patterson Irrigation District (6)	22,500
The West Side Irrigation District	5,000
Tracy, City of	20,000
U.S. Department of Veteran Affairs	850
West Stanislaus Irrigation District	50,000
Westlands Water District Distribution District 1	2,500
Westlands Water District Distribution District 1	2,990
Westlands Water District Distribution District 1	27,000
Westlands Water District Distribution District 2	4,198
<b>Delta Mendota Canal Total</b>	<b>330,100</b>
<b>Delta Division – Mendota Pool</b>	<b>Maximum Contract Amount</b>
Coehlo Family Trust	2,080
Fresno Slough Water District	4,000
James Irrigation District	35,300
Laguna Water District	800
Reclamation District No. 1606	228
Tranquillity Irrigation District	13,800
Tranquillity Public Utility District	70
Westlands Water District (Assigned from Oro Loma)	4,000
<b>Mendota Pool Total</b>	<b>60,278</b>
<b>Miscellaneous – Cross Valley Canal</b>	<b>Maximum Contract Amount</b>
Fresno, County of	3,000
Hills Valley Irrigation District	3,346
Kern-Tulare Water District	40,000
Lower Tule River Irrigation District	31,102

Pixley Irrigation District	31,102
Kern-Tulare Water District	13,300
Tri-Valley Water District	1,142
Tulare, County of	5,308
<b>Cross Valley Canal Total</b>	<b>128,300</b>
<b>San Felipe Division – San Felipe Unit</b>	<b>Maximum Contract Amount</b>
San Benito County Water District	43,800
Santa Clara Valley Water District (7)	152,500
<b>San Felipe Unit Total</b>	<b>196,300</b>
<b>West San Joaquin Division – San Luis Unit</b>	<b>Maximum Contract Amount</b>
Avenal, City of	3,500
California, State of	10
California, State of (Parks and Recreation)	2,250
Coalinga, City of	10,000
Huron, City of	3,000
Pacheco Water District	10,080
Panoche Water District	94,000
San Luis Water District	125,080
Santa Nella County Water District	0
Westlands Water District	1,150,000
<b>San Luis Unit Total</b>	<b>1,150,000</b>
<b>Delta Division – Mendota Pool Unit/Settlement Contractors</b>	<b>Maximum Contract Amount</b>
Dudley & Indart/Coelho/Hansen	2,280
Coelho Family Trust (10)	1,332
Fresno Slough Water District (10)	866
James Irrigation District (10)	9,700
Kenneth and Karen Carvalho Revocable Trust	600
Meyers Farms Family Trust	210
Reclamation District No. 1606 (10)	342
Tranquillity Irrigation District (10)	20,200
Tranquillity Public Utility District (10)	93
<b>Mendota Pool Unit/Settlement Contractors Total</b>	<b>35,623</b>
<b>Friant Division – Friant Dam &amp; Res.</b>	<b>Maximum Contract Amount</b>
Fresno County Water Works District No. 18	150
Gravelly Ford Water District	14,000
Madera, County of	200
<b>Friant Dam &amp; Res. Total</b>	<b>14,350</b>
<b>Friant Division – Friant-Kern Canal Class 1 &amp; Class 2</b>	<b>Maximum Contract Amount</b>

Arvin-Edison Water Storage District	40,000
Arvin-Edison Water Storage District	311,675
Delano-Earlimart Irrigation District	108,800
Delano-Earlimart Irrigation District	74,500
Exeter Irrigation District	11,100
Exeter Irrigation District	19,000
Fresno Irrigation District	200
Fresno, City of	60,000
Hills Valley Irrigation District	250
Hills Valley Irrigation District	1,000
Garfield Water District	3,500
International Water District	1,200
Ivanhoe Irrigation District	6,500
Ivanhoe Irrigation District	500
Kaweah Delta Water Conservation District	1,200
Kaweah Delta Water Conservation District	7,400
Kern-Tulare Water District	5,000
Lewis Creek Water District	1,200
Lindmore Irrigation District	33,000
Lindmore Irrigation District	22,000
Lindsay, City of	2,500
Lindsay-Strathmore Irrigation District	27,500
Lower Tule River Irrigation District	61,200
Lower Tule River Irrigation District	238,000
Orange Cove Irrigation District	39,200
Orange Cove, City of	1,400
Porterville Irrigation District	15,000
Porterville Irrigation District	30,000
Saucelito Irrigation District	300
Saucelito Irrigation District	21,200
Saucelito Irrigation District	32,800
Shafter-Wasco Irrigation District	50,000
Shafter-Wasco Irrigation District	39,600
Southern San Joaquin Municipal Utility District	97,000
Southern San Joaquin Municipal Utility District	45,000
Stone Corral Irrigation District	10,000
Tea Pot Dome Water District	7,200
Terra Bella Irrigation District	29,000
Tri-Valley Water District	400
Tulare Irrigation District	30,000
Tulare Irrigation District	141,000

<b>Friant-Kern Canal Class 1 &amp; Class 2 Total</b>	<b>1,626,325</b>
<b>Friant Division – Madera Canal Class 1 &amp; Class 2</b>	<b>Maximum Contract Amount</b>
Chowchilla Water District	55,000
Chowchilla Water District	160,000
Madera Irrigation District	85,000
Madera Irrigation District	186,000
<b>Madera Canal Class 1 &amp; Class 2 Total</b>	<b>486,000</b>
<b>Miscellaneous – Buchanan Unit</b>	<b>Maximum Contract Amount</b>
Chowchilla Water District	24,000
<b>Buchanan Unit Total</b>	<b>24,000</b>
<b>Miscellaneous – Hidden Unit</b>	<b>Maximum Contract Amount</b>
Madera Irrigation District	24,000
<b>Buchanan Unit Total</b>	<b>24,000</b>
<b>Delta Division – Contra Costa Canal Unit</b>	<b>Maximum Contract Amount</b>
Contra Costa Water District	195,000 <sup>2</sup>
<b>Buchanan Unit Total</b>	<b>195,000</b>
<b>Eastside Division – New Melones Dam &amp; Res.</b>	<b>Maximum Contract Amount</b>
Central San Joaquin Water Conservation Dist.	80,000
Stockton-East Water District	75,000
<b>New Melones Dam &amp; Res. Total</b>	<b>155,000</b>
<b>CVPIA Refuges</b>	
U.S. Fish and Wildlife – North of Delta	N/A
Department of Fish and Wildlife – North of Delta	N/A
U.S. Fish and Wildlife – South of Delta	N/A
Department of Fish and Wildlife – South of Delta	N/A
Grasslands Water District	N/A

<sup>2</sup> Highlighted Contractors covered by separate Implementing Agreements and/or Enforcement Agreements, and therefore, may not fall under the coverage of this MOU to avoid redundancy/conflict.





**ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION OF  
HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE DELTA  
BY CONTRA COSTA WATER DISTRICT**

**March 29, 2024**

This “Enforcement Agreement related to Implementation of Healthy Rivers and Landscapes Program in the Delta” is entered into by and between Contra Costa Water District (“CCWD”) and the State Water Resources Control Board (“State Water Board”) for the purpose of providing for regulatory enforcement of those flow, habitat restoration and other measures stated in Appendix 1 hereto. Defined terms are set forth in Section 2 of this Enforcement Agreement.

**RECITALS**

**A.** The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13000, et seq.) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

**B.** The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

**C.** The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan.

**D.** The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

**E.** On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

**F.** CCWD is subject to regulatory authority for enforcement of their obligations to implement flow, habitat restoration and other measures as specified in Appendix 1.

## **TERMS OF ENFORCEMENT AGREEMENT**

**1. Purpose.** This Enforcement Agreement states the specific obligations of CCWD for implementation of flow, habitat restoration and other measures for the Healthy Rivers and Landscapes Program as specified in Appendix 1. This Enforcement Agreement states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to CCWD. The Parties intend that the Delta’s Healthy Rivers and Landscapes Program measures include all of CCWD’s commitments to contribute to the Program of Implementation.

**1.1. Settlement of Disputed Issues.** This Enforcement Agreement resolves disputed issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to such implementation.

**1.2. Timeliness.** The Parties agree to the terms stated herein in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscapes Agreements. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. Delta Healthy Rivers and Landscapes Program** means the Healthy Rivers and Landscapes Flow Contribution, habitat enhancement, funding and other measures

specified in Appendix 1 of this Enforcement Agreement as the Covered Parties' contribution to the Healthy Rivers and Landscapes Program.

**2.2. Applicable Law** means: state or federal law that: (a) exists independently of this Enforcement Agreement, including a Constitution, statute, regulation, court decision, or common law; and (b) applies to obligations or activities of the State Water Board and CCWD contemplated by this Enforcement Agreement.

**2.2 AF** means acre-feet.

**2.3 Bay-Delta Plan** means: Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary (as amended December 12, 2018).

**2.4 CCWD** means: Contra Costa Water District.

**2.5 CDFW** means: the California Department of Fish and Wildlife.

**2.6 CDWR** means: the California Department of Water Resources.

**2.7 CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.8 Covered Entities** means: entities who hold water rights or contracts for water supplies from the Bay-Delta watershed and are identified as Covered Entities in Appendix 2 to this Enforcement Agreement.

**2.9 Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled "Salmon Protection" as stated in Bay-Delta Plan Table 3, p. 14 ("Narrative Salmon Objective"); and (ii) a new narrative objective to achieve the viability of native fish populations ("Narrative Viability Objective"), as stated in Exhibit A section 1 in the Global Agreement.

**2.10 Enforcement Agreement** means: this Enforcement Agreement for CCWD's contribution to the Healthy Rivers and Landscapes Program.

**Enforcement Agreements** means: the agreements signed by non-federal Parties pursuant to Government Code section 11415.60, or with respect to federal Parties, a Government Code section 11415.60 agreement to implement any Healthy Rivers and Landscapes Program-related modifications to water rights held by a federal entity and a memorandum of understanding to implement other federal Healthy Rivers and Landscapes

Program commitments, and approved by the State Water Board, to provide regulatory authority for enforcement of flow, habitat restoration and other measures in the Healthy Rivers and Landscapes Program.

**2.11 Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” The Global Agreement states the overall structure and content of the Healthy Rivers and Landscapes Program, along with the obligations of the Parties to support implementation of the Healthy Rivers and Landscapes Program.

**2.12 Implementation Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration and other measures in the Tributaries and Delta. In this Enforcement Agreement, the term refers to the Implementation Agreement for the Delta. Contemporaneously with the execution of this Enforcement Agreement, CCWD has entered into the Delta Implementation Agreement with CDWR.

**2.12 Material Modification** means: (a) a Regulatory Approval; or (b) an action or inaction with respect to a Party’s ability to perform its obligations under this Enforcement Agreement, that increases the obligations or other costs, reduces assurances or otherwise impairs bargained-for benefits of a Party to a significant extent, in that Party’s reasonable determination. Such conditions may arise from subsequent actions by the State Water Board, FERC, other regulatory agencies or courts, or from other changes in Applicable Law. Sections 8 (Dispute Resolution) and 9 (Remedies) establishes the procedures under this Enforcement Agreement for a response to a potential Material Modification.

**2.13 Parties** means the State Water Board and CCWD.

**2.14 Program of Implementation** means: the program of measures, schedule and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242, including measures required from CCWD under this Enforcement Agreement. The Supported Amendments, as approved, amend this Program of Implementation to authorize implementation of the Healthy Rivers and Landscapes Program.

**2.16 Regulatory Approval** whether in singular or plural, means any approval required under Applicable Laws for implementation of the Healthy Rivers and Landscapes Program, including the Biological Opinion for Long-Term Operations of the Central Valley Project and any other actions that may affect a Party’s obligations or activities of the Parties under this Enforcement Agreement.

**2.17 State Water Board** means: the State Water Resources Control Board.

**2.18 SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

**2.19 USBR** means: the United States Bureau of Reclamation.

**2.20 Healthy Rivers and Landscapes Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – G. This Enforcement Agreement is Exhibit \_\_\_\_ thereto.

**2.21 Healthy Rivers and Landscapes Agreements** means: the Global Agreement, the Implementation Agreements and the Enforcement Agreements.

**2.22 Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### **3. Obligations of CCWD.**

**3.1 Implementation.** CCWD will implement the obligations assigned to it in Appendix 1 in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance of these obligations will be subject to Sections 8 (Dispute Resolution) and 9 (Remedies), which establish the procedures under this Enforcement Agreement.

**3.2 Progress Reports and Inspections.** CCWD will cooperate with CDWR and Reclamation in preparing Annual and Triennial Reports with respect to implementation of the Delta Healthy Rivers and Landscapes Program. CCWD will be available to assist in assuring that the reports are provided to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D of the Global Agreement, section 1.5).

### **4. Obligations of State Water Board.**

**4.1. Execution of Order.** The Executive Officer of the State Water Board will sign the Order approving this Enforcement Agreement (Appendix 4 hereto), concurrent with the signing of this Enforcement Agreement.

**4.2. No Additional Contributions.** The State Water Board will not seek additional contributions from CCWD or the Covered Entities listed in Appendix 2 of this Enforcement Agreement, for the purpose of implementation of the Covered Water Quality Objectives or related purposes. This assurance will be implemented through the procedures, and subject to the requirements in limitations, stated in Exhibit A section 5 as incorporated in the Program of Implementation.

**4.3. Protection of Flows.** The State Water Board will use the protections identified in Exhibit A of the Global Agreement.

- A. CCWD will be available to assist the State Water Board in its proceedings to provide these protections. CCWD will support these protections, provided CCWD agrees with the authorities cited by the State Water Board, the scope, and the technical methodology used in a proceeding.
- B. The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses.

## **5. Enforcement.**

**5.1 General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of CCWD using: administrative civil liability, imposed pursuant to the procedures in Water Code sections 1050, et seq.; a cease-and-desist order adopted pursuant to the procedures stated in Water Code sections 1825, et seq.; or both.

**5.2** CCWD will not contest an enforcement action brought pursuant to this Section 5 on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to CCWD in Appendix 1.

**5.3** The State Water Board may not commence an enforcement action pursuant to this Section 5 against CCWD based on the non-performance of an obligation assigned to other parties under other Enforcement Agreements.

**5.4** CCWD may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Enforcement Agreement.

## **6. Dispute Resolution.**

**6.1** All disputes among the Parties regarding a potential Material Modification, a Party's performance or compliance with the provisions of this Enforcement Agreement, or other dispute regarding interpretation or administration of this Enforcement Agreement, will be subject to the dispute resolution process stated herein. Each such dispute will be brought and addressed in a timely manner. Resolution of a dispute will require unanimous consent of the Parties.

**6.2** The Parties may agree to additional or alternative dispute resolution procedures. The Parties will consider, but will not be required to agree to, reasonable

alternatives for resolving a dispute, such as providing an opportunity to cure a deficiency in performance of a Party's obligation under this Enforcement Agreement.

**6.3** This dispute resolution process does not preclude a Party from filing and pursuing an action for administrative or judicial relief to enforce an obligation under this Enforcement Agreement. A Party may bring a judicial or other action without exhausting these dispute resolution procedures.

**6.4** The Parties will devote such resources as are needed and as can be reasonably provided to resolve the dispute expeditiously. The Parties will cooperate in good faith to promptly schedule, attend and participate in the dispute resolution process. Unless otherwise agreed to, each Party will bear its own costs for its participation in the dispute resolution process. Time limits specified in this section may be shortened or extended upon agreement of the Parties.

**6.5** A Party claiming a dispute will issue notice of the dispute to the other Party within 7 days of becoming aware of the dispute. Such notice will describe: (a) the matter(s) in dispute; and (b) the specific relief sought.

**6.6** Following issuance of notice of a dispute, each Party will designate a representative to participate in an informal process to resolve the dispute. The informal process will include at least 2 meetings commencing within 20 days after the dispute initiation notice, and concluding within 45 days after the dispute initiation notice. If the representatives of the Parties determine that they are unable to resolve the dispute, then at least one meeting will be held within 20 days after such determination by management-level representatives of the Parties.

**6.7** If the dispute is not resolved in the informal meetings referred to in Section 8.6, then the Parties will decide within 45 days after the dispute initiation notice whether to use a neutral mediator to assist in resolving the dispute. If the Parties decide to use a mediator, then the Parties will select the mediator and determine how to allocate costs of the mediation among the Parties. The mediation process will be concluded within 75 days after the dispute initiation notice.

**6.8** The Party who provided notice of the dispute will provide a report of the results of the dispute resolution process including: (a) describing the dispute; (b) summarizing the approach to resolving the dispute, including alternatives considered; (c) stating whether the dispute was resolved; and (d) if the dispute was resolved, stating the resolution and specific relief granted.



## **7. Remedies.**

**7.1** A Party may terminate this Enforcement Agreement only if the Party has first complied with the dispute resolution procedures set forth in Section 6, and the Parties have not reached agreement on resolving the dispute.

**7.2** CCWD may terminate this Enforcement Agreement, and specify the effective date of such termination, if CCWD has reasonably determined that there has been a Material Modification with respect to any of the following:

**7.2.1** The State Water Board's Program of Implementation for the Delta.

**7.2.2.** Any other State Water Board water-quality or water-right action that would affect the Delta beyond the actions described in the Healthy Rivers and Landscapes Program, or any other actions that would increase any of CCWD's commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives.

**7.3** As an alternative to withdrawing from this Agreement due to a Material Modification, CCWD, in its discretion, may modify, suspend, or terminate its funding obligations under the Healthy Rivers and Landscapes Program.

**7.4** The State Water Board may terminate this Agreement, and specify the effective date of such termination, if the State Water Board has reasonably determined that there has been a Material Modification.

**7.5** The Parties reserve all other existing remedies for a Material Modification of this Agreement, provided that this section will constitute the exclusive procedure by which this Enforcement Agreement can be terminated.

**8. Force Majeure.** No Party will be liable for any failure of, or delay in, the performance of duties under this Enforcement Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any final determination by a court of competent jurisdiction that renders the performance of any duty under this Enforcement Agreement unlawful.

## **9. Effective Date and Term.**

**9.1** This Enforcement Agreement takes effect when signed by the Parties and will be binding as to such Parties when signed.

**9.2** Unless otherwise terminated according to its terms, the term of this Enforcement Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Enforcement Agreement will terminate upon that Party's withdrawal from the Global Agreement. The term of this Enforcement Agreement is subject to extension from time-to-time on terms approved by the Parties.

**10. No Admission of Liability.** The Parties enter into this Enforcement Agreement voluntarily. Nothing contained in this Enforcement Agreement is to be construed as an admission of liability, responsibility or procedural requirement as to any of the Parties, other than for purposes of enforcing this Enforcement Agreement. CCWD does not admit any liability or responsibility under the Fish and Game Code, Water Code; Article X, section 2 of the California Constitution; or the public trust doctrine, for providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in Section 5 would be available against it with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

**11. Compliance with Applicable Laws.** The Parties represent that they believe that this Enforcement Agreement is consistent with their respective statutory, regulatory, and other legal obligations for conservation, use or management of affected resources.

**12. Reservations.**

**12.1 Generally.** Nothing in this Enforcement Agreement is intended or will be construed to affect or limit the authority or obligation of the Parties to fulfill their respective constitutional, statutory and regulatory responsibilities or comply with any judicial decision. Nothing in this Enforcement Agreement will be interpreted to require any public agency to implement any action that is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized, or relinquished in this Enforcement Agreement.

**12.2 Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Enforcement Agreement is intended or will be construed to require the obligation, appropriation reprogramming or expenditure of any funds by any such public agency Party except as otherwise permitted by Applicable Law; provided that the Parties recognize that timely and sufficient funding is necessary to implement the Healthy Rivers and Landscapes Program.

**12.3 Federal Appropriations.** Nothing in this Enforcement Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Enforcement Agreement is

intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Enforcement Agreement.

**12.4 Environmental Review.** Nothing in this Enforcement Agreement is intended or will be construed to modify the application of the National Environmental Policy Act, California Environmental Quality Act, or other Applicable Law, to the environmental review of any action under this Enforcement Agreement, including the execution of this Enforcement Agreement.

**13. Notices.** Any Notice required by this Enforcement Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 3. Each Party will provide Notice of any change in the authorized representatives designated in Appendix 3, and [administrative entity] will maintain the current distribution list of such representatives.

**14. Attorneys' Fees and Costs.** The Parties will bear their own attorneys' fees and costs with respect to the negotiation, adoption, and enforcement of this Enforcement Agreement.

**15. Entire Agreement.** This Enforcement Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements between them, whether written or oral.

**16. Construction and Interpretation.** This Enforcement Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Enforcement Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Enforcement Agreement.

**17. Amendment.** This Enforcement Agreement may only be amended in writing by the Parties, including any successors or assigns. The Parties may provide Notice of a proposed amendment at any time. The Parties will meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**18. Additional Parties.** Subject to the consent of the Parties, and an appropriate amendment of this Enforcement Agreement, a non-covered entity may become a party by signing this Enforcement Agreement, the Delta Implementation Agreement, and other applicable agreements under the Healthy Rivers and Landscape Program, subject to the Parties' approval of the entity's proposed contribution under Appendix 1 hereto.

**19. Successors and Assigns.** This Enforcement Agreement will apply to, be binding on, and inure to the benefit of the Parties and their respective successors and assigns, unless otherwise specified in this Enforcement Agreement. No assignment may take effect without the express written approval of the Parties, which approval will not be unreasonably withheld.

**20. No Third-Party Beneficiaries.** This Enforcement Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Enforcement Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

**21. Elected Officials Not to Benefit.** No elected official will personally benefit from this Enforcement Agreement or from any benefit that may arise from it.

**22. Severability.** This Enforcement Agreement is made on the understanding that each term is a necessary part of the entire Enforcement Agreement. However, if any term or other part of this Enforcement Agreement is held to be unlawful, invalid or unenforceable, the Parties will undertake to assure that the remainder of the Enforcement Agreement will not be affected thereby. The Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid and enforceable and carries out the intention of this Enforcement Agreement to the greatest lawful extent.

**23. Authority to Bind.** Each signatory to this Enforcement Agreement certifies that he or she is authorized to execute this Enforcement Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**24. Counterpart Signatures; Facsimile and Electronic Signature.** This Enforcement Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Enforcement Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**[Signatures on following page]**

**The foregoing is approved by the Parties.**

State of California  
State Water Resources Control Board

\_\_\_\_\_

By:

Dated

Approved as to legal form  
and sufficiency:

\_\_\_\_\_  
Chief Counsel

Contra Costa Water District

\_\_\_\_\_

By:

Dated

Approved as to legal form  
and sufficiency:

\_\_\_\_\_  
Legal Counsel



## **APPENDICES**

- PROGRAM
1. THE DELTA HEALTHY RIVERS AND LANDSCAPES
  2. COVERED ENTITIES UNDER THIS AGREEMENT
  3. AUTHORIZED REPRESENTATIVES OF PARTIES

## **APPENDIX 1**

### **COVERED ENTITIES UNDER THIS ENFORCEMENT AGREEMENT**



## **APPENDIX 2**

### **DELTA HEALTHY RIVERS AND LANDSCAPES PROGRAM**

## **APPENDIX 3**

### **AUTHORIZED REPRESENTATIVES OF PARTIES**

**For the State Water Board**

**For CCWD**

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## **Exhibit C3. Feather River**

**ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION OF THE  
HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE FEATHER RIVER**

**March 29, 2024 Draft**

This “Enforcement Agreement related to Implementation of the Healthy Rivers and Landscapes Program in the Feather River” is entered into by and between the California State Water Resources Control Board and the California Department of Water Resources for the purpose of providing for regulatory enforcement of those flow, habitat restoration and other measures stated in Appendix 1 hereto. Defined terms are set forth in Section 2 of this Enforcement Agreement.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement

agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. DWR is subject to regulatory authority for enforcement of DWR's obligations to implement flow, habitat restoration and other measures as specified in Appendix 1.

### **TERMS OF ENFORCEMENT AGREEMENT**

1. **Purpose.** This Enforcement Agreement states the specific obligations of DWR for implementation of flow, habitat restoration and other measures for the Feather River Healthy Rivers and Landscapes Program as specified in Appendix 1. This Enforcement Agreement states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to DWR. The Parties intend that DWR’s Feather River Healthy Rivers and Landscapes Program measures include all of DWR’s commitments to contribute to the Program of Implementation for the Feather River.

1.1. **Settlement of Disputed Issues.** This Enforcement Agreement resolves disputed issues related to the Bay-Delta Plan and specifically resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to such implementation.

1.2. **Timeliness.** The Parties agree to the terms stated herein in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

2. **Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscapes Agreements. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

2.1. **Agreement** means: this Enforcement Agreement for the Healthy Rivers and Landscapes Program.

2.2. **Applicable Law** means: state or federal law that: (a) exists independently of this Enforcement Agreement, including a Constitution, statute, regulation, court decision, or common law; and (b) applies to obligations or activities of the State Water Board and DWR contemplated by this Enforcement Agreement.

2.2 **Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

2.3 **CESA** means: the California Endangered Species Act.

**2.4 CDFW** means: the California Department of Fish and Wildlife.

**2.5 Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

**2.6 Covered Entities** means: entities who hold water rights or contracts for water supplies from the Bay-Delta watershed and are identified as Covered Entities in Section 6 of this Enforcement Agreement.

**2.7 Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as stated in Exhibit A section 1 in the Global Agreement.

**2.8 DWR** means: the California Department of Water Resources.

**2.9 DWR’s Feather River Healthy Rivers and Landscapes Program** means: DWR’s Feather River flow measures, habitat restoration component, funding component and other measures specified in Appendix 1 of this Enforcement Agreement as DWR’s Feather River contribution to the Healthy Rivers and Landscapes Program.

**2.10 Enforcement Agreement** means: this Enforcement Agreement for the Feather River Healthy Rivers and Landscapes Program.

**2.11 Enforcement Agreements** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any VA-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscape Program.

**2.12 Feather River Agencies or FRA** means: the Feather River entities that signed the “Feather River Water Transfer Agreement,” attached as Exhibit A to DWR’s Feather River Implementation Agreement.

**2.13 Feather River Implementation Agreement** means: the “Implementation Agreement for the Healthy Rivers and Landscapes Program in the Feather River by the California Department of Water Resources.” (Insert date when signed/effective)

**2.14 Global Agreement** means: the “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” The Global Agreement states the overall structure and content of the HR&L Program, along with the obligations of the Parties to support implementation of the HR&L Program.

**2.15 Healthy Rivers and Landscapes Program or HR&L Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Enforcement Agreement is Exhibit C.3 thereto.

**2.16 Implementation Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration and other measures in the Tributaries and Delta. In this Enforcement Agreement, the term refers to DWR’s Feather River Implementation Agreement. Contemporaneously with the execution of this Enforcement Agreement, DWR has signed DWR’s Feather River Implementation Agreement.

**2.17 LTO ITP or ITP** means: the Incidental Take Permit governing the long term operations of the SWP issued by the California Department of Fish and Wildlife. (Date and permit number to be inserted upon completion of the consultation related to the 2023 ITP Application)

**2.18 Material Modification** means: a change in Applicable Law, or a new or amended regulatory action similar in character to pending actions described in Section 12.6(A), that imposes additional constraints on water supply operations, increases contributions of water for instream flow or Delta outflow, increases required habitat restoration, or increases contributions of funds, to an extent that materially impairs the bargained-for benefits of this Agreement. Section 14.2(A) establishes the criteria and procedures for response to a potential Material Modification.

**2.19 NMFS** means: the National Marine Fisheries Service.

**2.20 Oroville Complex** means: Oroville Dam and related facilities that may be used for Feather River flow deployments, including the Fish Barrier Dam, Fish Hatchery and Thermalito Afterbay River Outlet.

**2.21 Parties** means: the State Water Board and DWR.

**2.22 Program of Implementation** means: the program of measures, schedule and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242, including measures required from DWR under this Enforcement Agreement. The Supported Amendments, as approved, amend this Program of Implementation to authorize implementation of the HR&L Program.

**2.23 Reclamation** means: the United States Bureau of Reclamation.

**2.24 State Water Board** means: the State Water Resources Control Board.

**2.25 State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by DWR, for water supply, power, flood control and other purposes.

**2.26 TAF** means: thousand acre-feet.

**2.27 VA Memorandum of Understanding and Term Sheet or VA MOU** means: the March 29, 2022, Memorandum of Understanding Advancing a Term Sheet for the Voluntary Agreements to Update and Implement the Bay-Delta Water Quality Control Plan, and Other Related Actions, between VA Parties' signatories thereto, and the attached Term Sheet, including subsequent amendments.

**2.28 Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

**2.29 Water Year Type or WYT** means: the water year type based on the Sacramento Valley Index as published in DWR Bulletin 120.

### **3. Obligations of DWR.**

**3.1 Implementation.** DWR will implement the obligations assigned to DWR in Appendix 1 in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance of these obligations will be subject to Sections 8 (Dispute Resolution) and 9 (Remedies).

**3.2 Progress Reports and Inspections.** DWR will prepare Annual and Triennial Reports with respect to implementation of DWR's Feather River Healthy Rivers and Landscapes Program. DWR will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D of the Global Agreement, section 1.5).

### **4. Obligations of State Water Board**

**4.1. Execution of Order.** The Executive Officer of the State Water Board will sign the Order approving this Enforcement Agreement (Appendix B hereto), concurrent with the signing of this Enforcement Agreement.

**4.2. No Additional Contributions.** The State Water Board will not seek additional contributions from DWR or Covered Entities listed in Appendix 2 of this Enforcement Agreement, for the purpose of implementation of the Covered Water Quality Objectives or related purposes. This assurance will be implemented through the procedures, and subject to the requirements in limitations, stated in Exhibit A section 5 of the Global Agreement as incorporated in the Program of Implementation.

**4.3. Protection of Flows.** The State Water Board will use the protections identified in Exhibit A of the Global Agreement [*TBD – expand to include specific protections agreeable to SWRCB and Parties*].



- A. DWR will be available to assist the State Water Board in its proceedings to provide these protections. DWR will support these protections, provided they agree with the authorities cited by the State Water Board, the scope and the technical methodology, used in a proceeding.
- B. The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses. *[TBD – more specifics on such reporting.]*

**4.4 Expedited Process.** The State Water Board will undertake an expedited process for considering any petition by DWR pursuant to Water Code sections 1700-1725, changing the place and purpose of use for its water rights to implement its obligations hereunder.

**5. Guiding Principles for the Administration, Interpretation and Extension of this Enforcement Agreement.**

**5.1** The following principles will guide the Parties in the administration, interpretation and potential extension of the term of this Enforcement Agreement:

- a. Additional contributions to Delta inflow, Delta outflow, habitat enhancement, funding and other measures from DWR in implementing the Bay-Delta Plan should be comparable and proportionate to the contributions required of water users in other tributaries in the Sacramento River Basin, except as otherwise agreed to by DWR.
- b. Additional contributions to Delta inflow, Delta outflow, habitat enhancement, funding and other measures from water users in the Feather River watershed should be comparable and proportionate to their respective diversions of unimpaired flow from the Feather River watershed.
- c. DWR will provide the Feather River flow contribution as described in Appendix 1 during the term of this Agreement in order to advance the overall objectives of the HR&L Program, and not as a comparable and proportionate share of contributions to Delta inflow.
- d. The State Water Board will not assert that DWR providing the Feather River flow contribution as described in Appendix 1 for Delta inflow should be a precedent for future regulatory proceedings.
- e. The State Water Board will not assert that DWR is responsible for providing flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than DWR and the Covered Entities.

## **6. Covered Entities.**

**6.1** This Enforcement Agreement covers the contribution of DWR, FRA, and Covered Entities, as specified in Appendix 2, to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation.

**6.2** Except for DWR, FRA, and Covered Entities, this Enforcement Agreement does not cover the contribution of other water users in, or diverters of water from, the Feather River watershed to achieving the water quality objectives in the Bay-Delta Plan.

**6.3** Nothing in this Enforcement Agreement will require or be construed to require DWR to provide flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than DWR and the Covered Entities specified in Appendix 2.

## **7. Enforcement.**

**7.1 General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of DWR using: administrative civil liability, imposed pursuant to the procedures in Water Code sections 1050 et seq.; a cease-and-desist order adopted pursuant to the procedures stated in Water Code sections 1825 et seq.; or both.

**7.2** DWR will not contest an enforcement action brought pursuant to this Section 7.1 on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to it in Appendix 1.

**7.3** The State Water Board may not commence an enforcement action pursuant to this Section 7 against DWR based on the non-performance of an obligation assigned to other parties under other Enforcement Agreements.

**7.4** DWR may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Enforcement Agreement.

**7.5** DWR may enforce the FRA commitments in the Water Transfer Agreement pursuant to the process and remedies set forth therein. FRA are not subject to enforcement by the State Water Board pursuant to the terms and stipulated procedures of this Enforcement Agreement related to implementation of the Healthy Rivers and Landscapes Program in the Feather River.

## **8. Dispute Resolution.**

**8.1** All disputes among the Parties regarding a potential Material Modification, a Party's performance or compliance with the provisions of this Enforcement Agreement or other dispute regarding interpretation or administration of this Enforcement Agreement will be subject to the dispute resolution process stated herein. Each such dispute will be brought and addressed in a timely manner. Resolution of a dispute will require unanimous consent of the Parties.

**8.2** This dispute resolution process does not preclude a Party from filing and pursuing an action for administrative or judicial relief to enforce an obligation under this Enforcement Agreement. A Party may bring a judicial or other action without exhausting these dispute resolution procedures.

**8.3** A Party claiming a dispute will issue notice of the dispute to the other Party within 7 days of becoming aware of the dispute. Such notice will describe: (a) the matter(s) in dispute; and (b) the specific relief sought.

**8.4** Following issuance of notice of a dispute, authorized representatives for each Party will cooperate in good faith to promptly schedule, attend and participate in an informal process to resolve the dispute. If the representatives of the Parties determine that they are unable to timely resolve the dispute, then the dispute will be elevated to the Director of DWR and the Executive Director of the SWRCB for resolution.

## **9. Remedies.**

**9.1** A Party may terminate this Enforcement Agreement only if the Party has first complied with the dispute resolution procedures set forth in Section 8, and the Parties have not reached agreement on resolving the dispute.

**9.2** DWR may terminate this Enforcement Agreement, and specify the effective date of such termination, if DWR has reasonably determined that there has been a Material Modification.

**9.3** The State Water Board may terminate this Agreement, and specify the effective date of such termination, if the State Water Board has reasonably determined that there has been a Material Modification.

**9.4** The Parties reserve all other existing remedies for a Material Modification of this Agreement, provided that this section will constitute the exclusive procedure by which this Enforcement Agreement can be terminated.

**10. Force Majeure.** No Party will be liable for any failure of, or delay in, the performance of duties under this Enforcement Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any final determination by a court of competent jurisdiction that renders the performance of any duty under this Enforcement Agreement unlawful.

## **11. Effective Date and Term.**

**11.1** This Enforcement Agreement takes effect when signed by the Parties and will be binding as to such Parties when signed.

**11.2** Unless otherwise terminated according to its terms, the term of this Enforcement Agreement will be concurrent with the term of the Global Agreement. As to

any Party, this Enforcement Agreement will terminate upon that Party's withdrawal from the Global Agreement. The term of this Enforcement Agreement is subject to extension from time to time on terms approved by the Parties.

**12. No Admission of Liability.** The Parties enter into this Enforcement Agreement voluntarily. Nothing contained in this Enforcement Agreement is to be construed as an admission of liability, responsibility or procedural requirement as to any of the parties, other than for purposes of enforcing this Enforcement Agreement. DWR does not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or the public trust doctrine, for providing the flows, habitat restoration and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in Section 7 would be available against DWR with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

**13. Compliance with Applicable Laws.** The Parties represent that they believe that this Enforcement Agreement is consistent with their respective statutory, regulatory or other legal obligations for conservation, use or management of affected resources.

**14. Reservations.**

**14.1 Generally.** Nothing in this Enforcement Agreement is intended or will be construed to affect or limit the authority or obligation of the Parties to fulfill their respective constitutional, statutory and regulatory responsibilities or comply with any judicial decision. Nothing in this Enforcement Agreement will be interpreted to require any public agency to implement any action that is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Parties expressly reserve all rights not granted, recognized or relinquished in this Enforcement Agreement.

**14.2 Availability of Funding.** Funding by any public agency Party is subject to the requirements of Applicable Law. Nothing in this Enforcement Agreement is intended or will be construed to require the obligation, appropriation reprogramming or expenditure of any funds by any such public agency Party except as otherwise permitted by Applicable Law; provided that the Parties recognize that timely and sufficient funding is necessary to implement the HR&L Program.

**14.3 Federal Appropriations.** Nothing in this Enforcement Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Enforcement Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Enforcement Agreement.

**14.4 Environmental Review.** Nothing in this Enforcement Agreement is intended or will be construed to modify the application of the National Environmental

Policy Act, California Environmental Quality Act, or other Applicable Law, to the environmental review of any action under this Enforcement Agreement, including the execution of this Agreement.

**15. Notices.** Any Notice required by this Enforcement Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice transmitted via email or other electronic means will be effective upon acknowledgment of receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. A Party may notify the other Parties in writing of a change in its designated representatives, without requiring an amendment to this Agreement. Notices will be provided as follows:

To DWR:

To SWRCB:

**16. Attorney's Fees and Costs.** The Parties will bear their own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Enforcement Agreement.

**17. Entire Agreement.** This Enforcement Agreement contains the entire agreement of the Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements between them, whether written or oral.

**18. Construction and Interpretation.** This Enforcement Agreement has been arrived at through negotiation. Each Party has had a full and fair opportunity to revise the terms of the Enforcement Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Enforcement Agreement.

**19. Amendment.** This Enforcement Agreement may only be amended in writing by the Parties, including any successors or assigns. The Parties may provide Notice of a proposed amendment at any time. The Parties will meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**20. Additional Parties.** Subject to the consent of the Parties, and an appropriate amendment of this Enforcement Agreement, a non-covered entity may become a party by signing this Enforcement Agreement and the other Healthy Rivers and Landscapes Program Agreements, subject to the Parties' approval of the entity's proposed contribution under Appendix 1 hereto.

**21. Successors and Assigns.** This Enforcement Agreement will apply to, be binding on, and inure to the benefit of the Parties and their respective successors and assigns, unless otherwise specified in this Enforcement Agreement. No assignment may take effect without the express written approval of the Parties, which approval will not be unreasonably withheld.

**22. No Third-Party Beneficiaries.** This Enforcement Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Parties hereto or Covered Entities specified in Appendix 2, as intended or expected

third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Enforcement Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties will remain as imposed under Applicable Law.

**23. Elected Officials Not to Benefit.** No elected official will personally benefit from this Enforcement Agreement or from any benefit that may arise from it.

**24. Severability.** This Enforcement Agreement is made on the understanding that each term is a necessary part of the entire Enforcement Agreement. However, if any term or other part of this Enforcement Agreement is held to be unlawful, invalid or unenforceable, the Parties will undertake to assure that the remainder of the Enforcement Agreement will not be affected thereby. The Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid and enforceable and carries out the intention of this Enforcement Agreement to the greatest lawful extent.

**25. Authority to Bind.** Each signatory to this Enforcement Agreement certifies that he or she is authorized to execute this Enforcement Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**26. Counterpart Signatures; Facsimile and Electronic Signature.** This Enforcement Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Parties had signed the same instrument. The signature pages of counterparts of this Enforcement Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**[Signature Blocks]**

## Appendix 1.

### I. Responsibilities for Implementation on Feather River (Flow and Non-Flow Measures) and Supporting Actions

#### A. Feather River Flow Measures

DWR will implement the below described flow measures to provide flow contributions in the Feather River downstream of the Oroville Complex in order to increase survival of emigrating juvenile salmonids by providing increased Delta outflow, increased cover from predators, reduced pathogen transmission, decreased energetic expenditure during migration, and increased rearing habitat.

1. **Feather River HR&L Flow Deployment: Volumes, Timing and Flexibility.** DWR will deploy 60 TAF of flow contributions during March through May in Dry, Below Normal and Above Normal WYTs, as specified in Table I.A.1, below. Bold percentages in Table I.A.2 represent the default deployment plan and the percentage range in the parentheses represent the flexibility bracket for potential Feather River flow contributions. The flow contribution will be implemented as provided in the default plan unless a different flow contribution schedule, consistent with the flexibility bracket, is decided through the Feather River Implementation Agreement Governance process described in Section II, below.

Table I.A.1

Water Year	C	D	BN	AN	W
<b>Flow Contributions</b>	0	60	60	60	0

Table I.A.2

Water Year	Mar	Apr	May
<b>Above Normal</b>	<b>50%</b> (0-50%)	<b>25%</b> (0-75%)	<b>25%</b> (0-75%)
<b>Below Normal</b>	<b>25%</b> (0-75%)	<b>50%</b> (0-75%)	<b>25%</b> (0-50%)
<b>Dry</b>	<b>33.3%</b> (0-100%)	<b>33.3%</b> (0-50%)	<b>33.3%</b> (0-75%)

2. **Flow Accounting.** The Oroville Complex Feather River flow releases are additive to the baseline described in Section 4.4.A of the Global Agreement. Flows deployed through the Oroville Complex will be subject to the accounting procedures described in [Placeholder for Accounting Reference] and all flows will be verified as a contribution above baseline using these accounting procedures. DWR commits to not divert any of the 60 TAF of Feather River flow contribution after release below the Oroville Complex.

3. **Feather River Agencies' Supporting Actions.** The Feather River Agencies will support DWR's State Water Project and its implementation of the Feather River flow contribution specified in Section I.A.1, above, through the Feather River Water Transfer Agreement attached as Exhibit A to the Feather River Implementation Agreement. In Dry, Below Normal and Above Normal WYT, the FRA will deliver water to the Oroville Complex as specified in the Water Transfer Agreement during the water transfer period (May 1 – December 31), as more specifically described in the Water Transfer Agreement. The Water Transfer Agreement is expected to result in 60 TAF of water delivered to Oroville Complex in support of Feather River flow contributions through a combination of land fallowing (with limited groundwater substitution), with reduced water deliveries for agricultural use within FRA service areas, and reservoir reoperation.<sup>1</sup> The FRA commit to not divert any of the 60 TAF of Feather River flow contribution by DWR after release below the Oroville Complex. Except as specified in the Water Transfer Agreement, the FRAs will have no other responsibilities for (i) making water available for Feather River flow contributions; (ii) contributing to the Feather River habitat restoration component; and (iii) for funding the HR&L Program.

#### **B. Feather River Habitat Restoration Component**

During the term of this Agreement and consistent with Appendix 2 of the Global Agreement, DWR will design and construct 15 acres of spawning habitat, 5.25 acres of instream habitat and 1,655 acres of floodplain habitat (consisting of added instream habitat complexity and side-channel improvements). DWR will, subject to appropriations, design and construct such habitat features consistent with best available science and applicable environmental requirements. To achieve these habitat commitments, DWR will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals.

#### **C. Feather River Funding Component**

1. **Compensation for Flow Contribution.** During the term of this Agreement, payments to FRA for their supporting actions, will be made or arranged by DWR or the [HR&L Funding Entity], as further specified in the Water Transfer Agreement.

**Science and Habitat Fund Contribution.** Each year during the term of this Agreement, \$1.0 per acre-foot of surface water diverted by FRA for beneficial use within their service areas will be contributed on behalf of the FRA to the HR&L Structural Science and Habitat Fund, as further specified in the Water Transfer Agreement.

#### **D. Conditions.**

1. During the term of this Agreement, DWR's commitments and FRA's commitments in the Water Transfer Agreement, as specified therein, will be subject to suspension or termination if the State Water Board takes action to

<sup>1</sup> Real Water Verification procedures for the FRA's supporting actions are set forth in the Water Transfer Agreement attached as Exhibit A to the Feather River Implementation Agreement.



require additional commitments as a requirement of Bay-Delta Plan implementation that constitute a Material Modification of the commitments specified herein above. Prior to any such suspension or termination, DWR will seek to meet and confer with the State Water Board and will undertake the dispute resolution procedure required under the Feather River Enforcement Agreement, as applicable.

2. Nothing herein shall be interpreted to modify, change or otherwise obviate any legal requirement for DWR to fully implement minimization and mitigation measures specified in the LTO ITP.

## **II. Feather River Implementation Agreement Governance**

**A. Feather River Implementing Entities and Regulatory Assurances.** DWR is the only entity with direct responsibilities for HR&L Program implementation actions under this Agreement. While not Responsible Parties or Implementing Entities, FRA will support DWR's responsibilities as set forth in the Water Transfer Agreement. This Agreement is intended to provide regulatory assurances for DWR, FRA, and Covered Entities as further specified in Appendix 2.

### **B. Feather River Flow and Non-Flow Measures Governance.**

1. DWR will implement the Feather River flow and non-flow measures, as described above, and will consider the recommendations of the Systemwide Governance Committee and local system biologists related to flow contributions and timing. Except as provided in subsections C and D, below, for flow contributions relied upon for CESA compliance, DWR will retain sole discretion over the volumes specified in Table I.A.1 and the timing of flow contributions within the flexibility bracket specified in Table I.A.2.
2. DWR will seek prior approval from the State Water Board and concurrence from the FRA before implementing any proposed flow contribution schedule that exceeds the flexibility bracket limits.
3. DWR will determine the timing and WYT for Feather River HR&L Program deployment actions for purposes of implementing the flow measures specified in Section I.A.1, above, through development of the Spring Outflow plan prepared pursuant to Section II.D, below. Plan development and any subsequent revisions will be based on factors including but not limited to the following:
  - a. Hydrologic and precipitation data, including the DWR Bulletin 120 March 1<sup>st</sup> 90% exceedance forecast; DWR Bulletin 120 April 1<sup>st</sup> 75% exceedance forecast; and DWR Bulletin 120 May 1<sup>st</sup> exceedance forecast.

- b. Uncertainties of hydrologic conditions.
- c. Deployment mechanisms and timing.

- C. **Implementation Measures and Other Regulatory Proceedings.** Consistent with VA MOU Term Sheet section 11, Feather River flow and non-flow measures are intended to be recognized in other regulatory proceedings, to the maximum extent allowable under law, including in LTO ITP. The timing and mechanism of Oroville Complex deployments to provide Feather River flow contributions specified in Table I.A.1 within the flexibility brackets specified in Table I.A.2, above, shall be subject to CESA permit requirements governing decisions related to planning, deployment and accounting.
- D. **Spring Outflow and ITP for Long Term Operations of SWP.** Diversion fees collected from SWP contractors for implementation of the HR&L Program will be used, in part, to fund payments to the FRA under the Water Transfer Agreement, resulting in water available in Oroville Dam. The Feather River flow contributions are expected to result in increased Delta outflow during the spring period. This increased Delta outflow is intended to contribute to DWR's compliance with Spring Outflow requirements under the SWP LTO ITP. DWR and CDFW will confer, beginning no later than January 15 of each year, to develop a plan for deployment of the Feather River flow contributions required by the ITP, including mechanisms and timing. To ensure consistency between HR&L Program and ITP flow deployment decision making each year, CDFW and DWR will coordinate with NMFS, USFWS, and Reclamation on plan development. The plan is subject to CDFW approval and may be revised, with CDFW concurrence, to account for updated hydrologic conditions.

### III. **Feather River Science Program**

[The Feather River Science Program components are still under development.

The HR&L Science Plan will provide the framework and specific approach for evaluating the outcomes of the Flow and Non-flow Measures and ultimately to inform the State Water Board's assessment in Year 8 of the HR&L Program as described in the Exhibit A to the Global Agreement, "Supported Amendments to the Bay-Delta Plan". DWR will contribute to syntheses of the data produced through the HR&L Science Program in Annual Reports, Triennial Reports for Years 3 and 6 of HR&L Program implementation, and an ecological outcomes report prior to Year 7, as described in Section 9.4 of the Global Agreement. Information collected by the HR&L Science Program will serve to track and report progress relative to metrics identified in the HR&L Science Plan and will inform the biological and ecological outcomes of the HR&L actions.

To achieve the comprehensive HR&L Science Program described in Section 10 of the Global Agreement, DWR will participate in the HR&L Science Committee to advance consistency and coordination across Governance Area Entity activities. DWR will conduct science activities to

inform the Science Plan hypotheses to produce results that inform recommendations to the Systemwide Governance Committee regarding adaptive management of Flow and Non-flow Measures, and priorities for further investment in the Science Program. Additionally, coordinated by the HR&L Science Committee, DWR will develop detailed assessment protocols tailored to the specific measures implemented in the Feather River. The results of the assessments will be provided in HR&L Program reports as described in Section 9.4 of the Global Agreement as well as the ecological outcomes analysis to be provided prior to Year 7 of the HR&L Program, as described in Section 10.1 of the Global Agreement.]

## **Appendix 2.**

### **Feather River Covered Entities**

[This appendix will further define the Feather River Covered Entities, including FRA and, as applicable, other specific water rights holders and/or geographic regions receiving regulatory assurances hereunder and intended to be Covered Entities under the Feather River Enforcement Agreement]

### **Exhibit A**

[Placeholder for Feather River Water Transfer Agreement]

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# **Exhibit C4. Friant**

The San Joaquin River (Friant) Enforcement Agreement is still in development and not available at this time. Because the forbearance of recapture water under the San Joaquin River Restoration Program (Program) is included in the San Joaquin River (Friant) Implementation Agreement, the Friant Parties believe it is appropriate to consult with the plaintiffs to the settlement of litigation the Program is implementing. The consultation process with the plaintiffs is ongoing and we hope will be completed in the near future.

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# **Exhibit C5. Mokelumne River**

**ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION OF THE  
HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE MOKELUMNE  
RIVER WATERSHED**

**March 29, 2024 Draft**

This “Enforcement Agreement related to Implementation of Healthy Rivers and Landscapes Program in the Mokelumne River Watershed” (“Enforcement Agreement”) is entered into by and between the California State Water Resources Control Board and the signatories hereto for the purpose of providing for regulatory enforcement of those flow, habitat restoration, and other measures stated in Appendix 1 hereto.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow

and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. For purposes of implementing the Healthy Rivers and Landscapes Program (“HRL Program”) in the Mokelumne River watershed, the Mokelumne River Responsible Parties agree to be subject to the State Water Board’s regulatory authority for enforcement of their obligations to the implement flow, habitat restoration and other measures specified in Appendix 1 in the manner provided in this Enforcement Agreement.

## **TERMS OF AGREEMENT**

**1. Purpose.** This Enforcement Agreement states the specific obligations of the Mokelumne River Responsible Parties for implementation of flow, habitat restoration, and other measures for the Mokelumne River watershed as specified in Appendix 1. It states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to the Mokelumne River Responsible Parties.

**1.1. Settlement of Disputed Issues.** The Global Agreement, of which this Enforcement Agreement is a part, addresses disputed issues related to the Bay-Delta Plan and specifically, addresses disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

**1.2. Timeliness.** The State Water Board and the Mokelumne River Responsible Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all HRL Program Agreements. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. Applicable Law** means: state or federal law that (a) exists independently of this Enforcement Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of the Mokelumne River Responsible Parties contemplated by this Enforcement Agreement.



2.2. **Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

2.3. **CDFW** means: the California Department of Fish and Wildlife.

2.4. **CDWR** means: the California Department of Water Resources.

2.5. **Central Valley Project** or **CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

2.6. **Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in an Enforcement Agreement for the water source which is the basis for their diversion or use as appropriate. Within the Mokelumne River watershed, a Covered Entity is any person or entity who or which possesses the legal right to divert water from any stream within the Mokelumne River watershed from a point or points of diversion located upstream of Camanche Dam, regardless of the nature of the water right. Notwithstanding the foregoing, any Covered Entity that is also a Responsible Party must comply with this Enforcement Agreement to receive the benefits of this Enforcement Agreement. For the avoidance of doubt, a person or entity who or which diverts water from a point or points of diversion within the Mokelumne River watershed located downstream of Camanche Dam is not a Covered Entity, but such a person or entity may become an Implementing Entity and/or a Responsible Party by signing the appropriate agreement(s) and thereby become subject to the rights and obligations of those respective agreement(s).

2.7. **Covered Water Quality Objectives** means: the objectives that the HRL Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as stated in Exhibit A section 1.

2.8. **Enforcement Agreements** means: this Enforcement Agreement related to Implementation of the HRL Program in the Mokelumne River Watershed, and the other such agreements to assure implementation of the HRL Program, each executed pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the HRL Program. References to “this Enforcement Agreement” refer to this Exhibit C.5 applicable to the Mokelumne River watershed.

2.9. **Final Action** means: final action by the State Water Board to amend the Bay-Delta Plan to approve the Supported Amendments authorizing the implementation of the HRL Program.

2.10. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the HRL Program, along with the obligations of the Parties to support implementation.

2.11. **Healthy Rivers and Landscapes Program** or **HRL Program** means the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Enforcement Agreement is Exhibit C.5 thereto.

2.12. **Healthy Rivers and Landscapes Program Agreements** or **HRL Program Agreements** means: the Global Agreement, the Implementation Agreements, and the Enforcement Agreements.

2.13. **Implementation Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration, and other measures in the Tributaries and Delta. In this Enforcement Agreement for the Mokelumne River Watershed, the term when used in the singular refers to the Implementation Agreement for this same water source.

2.14. **Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in the Implementation Agreements, and specifically Appendix 1 thereto. Responsible Parties are Implementing Entities that sign an Enforcement Agreement.

2.15. **Mokelumne River Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures specified in the Implementation Agreement Appendix 1. The Mokelumne River Governance Entity is the Lower Mokelumne River Partnership, acting through its Mokelumne River Technical Advisory Committee, Partnership Coordinating Committee, and Partnership Steering Committee.

2.16. **Parties** means: those signatories to the Global Agreement who also sign the applicable Enforcement and/or Implementation Agreement. Parties who sign an Enforcement Agreement are Responsible Parties. Parties who sign an Implementation Agreement are Implementing Entities. A Party may be a Responsible Party and an Implementing Entity simultaneously by signing both an Implementation Agreement and an Enforcement Agreement.

2.17. **Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, amend this program to authorize implementation of the HRL Program.

2.18. **Responsible Parties** means: the Parties who are Implementing Entities under an Implementation Agreement and sign the corresponding Enforcement Agreement. Responsible Parties under this Enforcement Agreement are called “Mokelumne River Responsible Parties.”

2.19. **State Water Board** means: the State Water Resources Control Board.

2.20. **USBR** means: the United States Bureau of Reclamation.

2.21. **Year means:** time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### 3. **Obligations of Mokelumne River Responsible Parties.**

3.1. **Implementation.** Each Mokelumne River Responsible Party will implement the obligations assigned to that entity in Appendix 1.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance will be subject to the remedies stated in Appendix 1 and in Section 5 below.
- B. If an obligation is assigned to multiple Mokelumne River Responsible Parties under this Enforcement Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Mokelumne River Responsible Party, other such entities will not be responsible for performance.

3.2. **Progress Reports and Inspections.** The Mokelumne River Governance Entity will prepare Annual and Triennial Reports with respect to implementation. The entity will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

### 4. **Obligations of State Water Board**

4.1. **Execution of Order.** The Executive Officer of the State Water Board shall sign the Order approving this Enforcement Agreement (Appendix 2 hereto), concurrent with the signing of this Enforcement Agreement.

4.2. **Additional Contributions.** While this Enforcement Agreement is in effect, the State Water Board will not seek additional contributions, as that term is defined below, from the Responsible Parties, other Implementing Entities, or Covered Entities in the Mokelumne River watershed, for the purpose of implementation of the Covered

Water Quality Objectives or related purposes, for instream or environmental purposes, or for any water quality certification under Section 401 of the Clean Water Act.

- A. With respect to each individual Responsible Party, Implementing Entity, or Covered Entity, “additional contributions” means any flows or releases which exceed the flows or releases such party or entity was legally required to provide or make for instream and/or environmental purposes on the Effective Date of the Global Agreement including the flows required by this Enforcement Agreement.
- B. With respect to EBMUD specifically, “additional contributions” means any flows or releases which exceed those required of EBMUD for instream and/or environmental purposes by Revised Water Rights Decision 1641, Permit 10478, and this Enforcement Agreement, cumulatively.

4.3. **Protection of Flows.** The State Water Board will use the protections identified in Exhibit A (Supported Amendments to the Bay-Delta Plan), Section 3 (Procedures for Protection of Flows) to protect flows attributed to the Mokelumne River Responsible Parties.

- A. Responsible Parties will be available to assist the State Water Board in its proceedings to provide these protections. Responsible Parties who so participate will support these protections, provided they agree with the authorities cited by the State Water Board, the scope, and the technical methodology, used in a proceeding. Mokelumne River Responsible Parties currently have no legal means of supporting the State Water Board in the protection of flows, but will provide technical advice as requested.
- B. The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses.

4.4. **Expedited Process.** The State Water Board will undertake an expedited process for considering any petition by a Mokelumne River Responsible Party or other Implementing Entity pursuant to Water Code sections 1700-1725, changing the place and purpose of use for its water rights to implement its obligations hereunder.

## 5. **Enforcement and Dispute Resolution Procedures.**

5.1. **General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of Mokelumne River Responsible Parties using a cease-

and-desist order adopted pursuant to the procedures stated in Water Code sections 1825 et seq.

- A. No Mokelumne River Responsible Party will contest an enforcement action brought pursuant to this Section 5.1 on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to it in Appendix 1.
- B. The State Water Board may not commence an enforcement action against a Mokelumne River Responsible Party based on the non-performance of an obligation assigned to another Mokelumne River Responsible Party.

5.2. **State Water Board.** Mokelumne River Responsible Parties may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Enforcement Agreement.

5.3. **Dispute Resolution Procedures.** Prior to taking any enforcement action pursuant to Section 5, the State Water Board will provide notice to the Mokelumne River Responsible Party that the State Water Board alleges has violated an obligation, a written description of the alleged violation, and a reasonable opportunity for the Mokelumne River Responsible Party to cure the alleged violation. If, within 30 days of receipt of a notice of violation, a Mokelumne River Responsible Party named in such notice wishes to dispute the alleged violation or any ordered abatement of such violation, the Mokelumne River Responsible Party may provide notice to the State Water Board of its request to commence dispute resolution through non-binding arbitration before a neutral arbiter. If the State Water Board and the Mokelumne River Responsible Party are unable to resolve the dispute through non-binding arbitration, then the State Water Board may take further enforcement action pursuant to Section 5.1 of this Enforcement Agreement.

5.4. **Force Majeure.** No Party shall be liable for any failure of, or delay in, the performance of duties under this Enforcement Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any final determination by a court of competent jurisdiction that renders the performance of any duty under this Enforcement Agreement unlawful.

## 6. **Effective Date and Term.**

6.1. This Enforcement Agreement takes effect when signed by the Responsible Parties and will be binding as to such Parties when signed.

6.2. The term of this Enforcement Agreement will be concurrent with the term of the Global Agreement. As to any Mokelumne River Responsible Party, this Enforcement Agreement will terminate upon that Mokelumne River Responsible Party's withdrawal from the Global Agreement.

7. **No Admission of Liability.** Mokelumne River Responsible Parties enter into this Enforcement Agreement voluntarily. Mokelumne River Responsible Parties agree that nothing contained in this Enforcement Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the Mokelumne River Responsible Parties, other than for purposes of enforcing this Enforcement Agreement. The Mokelumne River Responsible Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or the public trust doctrine, for providing the flows, habitat restoration, and other measures stated in Appendix 1 of this Enforcement Agreement, or otherwise admit that the enforcement authorities provided in Section 5 would be available against them with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

8. **Compliance with Applicable Laws.** Each Mokelumne River Responsible Party represents that it believes that this Enforcement Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

9. **Reservations.**

9.1. **Generally.** Nothing in this Enforcement Agreement is intended or will be construed to affect or limit the authority or obligation of any Mokelumne River Responsible Party to fulfill its constitutional, statutory, and regulatory responsibilities or to comply with any judicial decision. Nothing in this Enforcement Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Mokelumne River Responsible Parties expressly reserve all rights not granted, recognized, or relinquished in this Enforcement Agreement.

9.2. **Availability of Funding.** Funding by any public agency Mokelumne River Responsible Party is subject to the requirements of Applicable Law. Nothing in this Enforcement Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law; provided that the Mokelumne River Responsible Parties recognize that timely and sufficient funding is necessary to implement the HRL Program.

9.3. Omitted.

9.4. **Environmental Review.** Nothing in this Enforcement Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Enforcement Agreement.

10. **Notices.** Any notice required by this Enforcement Agreement shall be provided in writing. Notice shall be provided by electronic mail to an authorized representative of a Mokelumne River Responsible Party, unless the sending entity determines that first-class mail or personal delivery to an authorized representative of a Mokelumne River Responsible Party is more appropriate in a given circumstance. A notice will be effective upon receipt, but if provided by U.S. Mail, notice shall be deemed effective on the seventh day after the date on which the notice was mailed. For the purpose of notice, the list of authorized representatives of the Mokelumne River Responsible Parties as of the Effective Date is attached as Appendix 3. Each such entity will provide notice of any change in the authorized representatives designated in Appendix 3, and the State Water Board will maintain the current distribution list of such representatives.

11. **Attorney's Fees and Costs.** The State Water Board and each Mokelumne River Responsible Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Enforcement Agreement.

12. **Entire Agreement.** The Global Agreement, of which this Enforcement Agreement is a part, contains the entire agreement of the Mokelumne River Responsible Parties and the State Water Board with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

13. **Construction and Interpretation.** This Enforcement Agreement has been arrived at through negotiation. Each Mokelumne River Responsible Party has had a full and fair opportunity to revise the terms of this Enforcement Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Enforcement Agreement.

14. **Amendment.** This Enforcement Agreement may only be amended in writing by all Mokelumne River Responsible Parties still in existence, including any successors or assigns. A Responsible Party may provide notice of a proposed amendment at any time. The Mokelumne River Responsible Parties agree to meet in person or by teleconference within 20 days of receipt of notice of a proposed amendment.

15. **Addition of New Responsible Parties.** An entity, including a non-covered entity, may become a Responsible Party by signing this Enforcement Agreement and the other HRL Program Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto and the amendment of this Enforcement Agreement pursuant to Section 14 of this Enforcement Agreement.

16. **Successors and Assigns.** This Enforcement Agreement will apply to, be binding on, and inure to the benefit of the Mokelumne River Responsible Parties and their successors and assigns, unless otherwise specified in this Enforcement Agreement. No assignment may take effect without the express written approval of the other parties, which approval will not be unreasonably withheld.

17. **No Third Party Beneficiaries.** This Enforcement Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Mokelumne River Responsible Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Enforcement Agreement. The duties, obligations, and responsibilities of the Mokelumne River Responsible Parties with respect to third parties will remain as imposed under Applicable Law.

18. **Elected Officials Not to Benefit.** No elected official will personally benefit from this Enforcement Agreement or from any benefit that may arise from it.

19. **Severability.** This Enforcement Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Enforcement Agreement is held to be unlawful, invalid, or unenforceable, the Mokelumne River Responsible Parties will undertake to assure that the remainder of this Enforcement Agreement will not be affected thereby. The State Water Board and Mokelumne River Responsible Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the intention of this Enforcement Agreement to the greatest lawful extent.

20. **Authority to Bind.** Each signatory to this Enforcement Agreement certifies that he or she is authorized to execute this Enforcement Agreement and to legally bind the entity the signatory represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

21. **Counterpart Signatures; Facsimile and Electronic Signature.** This Enforcement Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Mokelumne River Responsible Parties had signed the same instrument. The signature pages of counterparts of this Enforcement Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

[Signature blocks]



## Appendix 1.

### **REGULATORY OBLIGATIONS UNDER ENFORCEMENT AGREEMENT FOR THE MOKELUMNE RIVER WATERSHED**

Obligation (References to Mokelumne River Implementation Agreement)	Mokelumne River Responsible Party Assigned to Perform Obligation	Sequence and Conditions for Performance (References to Mokelumne River Implementation Agreement)	Remedies for Non-Performance
<p>East Bay Municipal Utility District (EBMUD) shall operate Camanche Dam to provide the HRL Flow Contribution immediately below Camanche Dam during the months, and in no less than the quantities, specified in Exhibit B.5, Appendix 1, <u>Tables 1</u> through <u>4</u>, after accounting for any adaptive management approved by the State Water Board, according to year types which will be determined as described in Exhibit B.5, Appendix 1 and <u>Tables 5</u> and <u>6</u> thereof. EBMUD will be deemed to be in compliance with this obligation during any given time period (e.g., March-May; October; or full year) when it demonstrates under the flow accounting methodology described in Exhibit B.5, Appendix 4 (Flow Accounting) that it released from Camanche Dam “the full volume of the HRL Flow Contribution” (as that phrase is defined in Exhibit B.5, Appendix 1, section I.A.3.b) required during that time period plus the full volume of the Existing Flow Requirements applicable during the same time period. (Exh. B.5, Appx 1, §§ I.A.1 through I.A.3.b.)</p>	<p>East Bay Municipal Utility District</p>	<p>In any year when Responsible Party’s March 1st median forecast of End-of-September Total Combined Pardee and Camanche (P+C) storage is less than 350 thousand acre-feet, Responsible Party will be excused for the remainder of that year from all obligations to provide the HRL Flow Contribution, and in that event Responsible Party will continue to provide the Existing Flow Requirements. (Exh. B.5, Appx. 1, § IV.1 and <u>Tables 1</u> through <u>3</u> at note V3.)</p> <p>If the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5, then, while this Enforcement Agreement remains in effect, such terms, regulations, or flows shall not be enforceable against Responsible Party to the extent they require an additional contribution. (Exh. B.5, Appx. 1, § IV.5.)</p>	<p>[[[ TBD ]]]</p>
<p>Amador Water Agency (AWA) shall dedicate and provide two (2) thousand acre-feet of its contractual water supply entitlement from Pacific Gas &amp; Electric Company to EBMUD during each “Dry” year as defined in Exhibit B.5, Appendix 1, <u>Table 6</u> which EBMUD shall use exclusively towards satisfying its obligation to release the ten (10) thousand acre-feet annual HRL Flow Contribution required in “Dry” years by Exhibit B.5, Appendix 1, <u>Table 3</u>. (Exh. B.5, Appx. 1, § I.A.3.c.)</p>	<p>Amador Water Agency</p>	<p>In any year when EBMUD’s March 1<sup>st</sup> median forecast of End-of-September Total Combined Pardee and Camanche (P+C) storage is less than 350 thousand acre-feet, Responsible Party will be excused from this obligation for the remainder of that year, and in that event EBMUD will continue to provide the Existing Flow Requirements. (Exh. B.5, Appx. 1, § IV.1 and <u>Tables 1</u> through <u>3</u> at note V3.)</p>	<p>[[[ TBD ]]]</p>

Obligation (References to Mokelumne River Implementation Agreement)	Mokelumne River Responsible Party Assigned to Perform Obligation	Sequence and Conditions for Performance (References to Mokelumne River Implementation Agreement)	Remedies for Non-Performance
		<p>Responsible Party’s obligation is contingent on AWA entering into a binding agreement with CDWR to receive no less than \$3,000,000.00 in funding from the State of California to fund AWA’s implementation of water conservation projects within its service area. The funded projects are intended to make conserved water available to AWA, as partial mitigation to AWA in consideration of AWA’s commitment to make 2 thousand acre-feet of its existing entitlement available for the HRL Flow Contribution. (Exh. B.5, Appx. 1, § IV.3.)</p> <p>If the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5, then, while this Enforcement Agreement remains in effect, such terms, regulations, or flows shall not be enforceable against Responsible Party to the extent they require an additional contribution. (Exh. B.5, Appx. 1, § IV.5.)</p>	
<p>North San Joaquin Water Conservation District (NSJWCD) has the right to divert flows from the Mokelumne River under the conditions described in its Permit 10477 from authorized points of diversion to storage and/or direct diversion on the Mokelumne River at and downstream of Camanche Dam. Responsible Party will bypass the HRL Flow Contribution while this Enforcement Agreement remains in effect. (Exh. B.5, Appx. 1, § I.A.3.d.)</p>	<p>North San Joaquin Water Conservation District</p>	<p>Responsible Party’s obligation is contingent upon satisfaction of both of the following conditions: (a) the State Water Board replaces Term 18 of Permit 10477 with a term requiring Responsible Party to make the bypass described in Exhibit B.5, Appendix 1, section I.A.3.d, such that Responsible Party will not have to further dedicate 1,000 acre-feet of available Permit 10477 supplies while this Enforcement Agreement remains in effect; <u>and</u> (b) Responsible Party has entered into a binding agreement with CDWR to receive no less than \$3,000,000.00 in funding from the State of California for a project that will facilitate the diversion</p>	<p>[[[ TBD ]]]</p>

Obligation (References to Mokelumne River Implementation Agreement)	Mokelumne River Responsible Party Assigned to Perform Obligation	Sequence and Conditions for Performance (References to Mokelumne River Implementation Agreement)	Remedies for Non-Performance
		<p>and use of surface water for groundwater recharge in Responsible Party’s district. (Exh. B.5, Appx. 1, § IV.4.)</p> <p>If the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5, then, while this Enforcement Agreement remains in effect, such terms, regulations, or flows shall not be enforceable against Responsible Party to the extent they require an additional contribution. (Exh. B.5, Appx. 1, § IV.5.)</p>	
<p>The Mokelumne River Water and Power Authority, of which the County of San Joaquin (County) is a member, has filed amended Application 29835 with the SWRCB for a permit to appropriate up to 110 thousand acre-feet per year from the Mokelumne River. The application remains pending. County will ensure that no part of the HRL Flow Contribution is diverted under any water right that may be obtained pursuant to Application 29835 while this Enforcement Agreement remains in effect, and County will accept a condition to that effect in any permit issued on Application 29835. (Exh. B.5, Appx. 1, § I.A.3.e.)</p>	<p>County of San Joaquin</p>	<p>If the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5, then, while this Enforcement Agreement remains in effect, such terms, regulations, or flows shall not be enforceable against Responsible Party to the extent they require an additional contribution. (Exh. B.5, Appx. 1, § IV.5.)</p>	<p>[[[ TBD ]]]</p>
<p>EBMUD shall develop, before the end of the initial eight-year term of the Global Agreement, no less than one (1) additional acre of in-channel rearing habitat and twenty-five (25) acres of new floodplain habitat, including projects completed in December 2018 or later, as described in Exhibit B.5, Appendix 1, section II and Exhibit B.5, Appendix 3.</p>	<p>East Bay Municipal Utility District</p>	<p>Responsible Party’s obligation is contingent upon satisfaction of both of the following conditions: (a) Responsible Party has received all permits from state, federal, and local agencies necessary to complete the specified habitat commitments, <u>and</u> (b) Responsible Party has entered into a binding agreement with CDWR to receive no less than \$7,500,000.00 in funding from the State of California for habitat measures, and,</p>	<p>[[[ TBD ]]]</p>

Obligation (References to Mokelumne River Implementation Agreement)	Mokelumne River Responsible Party Assigned to Perform Obligation	Sequence and Conditions for Performance (References to Mokelumne River Implementation Agreement)	Remedies for Non-Performance
		<p>provided Responsible Party remains in substantial compliance with such agreement, CDWR renews or extends such agreement if and when needed such that the CDWR remains bound for the expected duration of the funded work, not to exceed eight years. (Exh. B.5, Appx. 1, § IV.2.)</p> <p>Responsible Party will be excused from this obligation if, during the term of this Enforcement Agreement, the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5. (Exh. B.5, Appx. 1, § IV.5.)</p>	
<p>As described in Exhibit B.5, Appendix 1, sections II and III.A, EBMUD shall spend, before the end of the initial eight-year term of the Global Agreement, \$1,500,000.00 to assist in the completion of Mokelumne River habitat improvements listed in Exhibit B.5, Appendix 1, <u>Table 7</u>, including projects completed in December 2018 or later. (Exh. B.5, Appx. 1, §§ II, III.A and <u>Table 7</u>.)</p>	<p>East Bay Municipal Utility District</p>	<p>Responsible Party’s obligation is contingent upon satisfaction of both of the following conditions: (a) Responsible Party has received all permits from state, federal, and local agencies necessary to complete the specified habitat commitments, <u>and</u> (b) Responsible Party has entered into a binding agreement with CDWR to receive no less than \$7,500,000.00 in funding from the State of California for habitat measures, and, provided Responsible Party remains in substantial compliance with such agreement, CDWR renews or extends such agreement if and when needed such that the CDWR remains bound for the expected duration of the funded work, not to exceed eight years. (Exh. B.5, Appx. 1, § IV.2.)</p> <p>Responsible Party will be excused from this obligation if, during the term of this Enforcement Agreement, the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a</p>	<p>[[[ TBD ]]]</p>

Obligation (References to Mokelumne River Implementation Agreement)	Mokelumne River Responsible Party Assigned to Perform Obligation	Sequence and Conditions for Performance (References to Mokelumne River Implementation Agreement)	Remedies for Non-Performance
		water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5. (Exh. B.5, Appx. 1, § IV.5.)	
With respect to the habitat improvement projects required of EBMUD that are described in Exhibit B.5, Appendix 1, EBMUD shall diligently pursue, in cooperation and coordination with other parties, (a) all available funding sources, including State, federal, and grant sources, and (b) the issuance of all necessary permits and approvals. (Exh. B.5, Appx. 1, § II.)	East Bay Municipal Utility District	<p>Responsible Party’s obligation is contingent upon satisfaction of the following condition: Responsible Party has entered into a binding agreement with CDWR to receive no less than \$7,500,000.00 in funding from the State of California for habitat measures, and, provided Responsible Party remains in substantial compliance with such agreement, CDWR renews or extends such agreement if and when needed such that the CDWR remains bound for the expected duration of the funded work, not to exceed eight years. (Exh. B.5, Appx. 1, § IV.2.)</p> <p>Responsible Party will be excused from this obligation if, during the term of this Enforcement Agreement, the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5. (Exh. B.5, Appx. 1, § IV.5.)</p>	[[[ TBD ]]]
EBMUD shall pay ten dollars (\$10.00) per acre-foot that is diverted from Pardee Reservoir through the Mokelumne Aqueducts to the East Bay, according to EBMUD’s annual water rights reports for License 11109 and Permit 10478, for the purpose of funding the HRL Program water revolving fund, due and payable annually to the Systemwide Funding Entity by the date specified in	East Bay Municipal Utility District	Responsible Party will be excused from this obligation if, during the term of this Enforcement Agreement, the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring	[[[ TBD ]]]

Obligation (References to Mokelumne River Implementation Agreement)	Mokelumne River Responsible Party Assigned to Perform Obligation	Sequence and Conditions for Performance (References to Mokelumne River Implementation Agreement)	Remedies for Non-Performance
Exhibit B.5, Appendix 1, <u>Table 8</u> , note V2. (Exh. B.5, Appx. 1, § III.B.)		Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5. (Exh. B.5, Appx. 1, § IV.5.)	
If the HRL Program Agreements subject the diversion of “Project Water” from the Central Valley Project to a surcharge for the purpose of funding water purchases described in Appendix 1 to the Global Agreement, EBMUD will pay such surcharge on each acre-foot of Project Water it diverts, in the manner and amount specified by USBR in the rates and charges applicable to EBMUD. (Exh. B.5, Appx. 1, § III.B.)	East Bay Municipal Utility District	Responsible Party will be excused from this obligation if, during the term of this Enforcement Agreement, the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5. (Exh. B.5, Appx. 1, § IV.5.)	[[[ TBD ]]]
EBMUD shall pay \$191,000.00 to fund the systemwide Public Water Agency water purchase program upon each occurrence of an “Below Normal” water year, as classified under the Sacramento River Index, due and payable to the Systemwide Funding Entity by the date specified in Exhibit B.5, Appendix 1, <u>Table 8</u> , note V3. (Exh. B.5, Appx. 1, § III.C.)	East Bay Municipal Utility District	Responsible Party will be excused from this obligation if, during the term of this Enforcement Agreement, the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5. (Exh. B.5, Appx. 1, § IV.5.)	[[[ TBD ]]]
EBMUD shall pay \$256,000.00 to fund the systemwide Public Water Agency water purchase program upon each occurrence of an “Above Normal” water year, as classified under the Sacramento River Index, due and payable to the Systemwide Funding Entity by the date specified in Exhibit B.5, Appendix 1, <u>Table 8</u> , note V3. (Exh. B.5, Appx. 1, § III.C.)	East Bay Municipal Utility District	Responsible Party will be excused from this obligation if, during the term of this Enforcement Agreement, the State Water Board imposes or recommends in any matter or proceeding (including but not limited to a water quality certification under Section 401 of the Clean Water Act), any water right terms, regulations, or flows which would have the effect of requiring Responsible Party to provide an “additional contribution” as defined in Section 4.2 of Exhibit C.5. (Exh. B.5, Appx. 1, § IV.5.)	[[[ TBD ]]]

**Appendix 2.**  
**FORM OF ORDER BY THE STATE WATER RESOURCES CONTROL BOARD**

It is hereby ORDERED that the attached Enforcement Agreement between the State Water Board and Responsible Parties is approved.

1. The Responsible Parties shall implement the flow, habitat restoration, and other measures as stated in Section 3 of the Enforcement Agreement; and
2. The State Water Resources Control Board shall implement its obligations as stated in Section 4 of the Enforcement Agreement.
3. The State Water Board and Responsible Parties shall follow the enforcement and dispute resolution terms stated in Section 5 of the Enforcement Agreement.

**Appendix 3.**  
**CONTACT INFORMATION FOR RESPONSIBLE PARTIES**

[[[ TBD ]]]



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# **Exhibit C6. Putah Creek**

# **ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION OF HEALTHY RIVERS AND LANDSCAPE PROGRAM IN PUTAH CREEK**

**March 29, 2022 Draft**

This “Enforcement Agreement related to Implementation of Healthy Rivers and Landscapes Program in Putah Creek” is entered into by and between the California State Water Resources Control Board and the signatories hereto for the purpose of providing for regulatory enforcement of those flow, habitat enhancement and other measures stated in Appendix 1 hereto. Defined terms are set forth in Section 2 of this Enforcement Agreement.

## **RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including

potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. On May 23, 2000 a Settlement Agreement was reached between the Solano County Water Agency, Solano Irrigation District, Maine Prairie Water District, Cities of Vacaville, Fairfield, Vallejo, and Suisun City and Putah Creek Council, City of Davis, and the Regents of the University of California *Putah Creek Cases* (JCCP 2565). The Settlement Agreement is commonly referenced as the Putah Creek Accord.

G. The Putah Creek Accord provides specific details on Solano Project releases and instream flows for Lower Putah Creek for environmental benefit. It additionally provides for financial support for science and habitat restoration programs in Putah Creek, with a minimum contribution by SCWA of \$250,000 annually. Historically, SCWA has provided between \$500,000 and \$1 million above the required annual contribution. SCWA has also funded over \$2.5 million of fisheries and water quality monitoring work by UC Davis in the Cache Slough Complex, over a period of 8-years.

H. The Parties who sign this Enforcement Agreement, known as Responsible Parties, intend that they are subject to regulatory authority for enforcement of their obligations to implement flow, habitat restoration and other measures as specified in Appendix 1.

**Drafting Note:** Yolo County Flood Control & Water Conservation District has engaged the Department of Water Resources in substantive discussions about becoming a signatory to this Agreement through operations that would augment streamflows in Putah Creek. Those discussions have involved conceptual proposals that are described in the Yolo Attachment to this Agreement but are not part of this Agreement as of March 29, 2024.

## TERMS OF AGREEMENT

**1. Purpose.** This Enforcement Agreement states the specific obligations of the Responsible Parties for implementation of flow, habitat enhancement and other measures for the Putah Creek as specified in Appendix 1. This Enforcement Agreement states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to the Responsible Parties. The Parties intend that the

Putah Creek Healthy Rivers and Landscapes Program measures include all of the Responsible Parties' commitments to contribute to the Program of Implementation.

**1.1 Settlement of Disputed Issues.** This Agreement resolves disputed issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

**1.2 Timeliness.** The State Water Board and Responsible Parties agree to the terms stated herein in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscape Agreements. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1 Applicable Law** means: state or federal law that: (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common law; and (b) applies to obligations or activities of the State Water Board or the Responsible Parties contemplated by this Agreement.

**2.2 AF** means acre-feet.

**2.3 Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

**2.4 CDFW** means: the California Department of Fish and Wildlife.

**2.5 CDWR** means: the California Department of Water Resources

**2.6 Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in an Enforcement Agreement for the water source which is the basis for their diversion or use as appropriate.

**2.7 Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscape Program will implement. These are: (i) the narrative water quality objective entitled "Salmon Protection" as stated in Bay-Delta Plan Table 3, p. 14 ("Narrative Salmon Objective"); and (ii) a new narrative objective to achieve the viability of native fish populations ("Narrative Viability Objective"), as stated in Exhibit A section 1 of the Global Agreement.

**2.8 Enforcement Agreements** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to

Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any VA-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscape Program.

**2.9 Final Action** means: final action by the State Water Board to amend the Bay-Delta Plan to approve the Supported Amendments authorizing the implementation of the Healthy Rivers and Landscape Program.

**2.10 Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers and Landscape Program, along with the obligations of the Parties to support implementation.

**2.11 Healthy Rivers and Landscape Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Enforcement Agreement is Exhibit CX thereto.

**2.12 Implementation Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration and other measures in the Tributaries and Delta. In this Enforcement Agreement for Putah Creek, the term refers to the Implementation Agreement for Putah Creek.

**2.13 Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in Implementing Agreements, and specifically Appendix 1 thereto. Responsible Parties are Implementing Entities that sign an Enforcement Agreement.

**2.14 Lower Putah Creek Coordinating Committee** means: the committee formed under and referenced in the *Putah Creek Accord*, tasked under that judgment with monitoring the implementation of the Putah Creek Settlement, monitoring the conditions of Putah Creek and making recommendations regarding the same, undertaking maintenance, restoration and enhancement measures with respect to resources to lower Putah Creek, and other obligations more fully described in the *Putah Creek Accord*.

**2.15 Parties** means: signatories to the Global Agreement, who will also sign the applicable Enforcement and Implementing Agreement. Parties who sign an

Enforcement Agreement are Responsible Parties in that context. Parties who sign an Implementing Agreement are Implementing Entities in that context.

**2.16 Program of Implementation** means: the program of measures, schedule and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, amend this program to authorize implementation of the Healthy Rivers and Landscape Program.

**2.17 Putah Creek Accord** means: the May 2000 settlement agreement between the parties to the coordinated *Putah Creek Cases* (JCCP 2565), including SCWA.

**2.18 Regulatory Approval** means: any approval required under Applicable Laws for implementation of the Putah Creek Healthy Rivers and Landscapes Program, the Putah Accord or other action that affects a Party's obligations or activities of the Parties under this Enforcement Agreement.

**2.19 Responsible Parties** means: the Parties who are Implementing Entities under an Implementation Agreement and sign the corresponding Enforcement Agreement. Responsible Parties under this Agreement are called "Putah Creek Responsible Parties."

**2.20 SCWA** means: the Solano County Water Agency, a political subdivision of the State of California, formed and operating under the Solano County Water Agency Act.

**2.21 Solano Project** means: the project authorized by the Reclamation Act of 1939 (53 Stat. 1187) and subsequent statutes, consisting of Lake Berryessa, Putah Diversion Dam, Monticello Dam and other appurtenant facilities, that are owned by the U.S. Department of the Interior – Bureau of Reclamation, and operated in coordination with Solano County Water Agency for water supply, flood control and other purposes.

**2.22 State Water Board** means: the State Water Resources Control Board.

**2.23 State Water Project or SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

**2.24 USBR** means: the United States Bureau of Reclamation.

**2.25 VA Program** means: the Healthy Rivers and Landscape Program.

**2.26 Voluntary Agreements or VAs** means: the Global Agreement, the Implementation Agreements and the Enforcement Agreements.

**2.27 Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### **3. Obligations of Putah Creek Responsible Parties.**

**3.1 Implementation.** Each Responsible Party under this Agreement will implement the obligations assigned to that entity in Appendix 1.

A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance will be subject to the remedies stated therein and in Section 5 below.

B. If an obligation is assigned to multiple Responsible Parties under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Responsible Party, other such entities will not be responsible for performance.

**3.2 Progress Reports and Inspections.** SCWA will prepare Annual and Triennial Reports with respect to implementation. SCWA will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D of the Global Agreement, section 1.5).

### **4. Obligations of State Water Board.**

**4.1 Execution of Order.** The Executive Director of the State Water Board will sign the Order approving this Agreement (Appendix B hereto), concurrent with the signing of this Agreement.

**4.2 No Additional Contributions.** The State Water Board will not seek additional contributions from the Responsible Parties, other Implementing Entities or Covered Entities listed in Appendix 1, for the purpose of implementation of the Covered Water Quality Objectives or related purposes. This assurance will be implemented through the procedures, and subject to the requirements in limitations, stated in Exhibit A section 5 as incorporated into the Program of Implementation.

**4.3 Protection of Flows.** The State Water Board will use the protections identified in Exhibit A of the Global Agreement.

A. Responsible Parties will be available to assist the State Water Board in its proceedings to provide these protections. Responsible Parties who so participate will support these protections, provided they

agree with the authorities cited by the State Water Board, the scope, and the technical methodology, used in a proceeding.

- B. The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses.

**4.4 Expedited Process.** The State Water Board will undertake an expedited process for considering any petition by a Responsible Party or other Implementing Entity pursuant to Water Code sections 1700-1725, changing the place and purpose of use for its water rights to implement its obligations hereunder.

**5. Enforcement and Dispute Resolution Procedures.**

**5.1 General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of the non-Federal Responsible Parties using: administrative civil liability, imposed pursuant to the procedures in Water Code sections 1050 et seq.; a cease-and-desist order adopted pursuant to the procedures stated in Water Code sections 1825 et seq.; or both. The State Water Board may enforce obligations of federal Responsible Parties using the procedures stated in the Memorandum of Understanding regarding Enforcement.

**A.** No Responsible Party will contest an enforcement action brought pursuant to this Section **5.1** on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to it in Appendix 1.

**B.** The State Water Board may not commence an enforcement action pursuant to this Section 5.1 against a Responsible Party based on the non-performance of an obligation assigned to another Responsible Party

**5.2** The Responsible Parties may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Enforcement Agreement.

**5.3 Dispute Resolution Procedures.** Prior to taking any enforcement action pursuant to Section 5.1, the State Water Board will provide notice to the Responsible Party that the State Water Board alleges has violated an obligation, a written description of the alleged violation, and a reasonable opportunity for the Responsible Party to cure the alleged violation.

**5.4 Force Majeure.** No Party shall be liable for any failure of, or delay in, the performance of duties under this Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any



final determination by a court of competent jurisdiction that renders the performance of any duty under this Agreement unlawful.

**6. Effective Date and Term.**

**6.1** This Agreement takes effect when signed by the Responsible Parties and will be binding as to such Parties when signed.

**6.2** The term of this Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Agreement will terminate upon that Party's withdrawal from the Global Agreement.

**7. No Admission of Liability.** Responsible Parties enter into this Agreement voluntarily. Responsible Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the parties, other than for purposes of enforcing this Agreement. The Responsible Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or the public trust doctrine, for providing the flows, habitat restoration and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in Section 5 would be available against them with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

**8. Compliance with Applicable Laws.** Each Responsible Party represents that it believes that this Enforcement Agreement is consistent with its statutory, regulatory or other legal obligations for conservation, use or management of affected resources.

**9. Reservations.**

**9.1 Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Responsible Party to fulfill its constitutional, statutory and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Responsible Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

**9.2 Availability of Funding.** Funding by any public agency Responsible Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law; provided that the Parties recognize that timely

and sufficient funding is necessary to implement the Healthy Rivers and Landscape Program.

**9.3 Federal Appropriations.** All actions required of any federal Responsible Party are subject to appropriations by Congress. Nothing in this Agreement will be interpreted as or constitute a commitment or requirement that any federal Responsible Party obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Agreement.

**9.4 Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement.

**10. Notices.** Any Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Responsible Parties as of the Effective Date is attached as Exhibit C. Each such entity will provide Notice of any change in the authorized representatives designated in Exhibit C, and SCWA will maintain the current distribution list of such representatives.

**11. Attorney's Fees and Costs.** The State Water Board and each Responsible Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement of the Responsible Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

**13. Construction and Interpretation.** This Agreement has been arrived at through negotiation. Each Responsible Party has had a full and fair opportunity to revise the terms of the Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Agreement.

**14. Amendment.** This Agreement may only be amended in writing by all Putah Creek Responsible Parties still in existence, including any successors or assigns. A Responsible Party may provide Notice of a proposed amendment at any time. The Responsible Parties

agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**15. Addition of New Responsible Parties.** A non-covered entity may become a Responsible Party by signing the Agreement and the other Healthy Rivers and Landscape Program Agreements, subject to the Parties' approval of the entity's proposed contribution under Appendix 1 hereto.

**16. Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Responsible Parties and their successors and assigns, unless otherwise specified in this Agreement. No assignment may take effect without the express written approval of the other parties, which approval will not be unreasonably withheld.

**17. No Third-Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Responsible Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Responsible Parties with respect to third parties will remain as imposed under Applicable Law.

**18. Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

**19. Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, the Responsible Parties will undertake to assure that the remainder of the Agreement will not be affected thereby. The State Water Board and Responsible Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid and enforceable and carries out the intention of this Agreement to the greatest lawful extent.

**20. Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**21. Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Responsible Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without

impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**The foregoing is approved by the Parties.**

State of California  
State Water Resources Control Board

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By:

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Dated

Approved as to legal form  
and sufficiency:

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Chief Counsel

Solano County Water Agency

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By:

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Dated

Approved as to legal form  
and sufficiency:

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Solano County Water Agency, General Counsel

## **APPENDICES**

**1. REGULATORY OBLIGATIONS UNDER ENFORCEMENT AGREEMENT FOR PUTAH CREEK**

**2. FORM OF ORDER BY THE STATE WATER RESOURCES CONTROL BOARD**

**3. DESIGNATED REPRESENTATIVES FOR RESPONSIBLE PARTIES FOR PUTAH CREEK**

**Appendix 1**  
**REGULATORY OBLIGATIONS UNDER ENFORCEMENT AGREEMENT FOR**  
**PUTAH CREEK**

**1. Covered Parties.**

**1.1** This Agreement covers the contribution of the undersigned Responsible Parties to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation.

**1.2** This Agreement does not cover the contribution of other water users in, or diverters of water from, the Putah Creek Watershed to achieving the water quality objectives in the Bay-Delta Plan.

**1.3** Nothing in this Agreement will require or be construed to require a Responsible Party to provide flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any other water user.

**2. Guiding Principles.** The following principles will guide the administration, interpretation and potential extension of the term of this Agreement:

**2.1** Additional contributions to Delta inflows, habitat enhancement, funding and other measures from the Implementing Entities in implementing the Bay-Delta Plan should be comparable and proportionate to the contributions required of water users in other tributaries in the Sacramento River Basin, except as otherwise agreed to by the Implementing Entities.

**2.2** Additional contributions to Delta inflows, habitat enhancement, funding and other measures from water users in the Putah Creek Watershed should be comparable and proportionate to their respective diversions of unimpaired flow from the Putah Creek Watershed.

**2.3** The Responsible Parties will provide the Supplemental Flow Contribution as described in this Appendix during the term of this Agreement in order to advance the overall objectives of the Healthy Rivers and Landscapes Program, and not as a comparable and proportionate share of contributions to Delta inflow.

**2.4** The State Water Board will not assert that any Responsible Party providing the Supplemental Flow Contribution as described in this Appendix for Delta inflow should be a precedent for future regulatory proceedings.

**2.5** The State Water Board will not assert that any Responsible Party is responsible for providing flows, habitat enhancement, funding or other measures as contributions to

achieving the water quality objectives in the Bay-Delta Plan for any water user other than that Responsible Party.

### **3. Putah Creek Flow Component (Implementing Agencies: SCWA)**

**3.1** The Solano County Water Agency (SCWA) will provide additional flow commitments intended to augment the flow regime in Putah Creek during specific seasons of the year. Those additional flow commitments are intended to provide enhanced environmental flow conditions in Putah Creek for salmon habitat and other benefits pursuant to the Agreements to Support Healthy Rivers and Landscapes (Healthy Rivers Agreements) entered into by several parties. SCWA, through collaborative efforts with parties to the Healthy Rivers Agreements, will provide those additional flow commitments during periods, rates, volumes, and reaches of Putah Creek to assist with benefits to enhance habitat conditions for salmon, including factors such as flow depth, velocity, and temperature. Those additional flow commitments include individual contributions by SCWA, identified below, which will be coordinated to complement each contribution. SCWA commits not to divert any of those additional flow commitments following releases into Putah Creek. The Putah Creek Healthy Rivers and Landscape Program will be supplemental to the Putah Creek Accord flows.

SCWA will have no responsibility for purchasing or providing additional flow contributions beyond those identified herein.

**3.2 Putah Creek Healthy Rivers and Landscape Flow Contribution.** During the term of this Agreement, SCWA will operate the Solano Project to provide up to 6,000 AF per year of water during Above-Normal, Below-Normal and Dry water years<sup>1</sup>, and up to 7,000 AF per year of water during Critical water years as SCWA's Healthy Rivers Flow Contribution (Putah Creek Healthy Rivers and Landscape Flow Contribution). These flows will be managed by SCWA for enhanced instream flows as part of the Putah Creek Healthy Rivers and Landscape Program. The Putah Creek Healthy Rivers and Landscape Flow Contribution will result from storage releases from Lake Berryessa. These contributions will be made available each water year on October 1 as a dedicated volume (block) of water in storage for deployment within that corresponding water year.

**Table 1** presents the default plan and flexibility bracket for the Putah Creek Healthy Rivers and Landscape Flow Contributions:

<sup>1</sup> Unless otherwise stated, water year types are based on the Sacramento Valley Index (SVI) determined by CDWR as published in Bulletin 120.

**Table 1: Timing of Putah Creek Healthy Rivers and Landscape Flow Contributions from the Putah Creek water source. Bolded numbers represent the Default Plan for Putah Creek Healthy Rivers and Landscape Flow Contribution and numbers in parentheses represent the Flexibility Bracket for any given year. Putah Creek Healthy Rivers and Landscape Flow Contributions do not occur in Wet water years.**

<b>Water Year</b>	<b>Nov</b>	<b>Dec</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>	<b>Apr</b>	<b>May</b>
<b>Above Normal, Below Normal</b>	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-84%)	<b>16.7%</b> (0-74%)	<b>8.3%</b> (0-54%)	<b>8.3%</b> (0-57%)
<b>Dry &amp; Critical</b>	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-75%)	<b>16.7%</b> (0-84%)	<b>16.7%</b> (0-74%)	<b>8.3%</b> (0-54%)	<b>8.3%</b> (0-57%)

- A. The Putah Creek Healthy Rivers and Landscape Flow Contribution can be flexibly allocated across November through May, including in response to requests from the Systemwide Governance Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and other key stakeholders at the discretion of SCWA and consistent with the regulatory and operational constraints on the Solano Project.
- B. In some years, the flexibility shown in the table may be available (i.e., 0-54% in April, and 0-57% in May), while in other years, the flexibility may be significantly limited by the Solano Project and Lower Putah Creek’s hydrologic and operational constraints. SCWA will provide the total amount of Putah Creek Healthy Rivers and Landscape Flow Contribution under the default plan, but some months may require higher or lower ratios than listed in Table 1, based upon these hydrologic and operational constraints. Any modifications to the schedule provided in Table 1 will be planned in coordination with CDFW, NMFS, and SWRCB.

### **3.3 Modifications to Healthy Rivers and Landscape Flow Contributions in Response to Specific Physical Conditions.**

- A. During the months of April – October, there are permanent barriers installed in Lower Putah Creek outside of the control and operation of SCWA. In drought years, these permanent barriers are often installed for even longer periods of time. These barriers include CDFW’s Los Rios Check Dam within the Yolo Bypass Wildlife Area, Road 106A agricultural crossing, and other temporary crossings primarily located downstream of I-80. SCWA will provide the total amount of Putah Creek Healthy Rivers and Landscape Flow Contribution under the default plan, but some months may require higher or lower ratios than listed in Table 1, based upon the installation and removal of these permanent barriers in Lower Putah Creek.



- B.** In some years, Fall Run Chinook salmon are active in the Yolo Bypass Toe Drain (Tule Canal) as early as October. If permanent barriers are removed, it may be of environmental benefit to create and/or supplement the existing Putah Creek Accord fall pulse flow. While October is not included in Table 1, the Putah Creek Healthy Rivers and Landscape Flow Contribution can be flexibly allocated if there is environmental benefit to the system. Such coordination will be done in tandem with the Systemwide Governance Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and/or other key stakeholders at the discretion of SCWA and consistent with the regulatory and operational constraints on the Solano Project.

**3.4 Flow Contribution Accounting.** SCWA's Healthy Rivers and Landscapes Flow Contributions will be accounted for on a water year basis, in addition to the controlled water releases that SCWA is presently obligated to meet for existing minimum release requirements governed by the Putah Creek Accord. SCWA will account for the required Putah Creek Accord Flows as well as the supplemental Putah Creek Healthy Rivers and Landscape Flow Contribution. The accounting will also include Flow Contributions that are not released due to conditions and constraints beyond SCWA control, and which amounts will not carry-over to the following year and will revert back to the water rights holder.

- A.** SCWA will account for both the Putah Creek Accord Flows and the supplemental Putah Creek Healthy Rivers and Landscape Flow Contributions at the Putah Diversion Dam. The Putah Creek Healthy Rivers and Landscape Flow Contribution will be supplemental to the instream Putah Creek Accord requirements, up to the volumes and conditions specified in Table 1.

**3.5 Limitations on Releases.** SCWA will not be required to provide Flow Contributions while uncontrolled releases are occurring at the Putah Diversion Dam (i.e., flood flows – inflow from tributaries downstream of Monticello Dam or when the “Glory Hole” is spilling) or when the Yolo Bypass is passing uncontrolled flood water from the Sacramento River. SCWA will also not be obligated to provide Flow Contributions during the seasonal period (typically April – October) when the Los Rios Check Dam is installed in the Yolo Basin Wildlife Area (YBWA) by others for irrigation operations. The Parties will evaluate the potential for removing this limitation upon completion of the Putah Creek Bypass fish passage project, which was currently under construction as of the date of this Agreement. SCWA may choose, but will not be obligated, to release water during these periods of time if there is environmental benefit and done in coordination with the Systemwide Governance Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and other key stakeholders.

#### **4. Putah Creek Habitat Enhancement Component (Implementing Agency: SCWA)**

**4.1** As part of the Putah Creek Accord, SCWA is required to fund a minimum level of fish and wildlife monitoring, vegetation management, portion of the Putah Creek Streamkeeper position, and a non-indexed level of grant funding (\$250K) to preserve and enhance Lower Putah Creek. SCWA's annual contributions have significantly surpassed this minimum requirement. The additional funding has been used to support Lower Putah Creek wildlife monitoring including long-term monitoring of bird nesting, fisheries monitoring including both Chinook salmon juvenile snorkel surveys and adult salmon carcass surveys, as well as special studies, and educational programs along Putah Creek. SCWA has also funded over \$2.5 million of fisheries and water quality monitoring work by UC Davis in the Cache Slough Complex, over a period of 8-years. In addition to monitoring, SCWA has provided additional restoration funding for spawning gravel scarification and augmentation, specific restoration projects along Putah Creek such as the Winters Putah Creek Nature Park, as well as additional funding to support a full-time Streamkeeper position (the Accord only requires partial funding of the Streamkeeper position).

**4.2** During the term of this Agreement, consistent with the MOU (including the provision for early implementation of habitat projects), the Putah Creek Habitat Enhancement Component is the restoration of 1.4 acres of instream spawning habitat for adult Chinook salmon and resident rainbow trout (Lower Putah Creek Restoration Project: Nishikawa – UCD Reach). Planning for this component will occur in coordination with CDFW, NMFS, and SWRCB. SCWA's commitment is subject to the funding commitments and limitations set forth in Section 4 of this Appendix. SCWA will receive credit toward this obligation for early implementation of habitat measures that were approved by DWR prior to the effective date of this Agreement. SCWA anticipates completion of the restoration project in either Fall-2024 or Fall-2025 dependent on permit approvals. In addition to spawning habitat, the project will provide significant floodplain and riparian enhancement, gravel augmentation, and provide instream rearing habitat.

**4.3** Habitat measures will be designed and constructed to include a mixture of habitat features intended to enhance Chinook salmon in-river productivity to contribute toward achieving the Narrative Salmon Objective.

**4.4** Habitat measures will be developed and selected by SCWA in accordance with the best available science and local Putah Creek knowledge and experience, with input and coordination from CDFW, NMFS, and SWRCB during the design and permitting phases of each project.

**4.5** The overall Putah Creek Habitat Program purpose is to restore and rehabilitate the creek channel, banks, and associated habitats to more natural, self-sustaining form and

function, consistent with the current (post-Monticello Dam) hydrologic regime. The Program is being implemented to stop further degradation of the creek corridor and to “jump-start” natural geomorphic and ecological processes systematically.

**4.6** Putah Creek Habitat Program activities will be developed with input from CDFW, NMFS, and SWRCB during the design and permitting phases.

Potential additional habitat measures (subject to selection by SCWA in coordination with Putah Accord requirements) include:

- A.** Adult spawning habitat.
- B.** Instream rearing habitat.
- C.** Floodplain and riparian enhancement, including specific restoration projects along Putah Creek such as the Winters Putah Creek Nature Park,
- D.** Gravel scarification and augmentation.
- E.** Funding and support for the Putah Creek Streamkeeper position.
- F.** Fish and wildlife monitoring, including long-term monitoring of bird nesting, fisheries monitoring including both Chinook salmon juvenile snorkel surveys and adult salmon carcass surveys, as well as special studies, and educational programs along Putah Creek.
- G.** Improvements to channel geomorphology to reduce water temperature and better match existing hydrologic conditions.
- H.** Modification and/or removal of Fish Passage Barriers in Lower Putah Creek.
- I.** Vegetation management, including removal and/or management of Invasive Terrestrial and Aquatic Plant species in Lower Putah Creek.

**4.7** In addition to Putah Creek, SCWA may at its discretion, choose to partner with other agencies on habitat improvement projects within the Putah Creek watershed in coordination with the Systemwide Governance Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and/or other key stakeholders.

**4.8** Table 3 presents the default implementation schedule for SCWA’s habitat enhancement measures:

**Table 2. Default implementation schedule for Non-flow Measures on Putah Creek.**

Description of Measures	Early Implementation (Dec 2018 2024)	Years 1 3 (2025 2027)	Years 4 6 <sup>1</sup> (2028 2031)	Years 7 8 <sup>1</sup> (2032 2033)	Total
Spawning (ac)	1.4	---	---	---	1.4

<sup>1</sup>Assumes adequate funding exists at the time of implementation.

### **3. Putah Creek Healthy Rivers and Landscape Funding Component (Implementing Agency: SCWA)**

**3.1** The Parties expect that additional State and federal funds will be provided as needed to fully implement habitat measures under this agreement. To achieve the habitat enhancement commitments, SCWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal and grant sources and the issuance of all necessary permits and approvals. During the term of this Agreement, SCWA will dedicate \$2 per AF diverted for municipal and agricultural use (\$400,000 per year) for (a) Habitat Enhancement measures within Putah Creek and (b) to fund the Putah Creek Science Program, including monitoring, adaptive management, and reporting as described in Appendix 3 to this Agreement. The Parties expect that additional state and federal funds will be provided as needed to fully implement the Habitat Enhancement measures and Putah Creek Science Program under this Agreement. The Putah Creek Healthy Rivers and Landscape funding component will be in addition to the minimum required funding as part of the Putah Creek Accord.

**3.2** SCWA will receive credit toward this obligation for early implementation of habitat measures, specifically the Lower Putah Creek Restoration Project: Nishikawa – UCD Reach described in the Strategic Plan for the Healthy Rivers Program. SCWA anticipates completion of the restoration project in either Fall-2024 or Fall-2025 dependent on permit approvals.

**3.3** In addition to Putah Creek, SCWA may at its discretion, choose to partner with other agencies in neighboring watersheds on (a) Habitat Enhancement measures and/or (b) neighboring Science Programs in coordination with the Systemwide Governance Committee, Putah Creek Science Program, UC Davis, CDFW, CDWR, and other key stakeholders where appropriate. This allows for greater flexibility when unique or unusual events arise, such as the 2021 Putah Creek Fish Kill, where SCWA staff were conducting monitoring in Colusa and Yolo Counties in coordination with state and local agencies within the Colusa Basin Drain and Yolo Bypass. The 2020 LNU Fire is another example,

where extensive monitoring was done in Napa, Yolo, and Solano County in response to the post-fire watershed concerns.

**3.4** Funds contributed by SCWA under this section will be accounted for and managed in accordance with the governance procedures set forth in Appendix 2 of this Agreement.

#### **4. Conditions**

**4.1** During the term of this Agreement, SCWA's commitment to provide the Putah Creek Healthy Rivers and Landscape Flow Contribution will be subject to suspension or termination by SCWA if SCWA's water rights for the SP, are amended to include instream flow requirements that are substantially different from SCWA's Accord streamflow obligations for the Solano Project.

**4.2** Commitments by SCWA to implement respective Putah Creek Habitat Enhancement Components are subject to the availability of adequate funding. Funding commitments toward such components are limited to obligations under Section 4 and Section 5 of this Appendix. To achieve Putah Creek Habitat Enhancement Components, SCWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals.

**4.3** Commitments by SCWA to implement the Putah Creek Science Program are subject to the availability of adequate funding. Funding commitments toward that program are limited to obligations under Section 4 and Section 5 of this Appendix.

**4.4** The Parties intend that the Putah Creek Healthy Rivers and Landscape Program measures include all of the commitments by SCWA to contribute to the implementation of the Bay-Delta Plan's water quality objectives. Accordingly, the Parties will ask the State Water Board to include in the Bay-Delta Plan amendments provisions confirming that: (a) the State Water Board will not take any water-quality or water-right actions that would affect SCWA beyond the actions described as each entity's respective contributions to the Putah Creek Healthy Rivers and Landscape Program, or any other actions that would increase any of each entity's respective commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives, during the term of this Agreement; and (b) if the State Water Board takes any such actions, then SCWA may terminate or withdraw from this Agreement.

**4.5** The Parties intend that SCWA's Flow Contributions will not result in reductions in the amount of transfer water available under the Putah Creek Accord Water Purchase Agreement.

## **Appendix 2.**

### **FORM OF ORDER BY THE STATE WATER RESOURCES CONTROL BOARD**

It is hereby ORDERED that the attached Enforcement Agreement between the State Water Board and Responsible Parties is approved.

1. The Responsible Parties shall implement the flow, habitat restoration, and other measures as stated in Section 3 of the Enforcement Agreement; and
2. The State Water Resources Control Board shall implement its obligations as stated in Section 4 of the Enforcement Agreement.
3. The State Water Board and Responsible Parties shall follow the enforcement and dispute resolution terms stated in Section 5 of the Enforcement Agreement.

**Appendix 3.**  
**DESIGNATED REPRESENTATIVES FOR RESPONSIBLE PARTIES FOR**  
**PUTAH CREEK**

## YOLO ATTACHMENT

**Drafting Note:** Yolo County Flood Control & Water Conservation District (YCFC&WCD) has engaged the Department of Water Resources in substantive discussions about becoming a signatory to the above Agreement through operations that would augment streamflows in Putah Creek. Those discussions have involved conceptual proposals that are described in this Attachment, but they are not part of the above Agreement as of March 29, 2024.

- *Rationale:* YCFC&WCD proposes enhancing flows in Putah Creek in lieu of flows in Cache Creek because conveying flows to Putah Creek will provide more benefit to fish species and increase Delta outflow consistent with the Bay-Delta Water Quality Control Plan more than increasing flows in Cache Creek. Cache Creek contains so-called “losing reaches,” in which surface water is “lost” to the groundwater aquifer. Additional conveyance losses occur from Capay Diversion Dam to the Cache Creek Settling Basin overflow weir. Cache Creek is an ephemeral creek that historically ran dry during summer months (pre-Cache Creek and Capay Diversion dams) and has naturally not flowed continuously into the Yolo Bypass or maintained connectivity to the Delta. (See Decision 1641, pp. 70-72.) Ongoing restoration and management efforts in Putah Creek have provided sustained creek flows and favorable conditions for attracting salmon, which has resulted in increased numbers of juvenile Chinook salmon as documented by the UCD Fisheries Group. Finally, enhanced instream flows in Putah Creek would have more benefit to fish species than enhanced instream flows in Cache Creek because salmon and other native fish are not present within the lower reaches due to Cache Creek’s ephemeral or intermittent nature and any attempts such fish would make to migrate into Cache Creek from the Yolo Bypass would be impeded by the Cache Creek Settling Basin. Spring and summertime water temperatures in Cache Creek are typically warmer and thus not as conducive to fish habitat as Putah Creek.
- *Proposed Contribution:* In exchange for compensation consistent with compensation for other streamflow contributions that are part of the Healthy Rivers and Landscapes Program, YCFC&WCD proposes to enhance Putah Creek instream flows with up to 5,000 acre-feet between November and March 31 in all water years except critically dry years when water is available and when additional flows are beneficial to salmon and other native fish in Putah Creek. The YCFC&WCD will: (1) use its water distribution system to store water underground for later extraction to Putah Creek, with contributions coming from Cache Creek water that YCFC&WCD previously has recharged; (2) divert excess winter flows from Cache Creek to augment flows in Putah Creek; or (3) implement a combination of those measures, depending on hydrology.



- *Prerequisites:* In addition to the anticipated compensation described above, YCFC&WCD will require a water-right permit to divert excess flows in Cache Creek into augmented recharge in a manner similar to the multiple temporary water-right permits that YCFC&WCD has received for similar purposes over the last several years. YCFC&WCD anticipates that it would implement its contribution using existing diversion and conveyance facilities but may require canal lining/pipeline installation and new wells for purposes of pumping previously recharged water. To the extent that any permit would be necessary for YCFC&WCD's discharge of its proposed flow contribution, such a permit's issuance also would be a prerequisite for YCFC&WCD to implement that contribution.
- *Financial Contribution:* YCFC&WCD would dedicate \$2 per AF that it delivers for agricultural use for (a) Habitat Enhancement measures within Putah Creek and (b) to fund the Putah Creek Science Program, including monitoring, adaptive management, and reporting. When YCFC&WCD has sufficient supplies, its deliveries reach 150,000 AF per year, which would result in a contribution of \$300,000 in such a year.

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# **Exhibit C7. Sacramento Mainstem**

**ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION  
OF THE HEALTHY RIVERS AND LANDSCAPE PROGRAM ON THE  
SACRAMENTO RIVER MAINSTEM**

**March 29, 2024**

This “Enforcement Agreement related to Implementation of the Healthy Rivers and Landscape Program on the Sacramento River Mainstem” is entered into by and between the California State Water Resources Control Board and the signatories hereto for the purpose of providing for regulatory enforcement of those flow, habitat restoration, and other measures stated in Appendix 1 hereto.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital G.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.

F. The Parties who sign this Enforcement Agreement, known as Responsible Parties, intend that they are subject to regulatory authority for enforcement of their obligations to implement flow, habitat restoration, and other measures as specified in Appendix 1.

### **TERMS OF ENFORCEMENT AGREEMENT**

**1. Purpose.** This Enforcement Agreement states the specific obligations of Responsible Parties for implementation of flow, habitat restoration, and other measures for the Sacramento River Mainstem Healthy Rivers and Landscape Program as specified in Appendix 1. This Enforcement Agreement states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to Responsible Parties.

**1.1. Settlement of Disputed Issues.** This Enforcement Agreement resolves disputed issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

**1.2. Timeliness.** The State Water Board and Responsible Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscape Agreements. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. Applicable Law** means: state or federal law that (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common

law, and (b) applies to obligations or activities of the Responsible Parties contemplated by this Agreement.

2.2. **Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

2.3. **CDFW** means: the California Department of Fish and Wildlife.

2.4. **CDWR** means: the California Department of Water Resources.

2.5. **Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control, and other purposes.

2.6. **Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in an Enforcement Agreement for the water source which is the basis for their diversion or use as appropriate.

2.7. **Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscape Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as stated in Exhibit A section 1.

2.8. **Enforcement Agreements** means: with respect to non-federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscape Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code section 11415.60 to implement any VA-related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscape Program.

2.9. **Final Action** means: final action by the State Water Board to amend the Bay-Delta Plan to approve the Supported Amendments authorizing the implementation of the Healthy Rivers and Landscape Program.

2.10. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers and Landscape Program, along with the obligations of the Parties to support implementation.

2.11. **Healthy Rivers and Landscape Program** means: the measures, rights, and obligations stated in the Global Agreement and its Exhibits A-E. This Enforcement Agreement is Exhibit CX thereto.

2.12. **Implementation Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration, and other measures in the Tributaries and Delta. In this Enforcement Agreement for the Sacramento River Mainstem, the term refers to the Implementation Agreement for this same water source.

2.13. **Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in the Implementation Agreements, and specifically Appendix 1 thereto. Responsible Parties are Implementing Entities that sign an Enforcement Agreement.

2.14. **Parties** means: signatories to the Global Agreement, who will also sign the applicable Enforcement and Implementation Agreements. Parties who sign an Enforcement Agreement are Responsible Parties in that context. Parties who sign an Implementation Agreement are Implementing Entities in that context.

2.15. **Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242, including measures required from Sacramento River Mainstem Responsible Parties under this Enforcement Agreement. The Supported Amendments, as approved, amend this program to authorize implementation of the Healthy Rivers and Landscape Program.

2.16. **Responsible Parties** means: the Parties who are Implementing Entities under an Implementation Agreement and sign the corresponding Enforcement Agreement. Responsible Parties under this Agreement are called “Sacramento River Mainstem Responsible Parties.”

2.17. **State Water Board** means: the State Water Resources Control Board.

2.18. **State Water Project or SWP** means: the project authorized by California Water Code section 11000 et seq., and operated by CDWR, for water supply, power, flood control, and other purposes.

2.19. **USBR** means: the United States Bureau of Reclamation.

2.20. **VA Program** means the Healthy Rivers and Landscape Program.

2.21. **Voluntary Agreements** or **VAs** means: the Global Agreement, the Implementation Agreements, and the Enforcement Agreements, which constitute the Healthy Rivers and Landscape Program.

2.22. **The Sacramento River Mainstem Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures specified in the Implementation Agreement Appendix 1.

2.23. **Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### **3. Obligations of Sacramento River Mainstem Responsible Parties.**

3.1. **Implementation.** Each Responsible Party under this Agreement will implement the obligations assigned to that entity in Appendix 1.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance will be subject to the remedies stated therein and in section 5 below.
- B. If an obligation is assigned to multiple Responsible Parties under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Responsible Party, other such entities will not be responsible for performance.

3.2. **Progress Reports and Inspections.** The Sacramento River Mainstem Governance Entity will prepare Annual and Triennial Reports with respect to implementation. The entity will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

### **4. Obligations of State Water Board**

4.1. **Execution of Order.** The Executive Director of the State Water Board will sign the Order approving this Agreement (Appendix B hereto), concurrent with the signing of this Agreement.

4.2. **Additional Contributions.** The State Water Board will not seek additional contributions from the Responsible Parties, other Implementing Entities, or Covered Entities listed in Appendix 1 of this Enforcement Agreement, for the purpose of implementation of the Covered Water Quality Objectives or related purposes. This assurance will be implemented through the procedures, and subject to the requirements in limitations, stated in Exhibit A section 5 as incorporated into the Program of Implementation.

4.3. **Protection of Flows.** The State Water Board will use the protections identified in Exhibit A of the Global Agreement.

- A. Responsible Parties will be available to assist the State Water Board in its proceedings to provide these protections. Responsible Parties will support these protections, provided they agree with the authorities cited by the State Water Board, the scope, and the technical methodology, used in a proceeding.
- B. The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses.

4.4. **Expedited Process.** The State Water Board will undertake an expedited process for considering any petition by a Responsible Party or other Implementing Organization pursuant to Water Code sections 1700-1725, changing the place and purpose of use for its water rights to implement its obligations hereunder.

## 5. **Enforcement and Dispute Resolution Procedures.**

5.1. **General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of non-federal Responsible Parties using: administrative civil liability, imposed pursuant to the procedures in Water Code section 1050 et seq.; a cease-and-desist order adopted pursuant to the procedures stated in Water Code section 1825 et seq.; or both. The State Water Board may enforce obligations of federal Responsible Parties using the procedures stated in the Memorandum of Understanding regarding Enforcement.

- A. No Responsible Party will contest an enforcement action brought pursuant to this section 5.1 on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to it in Appendix 1.
- B. The State Water Board may not commence an enforcement action pursuant to this section 5 against a Responsible Party based on the



non-performance of an obligation assigned to another Responsible Party.

5.2. **State Water Board.** Responsible Parties may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Agreement.

5.3. **Dispute Resolution Procedures.** Prior to taking any enforcement action pursuant to section 5, the State Water Board will provide Notice to the Responsible Party that the State Water Board alleges has violated an obligation, a written description of the alleged violation, and a reasonable opportunity for the Responsible Party to cure the alleged violation.

5.4. **Force Majeure.** No Party shall be liable for any failure of, or delay in, the performance of duties under this Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any final determination by a court of competent jurisdiction that renders the performance of any duty under this Agreement unlawful.

## 6. **Effective Date and Term.**

6.1. This Agreement takes effect when signed by the Responsible Parties and will be binding as to such Parties when signed.

6.2. The term of the Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Agreement will terminate upon that Party's withdrawal from the Global Agreement.

7. **No Admission of Liability.** Responsible Parties enter into this Agreement voluntarily. Responsible Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the parties, other than for purposes of enforcing this Agreement. The Responsible Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or the public trust doctrine, for providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in section 5 would be available against them with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

**8. Compliance with Applicable Laws.** Each Responsible Party represents that it believes that this Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

**9. Reservations.**

9.1. **Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Responsible Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Responsible Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

9.2. **Availability of Funding.** Funding by any public agency Responsible Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming, or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law; provided that the Parties recognize that timely and sufficient funding is necessary to implement the Healthy Rivers and Landscape Program.

9.3. **Federal Appropriations.** All actions required of any federal Responsible Party are subject to appropriations by Congress. Nothing in this Agreement will be interpreted as or constitute a commitment or requirement that any federal Responsible Party obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Agreement.

9.4. **Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement.

**10. Notices.** Any Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Responsible Parties as of the Effective Date is attached as Exhibit C. Each such entity

will provide Notice of any change in the authorized representatives designated in Exhibit C, and [administrative entity] will maintain the current distribution list of such representatives.

**11. Attorney's Fees and Costs.** The State Water Board and each Responsible Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement of the Responsible Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

**13. Construction and Interpretation.** This Agreement has been arrived at through negotiation. Each Responsible Party has had a full and fair opportunity to revise the terms of the Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Agreement.

**14. Amendment.** This Agreement may only be amended in writing by all Sacramento River Mainstem Responsible Parties still in existence, including any successors or assigns. A Responsible Party may provide Notice of a proposed amendment at any time. The Responsible Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**15. Addition of New Responsible Parties.** A non-covered entity may become a Responsible Party by signing the Agreement and the other Voluntary Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

**16. Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Responsible Parties and their successors and assigns, unless otherwise specified in this Agreement. No assignment may take effect without the express written approval of the other Parties, which approval will not be unreasonably withheld.

**17. No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Responsible Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and responsibilities of the Responsible Parties with respect to third parties will remain as imposed under Applicable Law.

**18. Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

**19. Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, the Responsible Parties will undertake to assure that the remainder of the Agreement will not be affected thereby. The State Water Board and Responsible Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the intention of this Agreement to the greatest lawful extent.

**20. Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**21. Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Responsible Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

**[Signature blocks]**

## **Appendix 1.**

### **SACRAMENTO RIVER MAINSTEM HEALTHY RIVERS AND LANDSCAPE PROGRAM UNDER IMPLEMENTATION AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF WATER RESOURCES, SACRAMENTO RIVER SETTLEMENT CONTRACTORS, AND TEHAMA-COLUSA CANAL AUTHORITY PARTIES**

#### **1. Sacramento River Mainstem Flow Component (Implementing Agency: Sacramento River Settlement Contractors)**

The Sacramento River Settlement Contractors (SRS Contractors), in coordination with USBR's operation of Shasta Dam, will perform a series of additional flow commitments intended to: (1) augment the flow regime required by the then current Biological Opinions governing long-term operations of the CVP on the Sacramento River mainstem during specific seasons of the year, (2) provide additional pulse flows at biologically sensitive periods, and (3) preserve cold-water pool to ensure viability of fish species during the warm summer months. These additional flow commitments are as follows:

**1.1** During the term of this Agreement, and during Above Normal, Below Normal and Dry years, the SRS Contractors will make available 100,000 AF through land fallowing/crop shifting within their service areas (up to 20% of that total committed amount can alternatively be made available via groundwater substitution).<sup>1</sup> This supply will be made available for Reclamation to reoperate Shasta Reservoir to make water available for Sacramento River instream flows and Delta outflow. The Sacramento River Mainstem Responsible Parties commit to not divert any of this 100,000 AF of water after its release from Shasta Reservoir.

<sup>1</sup> This 100,000 AF flow commitment corresponds to the 100,000 AF flow contributions from the Sacramento River mainstem in Dry, Below Normal, and Above Normal years as listed in the Global Agreement, Appendix 1 for the Sacramento River Basin. Consistent with footnote 11 of that Appendix 1, this 100,000 AF of flow contributions shall not result in idling more than 23,256 acres of ricelands, assuming no groundwater substitution supply by the SRS Contractors.

**1.2** The 100,000 AF flow contribution will be made available by the SRS Contractors under a land idling monthly allocation from April through October as shown in Table 1 below, which sets forth the default plan and flexibility bracket for flow contributions from the Sacramento River Mainstem. The Parties to this Agreement acknowledge that the default plan shown below is to focus supply in April and May for Above Normal water years, and as to Below Normal and Dry water years it is anticipated that supply will be spread between the months of April to October to provide benefits in the season that provides the most benefits for fish.

**Table 1: Timing of VA Flow Measures from the Sacramento River Mainstem. Bolded numbers represent the Default Plan for VA Flow Measures and numbers in parentheses represent the Flexibility Bracket for any given year. The SRS Contractors are not providing flow contributions in Wet or Critical year types.**

Water Year	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Above Normal <sup>1</sup>	0%	0%	0%	0% (0-25%)	0% (0-25%)	0% (0-25%)	50% (0-100%)	50% (0-100%)	0% (0-25%)	0%	0%	0%
Below Normal, and Dry <sup>2</sup>	5% (0-25%)	0% (0-25%)	0% (0-25%)	0% (0-25%)	0% (0-25%)	0% (0-50%)	10% (0-25%)	15% (0-25%)	20% (0-25%)	20% (0-25%)	20% (0-25%)	10% (0-25%)
<p>1. VA parties agree that the Sacramento River flow contribution of 100 thousand acre-feet (TAF) will be provided during the January through June period, except when it is recommended through the VA governance process that shifting the timing of a portion of this contribution would be in the best interest of the fishery. Recommendations by the VA governance process require approval from at least two of the following agencies: National Marine Fisheries Service, California Department of Fish and Wildlife, and the State Water Board. A process will need to be developed which describes this decision-making process for each of the three agencies as well as a summary of why one of the agencies chose not to approve the action.</p> <p>2. Assumes an April-October following pattern. For November-February, assumes water from the action year would be held in storage to be used in the fall or into the winter, assuming USBR approves the extension of the VA water into the next water year and operations. For March, assumes a dry year pulse in March. [Drafting note: The Critical year type has been removed from this table since the SRS Contractors are not making VA flow contributions in those years.]</p> <p>[Drafting note: The flow accounting workgroup is continuing to develop a method to track deployment of these flows, and address implications of spill operations.]</p>												

**1.3** The Parties to this Agreement acknowledge that the 100,000 AF flow contribution from the SRS Contractors will require the reoperation of Shasta Reservoir, which is owned and operated by USBR. The Parties will coordinate with USBR so that reoperation of Shasta Reservoir will involve the following actions and order:

- A. If the water year is designated Dry, Below Normal, or Above Normal, the SRS Contractors will implement actions to make water available as stated in section 1.1 above.
- B. VA governance entities (Sacramento River Governance and Systemwide Governance Committee) will decide on a recommended Spring Action based on the framework in the VA Strategic Plan. An evaluation of Shasta Cold Water Pool would be completed to ensure any spring action would not impact winter-run salmon cold-water temperature requirements that align with the applicable Biological Opinions and State Water Board water right requirements.
- C. Recommendations by the VA governance entities require approval from at least two of the following agencies: National Marine Fisheries Service, CDFW, and the State Water Board.
- D. If a spring pulse is not possible (for example, because of winter-run salmon cold-water temperature requirements) or needed, the VA governance entities would discuss other options for the block of water made available subject to USBR approval, which could include:
  - Making the water available instream per the following schedule
  - Holding the water in storage in Shasta Reservoir until the fall to help meet fall flow and temperature requirements for fall-run salmon
  - Carrying the water over into the next water year for a spring action, or a summer/fall action, while ensuring decision-making is clear and accounting is done through an approved methodology (subject to any additional necessary regulatory approvals still under development).
- E. For the options listed above, if any option falls outside of the Flexibility Bracket as defined in Table 1 above, the Implementing Parties would seek prior approval from the State Water Board to make these adjustments.

**2. Sacramento River Mainstem Non-Flow Measures/Habitat Enhancement Component (Implementing Agencies: SRS Contractors, CDWR)**

**2.1** Habitat measures will be designed and constructed to include a mixture of habitat features intended to enhance Chinook salmon in-river productivity to contribute toward achieving the Narrative Salmon Objective.

**2.2** Habitat measures will be developed by the SRS Contractors in coordination with USBR, CDWR, and CDFW.

**2.3** As further described in sections 3.2.B and 4.2, below, the habitat enhancement commitments in this section are subject to the availability of adequate funding, and the issuance of necessary permits and approvals, including any necessary approvals required under the Sacramento River Mainstem Governance Program as set forth in Appendix 2 to this Agreement.

**2.4** During the term of this Agreement, and consistent with the VA MOU and Term Sheet, the SRS Contractors and CDWR, in coordination with USBR, will implement the restoration of at least 137.5 acres of instream habitat for juvenile Chinook salmon rearing and 113.5 acres of spawning habitat on the Sacramento River Mainstem.

**2.5** The Parties to this Agreement acknowledge that since December 2018, twelve spawning/rearing combination projects contributing to the VA environmental targets have been implemented in the Sacramento River Mainstem, and that these early implementation projects are contributing 105.65 acres of instream habitat (in-channel rearing habitat) and 71.85 acres of spawning habitat towards the habitat restoration targets established in the VA MOU.

**2.6** During the term of this Agreement, CDWR will lead implementation of the Non-Flow Measures in Table 2 below for the Years 1 through 8 columns and that exceed the SRS Contractors' acreage commitments in section 2.4 above. CDWR will coordinate with USBR, and work with the SRS Contractors, other water suppliers, and non-governmental agencies under existing habitat programs for this implementation. CDWR will lead this implementation in support of the following objectives: continued annual implementation and maintenance of salmonid habitat, maintaining vital landowner and stakeholder support, operating within the constraints of available funding, coordinating schedules with other entities planned work in the river corridor, and allowing for adaptive management while fully meeting VA habitat acreage requirements during the term of this Agreement.

**Table 2. Default Implementation Schedule for Non-Flow Habitat Enhancement Measures on the Sacramento River Mainstem.**

Description of Measures	Early Implementation (Dec 2018-2024)	Years 1-3 (2025-2027)	Years 4-6 <sup>1</sup> (2028-2031)	Years 7-8 <sup>1</sup> (2032-2033)	Total <sup>2</sup>
Spawning (acres) <sup>3</sup>	71.85	45.37	73.20	42.20	232.62
Rearing: In-Channel (Instream) (acres) <sup>4</sup>	105.65	8.07	121.70	3.00	238.42
Rearing: Tributary Floodplain (acres) <sup>4</sup>	138.20	328.20	5,476.00	0	5,942.40



Fish passage improvements (# of acres) <sup>4</sup>	3.50	0	0	0	3.50
Other (predation reduction/combination of acres and number of clusters)	31.9 acres predation / 2,085 clusters	0 acres predation / 50 clusters	2 acres predation / 193.3 clusters	0 acres predation / 50 clusters	33.9 acres predation / 2,378.30 clusters

<sup>1</sup> Assumes adequate funding exists at the time of implementation.

<sup>2</sup> Table includes all likely feasible acreage planned for implementation and/or maintenance under existing and ongoing habitat program, based on the current implementation schedules. More habitat may be constructed during the VA timeframe above than required. The VA commitment includes 135.5 acres of rearing and 113.5 acres of spawning habitat. Any acreages created during the VA term above those obligations will not be subject to VA governance or State Water Board oversight.

<sup>3</sup> Includes implementation of current programmatically permitted and designed spawning/rearing combination sites and ongoing maintenance of spawning sites, to ensure continued habitat function at early implementation program (EIP) funded sites through the period of performance for the Healthy Rivers and Landscape Program.

<sup>4</sup> Includes implementation of current programmatically permitted rearing and spawning combination habitat sites and implementation of new rearing-only sites that have not yet been permitted and for which designs are currently at the conceptual level.

### 3. Sacramento River Mainstem Funding Component

#### 3.1 Compensation to SRS Contractors (Implementing Entity: Systemwide Funding Entity)

- A. During the term of this Agreement, the Systemwide Funding Entity will provide or arrange for funding for payment to the SRS Contractors for their 100,000 AF flow contribution in each of the above normal, below normal, and dry year types when water is called and made available under the Healthy Rivers and Landscape Program as follows:
- \$300/AF for the first 7 years while this Agreement is in effect.
  - \$375/AF for the 8th year.<sup>2</sup>
  - Each call year will include an additional \$75/acre payment for reduced Fall water use (for the 1 AF of reduced Fall water use on each idled rice acre).
- B. In addition to funding set forth above, the Systemwide Funding Entity will within \_\_ days of execution of this Agreement, provide a nonrefundable upfront payment totaling \$\_\_\_\_\_, equating to

<sup>2</sup> The Parties agree that water made available by riceland idling under the Healthy Rivers and Landscape Program equates to 3.3 AF per idled acre during the irrigation season, and 1 AF of reduced Fall water use per each idled acre, for a total of 4.3 AF per idled acre.

\$\_\_\_\_\_ per acre idled for the SRS Contractors 100,000 AF flow contribution.

**3.2 Contributions From SRS Contractors (Implementing Entity: SRS Contractors)**

- A. During the term of this Agreement, each year the SRS Contractors will contribute \$8/AF to the Revolving Water Transfer Fund or equivalent funding mechanism for all Project water (as defined under the SRS Contracts) that the SRS Contractors actually divert in accordance with their SRS Contracts.
- B. During the term of this Agreement, each year the SRS Contractors will contribute an additional \$1/AF to the Structural Science and Habitat Fund or equivalent funding mechanism, for all surface water the SRS Contractors actually divert in accordance with their SRS Contracts.
- C. The SRS Contractors will receive credit toward their above-referenced per acre-foot payment obligations to the Structural Science and Habitat Fund in amounts equivalent to the costs they have incurred for early implementation of habitat measures that were completed prior to the effective date of this Agreement.
- D. Funds contributed by the SRS Contractors under this section 3.2 will be accounted for and managed in accordance with the governance procedures set forth in Appendix 2 of this Agreement.

**3.3 Contributions From Tehama-Colusa Canal Authority (TCCA) Parties (Implementing Entity: TCCA Parties)**

- A. During the term of this Agreement, each year the TCCA Parties will contribute \$8/AF to the Revolving Water Transfer Fund or equivalent funding mechanism for all CVP water that is actually delivered to the TCCA Parties in accordance with their CVP contracts.
- B. During the term of this Agreement, each year the TCCA Parties will contribute an additional \$2/AF to the Structural Science and Habitat Fund or equivalent funding mechanism, for all CVP water that is actually delivered to the TCCA Parties in accordance with their CVP contracts.

### **3.4 Collection of Contributed Funds**

The SRS Contractors and TCCA Parties shall provide their above-referenced funding contributions through one of the following alternatives:

1. Self-collect as required under any funding collection agreement by and between the SRS Contractors, or any funding agreement by and between the TCCA Parties.
2. Request that USBR collect funds on behalf of the SRS Contractors and TCCA Parties under existing authorities.
3. Special authorizing legislation that will allow for USBR to collect from the SRS Contractors and TCCA Parties in accordance with their respective water rights settlement contract or water service contract for water supplies from the CVP.

Collected funds will be deposited into the Revolving Water Transfer Fund or Structural Science and Habitat Fund, as applicable, and may be used at the discretion of the Systemwide Governance Committee, unless otherwise prescribed by this Implementation Agreement, to implement the water acquisition, habitat and other non-flow, and science elements of the Healthy Rivers and Landscape Program.

## **4 Conditions**

**4.1** The SRS Contractors' commitment to provide their 100,000 AF flow contribution will be subject to the Systemwide Funding Entity providing the funding specified in section 3.1 of this Appendix.

**4.2** The SRS Contractors' commitment to implement habitat enhancement measures is subject to the availability of adequate funding and the issuance of necessary permits and approvals, and the SRS Contractors' and TCCA Parties' funding commitment toward such measures is limited to their obligations under sections 3.2.B and 3.3.B of this Appendix. To achieve the habitat enhancement commitments, SRS Contractors will, in cooperation and coordination with other Parties, pursue all available funding sources, including state, federal, and grant sources and the issuance of all necessary permits and approvals.

**4.3** The SRS Contractors' and TCCA Parties' commitment to implement the Sacramento River Mainstem Science Program is subject to the availability of adequate funding and the issuance of necessary permits and approvals, and the SRS Contractors' and TCCA Parties' funding commitment toward such program is limited to their obligations under sections 3.2.B and 3.3.B of this Appendix.

**4.4** The Parties intend that the Healthy Rivers and Landscape Program for the Sacramento River Mainstem measures include all of the SRS Contractors' and TCCA Parties' commitments to contribute to the implementation of the Bay-Delta Plan's water quality objectives. If the State Water Board takes any water-quality or water-right actions in this Bay-Delta Plan amendment proceeding that would affect the SRS Contractors or TCCA Parties beyond the actions described as their respective contributions in this Implementation Agreement to the Healthy Rivers and Landscape Program for the Sacramento River Mainstem, or any other actions that would increase any of their respective commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives, during the term of this Agreement, then the SRS Contractors and TCCA Parties may terminate or withdraw from this Agreement.

**4.5** During the term of this Agreement, the SRS Contractors' commitment to provide their 100,000 AF flow contribution will be subject to suspension or termination by the SRS Contractors if: (1) the new Biological Opinions issued for the Long-Term Operations of the CVP and SWP result in reduced diversions by the SRS Contractors that are not agreed to by the SRS Contractors or are otherwise inconsistent with the terms of the SRS Contracts with USBR; or (2) the State Water Board's implementation of Order 90-5 results in reduced diversions by the SRS Contractors below the quantities provided for in their respective SRS Contracts, or as otherwise may be agreed to by the SRS Contractors.

**Appendix 2.**  
**FORM OF ORDER BY THE STATE WATER RESOURCES CONTROL BOARD**

It is hereby ORDERED that the attached Enforcement Agreement between the State Water Board and Responsible Parties is approved.

1. The Responsible Parties shall implement the flow, habitat restoration, and other measures as stated in section 3 of the Enforcement Agreement;
2. The State Water Board shall implement its obligations as stated in section 4 of the Enforcement Agreement; and
3. The State Water Board and Responsible Parties shall follow the enforcement and dispute resolution terms stated in section 5 of the Enforcement Agreement.

**Appendix 3.**  
**DESIGNATED REPRESENTATIVES FOR RESPONSIBLE PARTIES**

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# **Exhibit C8.**

## **State Water Purchase Program**

**The State team has drafted an MOU specifying measures to implement the State Water Purchase Program. The draft is undergoing internal review. The draft reflects the expectation that continued implementation of CNRA and DWR's existing "Instream Water Purchase Program," <https://resources.ca.gov/grants/instream-flow-water-purchase>, including procedures and requirements thereof, will achieve the State Water Purchase Program specified in VA MOU Term Sheet (2022).**



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# **Exhibit C9.**

## **Tuolumne River**

ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION OF THE  
HEALTHY RIVERS AND LANDSCAPES PROGRAM ON THE TUOLUMNE RIVER

**March 29, 2024 Draft**

This “Enforcement Agreement related to Implementation of the Healthy Rivers and Landscapes Program on the Tuolumne River” (“Enforcement Agreement”) is entered into by and between the California State Water Resources Control Board (“State Water Board”) and the Modesto Irrigation District (“MID”), the Turlock Irrigation District (“TID”), and the San Francisco Public Utilities Commission (“SFPUC”)(collectively, “the Tuolumne River Responsible Parties,” or “Responsible Parties”)for the purpose of providing for regulatory enforcement of those flow, habitat restoration, and other measures stated in Appendix 1 hereto.

**RECITALS**

A. The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 *et seq.*) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

B. The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

C. The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital E.

D. The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

E. On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. Without waiving any future legal position and only for purposes of implementing the Tuolumne River Agreement for Healthy Rivers and Landscapes, the Tuolumne River Responsible Parties agree to be subject to the State Water Board’s regulatory authority for enforcement of their obligations to implement flow, habitat restoration, and other measures as specified in Appendix 1.

## **TERMS OF AGREEMENT**

**1. Purpose.** This Enforcement Agreement states the specific obligations of Responsible Parties for implementation of flow, habitat restoration, and other measures for the Tuolumne River as specified in Appendix 1. It states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to the Responsible Parties.

**1.1. Settlement of Disputed Issues.** This Enforcement Agreement addresses disputed issues related to the Bay-Delta Plan and specifically, addresses disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

**1.2. Timeliness.** The State Water Board and Responsible Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all Agreements for Healthy Rivers and Landscapes. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

**2.1. Applicable Law** means: state or federal law that (a) exists independently of this Enforcement Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Responsible Parties contemplated by this Enforcement Agreement.

**2.2. Bay-Delta Plan** means: *Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary* (as amended December 12, 2018).

2.3. **CDFW** means: the California Department of Fish and Wildlife.

2.4. **CDWR** means: the California Department of Water Resources.

2.5. **Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in an Enforcement Agreement for the water source which is the basis for their diversion or use as appropriate. Within the Tuolumne River watershed, a Covered Entity is any person or entity, other than the Responsible Parties, who or which possesses the legal right to divert water from Tuolumne River watershed upstream of the La Grange Diversion Dam.

2.6. **Covered Water Quality Objectives** means: the objectives that the Agreement for Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as stated in Exhibit A section 1.

2.7. **Enforcement Agreements** means: this Enforcement Agreement related to Implementation of the Healthy Rivers and Landscapes Program on the Tuolumne River, and the other such agreements to assure implementation of the Healthy Rivers and Landscapes Program, each executed pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program.

2.8. **Final Action** means: final action by the State Water Board to amend the Bay-Delta Plan to approve the Supported Amendments authorizing the implementation of the Healthy Rivers and Landscapes Program.

2.9. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers and Landscapes Program, along with the obligations of the Parties to support implementation.

2.10. **The Tuolumne River Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures specified in the Implementing Agreement Appendix 1. The Tuolumne River Governance Entity is the Tuolumne River Partnership Advisory Committee.

2.11. **Implementing Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration, and other measures in the Tributaries and Delta. In this Enforcement

Agreement for the Tuolumne River, the term refers to the Implementing Agreement for this same water source.

2.12. **Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in the Implementing Agreements, and specifically Appendix 1 thereto. Responsible Parties are Implementing Entities that sign an Enforcement Agreement.

2.13. **Parties** means: signatories to the Global Agreement, who will also sign the applicable Enforcement and Implementing Agreement. Parties who sign an Enforcement Agreement are Responsible Parties. Parties who sign an Implementing Agreement are Implementing Entities.

2.14. **Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, amend this program to authorize implementation of the Healthy Rivers and Landscapes Program.

2.15. **Responsible Parties** means: the Parties who are Implementing Entities under an Implementing Agreement and sign the corresponding Enforcement Agreement. Responsible Parties under this Enforcement Agreement are called “Tuolumne River Responsible Parties.”

2.16. **State Water Board** means: the State Water Resources Control Board.

2.17. **State Water Project** or **SWP** means: the project authorized by California Water Code sections 11000 *et seq.*, and operated by CDWR, for water supply, power, flood control and other purposes.

2.18. **USBR** means: the United States Bureau of Reclamation.

2.19. **Healthy Rivers and Landscapes Program** means the measures, rights and obligations stated in the Global Agreement and its Exhibits A – G. This Enforcement Agreement is Exhibit C.X thereto.

2.20. **Agreements for Healthy Rivers and Landscapes** means: the Global Agreement, the Implementing Agreements, and the Enforcement Agreements.

2.21. **Year means:** time starting on the Effective Date of the Global Agreement. Year 0 begins on the Effective Date.

### 3. **Obligations of the Tuolumne River Responsible Parties.**

3.1. **Implementation.** Each Responsible Party under this Agreement will implement the obligations assigned to that entity in Appendix 1.

- A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance will be subject to the remedies stated in Section 5 and Appendix 1, below.
- B. If an obligation is assigned to multiple Responsible Parties under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Responsible Party, other such entities will not be responsible for performance.

3.2. **Progress Reports and Inspections.** The Tuolumne River Governance Entity will prepare Annual and Triennial Reports with respect to implementation. The entity will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

#### 4. **Obligations of State Water Board**

4.1. **Execution of Order.** The Executive Officer of the State Water Board shall sign the Order approving this Agreement (Appendix 2 hereto), concurrent with the signing of this Agreement.

4.2. **Additional Contributions.** The State Water Board shall not seek Additional Contributions in excess of the contributions listed in Appendix 1 of this Enforcement Agreement from the Responsible Parties, other Implementing Entities, or Covered Entities in the Tuolumne River, for the purpose of implementation of the Covered Water Quality Objectives or related purposes, including, but not limited to, any curtailments and any water quality certification provided pursuant to Section 401 of the Clean Water Act. With respect to each individual Responsible Party, Implementing Entity, or Covered Entity, “Additional Contributions” means any flows, or reductions in diversions, which would exceed the flows such Responsible Party or entity is legally required to provide or release, including the flows required by this Enforcement Agreement. This assurance will be implemented through the procedures, and subject to the requirements in limitations, stated in Exhibit A section 5 as incorporated into the Program of Implementation.

4.3. **Protection of Flows.** The State Water Board will use the protections identified in Exhibit A (Supported Amendments to the Bay-Delta Plan), Section 3 (Procedures for Protection of Flows) to use the authority vested in the State Water Board to protect flows attributed to the Tuolumne River Responsible Parties.

- A. Responsible Parties will be available to assist the State Water Board in its proceedings to provide these protections. Responsible Parties who so participate will support these protections, provided they agree with the authorities cited by the State Water Board, the scope, and the technical methodology, used in a

proceeding. Tuolumne River Responsible Parties currently have no legal means of supporting the State Water Board in the protection of flows, but will provide technical advice as requested.

- B. The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses.

4.4. **Expedited Process.** The State Water Board will undertake an expedited process for considering any petition by a Responsible Party or other Implementing Organization pursuant to Water Code sections 1700-1725, changing the place and purpose of use for its water rights to implement its obligations hereunder.

## 5. **Enforcement and Dispute Resolution Procedures.**

5.1. **General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of Tuolumne River Responsible Parties using a cease-and-desist order adopted pursuant to the procedures stated in Water Code sections 1825 through 1835, to the extent allowed under these existing laws.

- A. The Tuolumne River Responsible Parties will not contest an enforcement action brought pursuant to this Section 5.1 on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to it in Appendix 1.
- B. The State Water Board is not authorized to commence an enforcement action against a Tuolumne River Responsible Party based on the non-performance of an obligation that is not assigned to that Tuolumne River Responsible Party or Covered Entity.
- C. The State Water Board is not authorized to seek any further curtailment from Tuolumne River Responsible Parties and associated Covered Entities during the term of the Agreement for Healthy Rivers and Landscapes.

5.2. **State Water Board.** The Tuolumne River Responsible Parties may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Enforcement Agreement.

5.3. **Dispute Resolution Procedures.** Prior to taking any enforcement action pursuant to Section 5 of this Enforcement Agreement, the State Water Board shall provide a notice of violation to the Responsible Party that the State Water Board alleges has violated an obligation, a written description of the alleged violation, and a reasonable opportunity for the Responsible Party to cure the alleged violation. If, within 30 days of receipt of a notice of violation, a Responsible Party named in such Notice wishes to dispute the alleged violation(s) or any ordered abatement of such violation(s),

the Responsible Party may provide notice to the State Water Board of its request to commence dispute resolution through non-binding arbitration before a neutral arbiter. If the State Water Board and Responsible Party are unable to resolve the dispute through non-binding arbitration, then the State Water Board may seek to enforce the notice pursuant to Section 5.1 of this Enforcement Agreement.

5.4. **Force Majeure; Conditions Precedent.** No Tuolumne River Responsible Party shall be liable for any failure of, or delay in, the performance of duties under this Enforcement Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; any final determination by a court of competent jurisdiction that renders the performance of any duty under this Enforcement Agreement unlawful; or where any Responsible Party fails or is otherwise unable to perform an action under this Enforcement Agreement due to no fault of that Party, including, but not limited to, the nonattainment of any condition precedent.

## 6. **Effective Date and Term.**

6.1. This Enforcement Agreement takes effect when signed by the Responsible Parties and will be binding as to such Parties when signed.

6.2. The term of the Enforcement Agreement will be concurrent with the term of the Global Agreement. As to any Responsible Party, this Enforcement Agreement will terminate upon that Responsible Party's withdrawal from the Global Agreement.

7. **No Admission of Liability.** The Tuolumne River Responsible Parties enter into this Enforcement Agreement voluntarily. Nothing in this Tuolumne River Enforcement Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the Responsible Parties, other than for purposes of enforcing this Enforcement Agreement. The Tuolumne River Responsible Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2, of the California Constitution, or the public trust doctrine, for providing the flows, habitat restoration, and other measures stated in Appendix 1 of this Enforcement Agreement, or otherwise admit that the enforcement authorities provided in Section 5 would be available against them with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

8. **Compliance with Applicable Laws.** Each Tuolumne River Responsible Party represents that it believes that this Enforcement Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

## 9. **Reservations.**

9.1. **Generally.** Nothing in this Enforcement Agreement is intended or will be construed to affect or limit the authority or obligation of any Tuolumne River Responsible Party to fulfill its



constitutional, statutory, and regulatory responsibilities or to comply with any judicial decision. Nothing in this Enforcement Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law. The Tuolumne River Responsible Parties expressly reserve all rights not granted, recognized, or relinquished in this Enforcement Agreement.

9.2. **Availability of Funding.** Funding by any public agency Responsible Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law; provided that the Responsible Parties recognize that timely and sufficient funding is necessary to implement the Healthy Rivers and Landscapes Program.

9.3. **[Reserved].**

9.4. **Environmental Review.** Nothing in this Enforcement Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Enforcement Agreement.

10. **Notices.** Any notice required by this Enforcement Agreement shall be provided in writing. Notice shall be provided by electronic mail to the authorized representative of a Tuolumne River Responsible Party, unless the sending entity determines that first-class mail or personal delivery to an authorized representative of a Tuolumne River Responsible Party is more appropriate in a given circumstance. A notice shall be effective upon receipt; but, if notice is provided by U.S. Mail, notice shall be deemed effective on the seventh day after the date on which the notice was mailed. For the purpose of notice, the list of authorized representatives of the Responsible Parties as of the Effective Date is attached as Exhibit C. Each such entity will provide notice of any change in the authorized representatives designated in Exhibit C. The State Water Board will maintain the current distribution list of all such authorized representatives.

11. **Attorney's Fees and Costs.** The State Water Board and each Tuolumne River Responsible Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Enforcement Agreement.

12. **Entire Agreement.** This Enforcement Agreement contains the entire agreement of the Tuolumne River Responsible Parties and State Water Board with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

13. **Construction and Interpretation.** This Enforcement Agreement has been arrived at through negotiation. Each Responsible Party has had a full and fair opportunity to revise the terms of the Enforcement Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Enforcement Agreement.

14. **Amendment.** This Enforcement Agreement may only be amended in writing by all Tuolumne River Responsible Parties still in existence, including any successors or assigns. A Responsible Party may provide notice of a proposed amendment at any time. The Responsible Parties agree to meet in person or by teleconference within 20 days of receipt of notice of a proposed amendment.

15. **Addition of New Responsible Parties.** A non-covered entity on the Tuolumne River may become a Responsible Party by signing the Enforcement Agreement and the other Agreements for Healthy Rivers and Landscapes, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto and the amendment of this Enforcement Agreement pursuant to Section 14 of this Enforcement Agreement.

16. **Successors and Assigns.** This Enforcement Agreement will apply to, be binding on, and inure to the benefit of the Responsible Parties and their successors and assigns, unless otherwise specified in this Enforcement Agreement. No assignment may take effect without the express written approval of the other parties, which approval will not be unreasonably withheld.

17. **No Third Party Beneficiaries.** This Enforcement Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Responsible Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Enforcement Agreement. The duties, obligations, and responsibilities of the Responsible Parties with respect to third parties will remain as imposed under Applicable Law.

18. **Elected Officials Not to Benefit.** No elected official will personally benefit from this Enforcement Agreement or from any benefit that may arise from it.

19. **Severability.** This Enforcement Agreement is made on the understanding that each term is a necessary part of the entire Enforcement Agreement. However, if any term or other part of this Enforcement Agreement is held to be unlawful, invalid, or unenforceable, the Responsible Parties will undertake to assure that the remainder of the Enforcement Agreement will not be affected thereby. The State Water Board and the Tuolumne River Responsible Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the intention of this Enforcement Agreement to the greatest lawful extent.

20. **Authority to Bind.** Each signatory to this Enforcement Agreement certifies that he or she is authorized to execute this Enforcement Agreement and to legally bind the entity the signatory represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

21. **Counterpart Signatures; Facsimile and Electronic Signature.** This Enforcement Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Responsible Parties had signed the same instrument. The signature pages of

counterparts of this Enforcement Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

*[Signatories]*

## Appendix 1.

### **REGULATORY OBLIGATIONS UNDER ENFORCEMENT AGREEMENT FOR THE TUOLUMNE RIVER**

<b>Obligation</b>	<b>Responsible Party</b>	<b>Sequence and Conditions for Performance</b>	<b>Remedies for Non-Performance</b>
Meet or exceed the flow volumes in the quantities, times, and at the locations identified in Tables B9.1.A – B9.1.G of the Tuolumne River Agreement for Healthy Rivers and Landscapes Implementation Agreement. (Attached hereto as Exhibit 1)	MID, TID, and SF		
Several non-flow actions that, in combination with the Agreement for Healthy Rivers and Landscapes flow commitments, will improve salmonid spawning and rearing habitat on the lower Tuolumne River, including construction of 77 acres of rearing/floodplain habitat that will be inundated at the Agreement for	MID, TID and SF	Timely permitting and completion of appropriate environmental review.  San Francisco's funding commitments are subject to the budget and fiscal provisions of San Francisco's Charter. San Francisco's financial obligations will accrue only after prior written authorization certified by the San Francisco Controller, and the amount of San	

<p>Healthy Rivers and Landscapes flows. See Table B9.1-I of the Tuolumne River Agreement for Healthy Rivers and Landscapes Implementation Agreement. (Attached hereto as Exhibit 2)</p>		<p>Francisco's obligation under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. San Francisco has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. San Francisco budget decisions are subject to the discretion of the San Francisco Mayor and the Board of Supervisors. The assumption of risk of possible non-appropriation is part of the consideration for this Agreement.</p>	
<p>75,000 tons of new gravel between river mile (RM) 52 and RM 39 and approximately 25,000 tons of new gravel between RM 39 and RM 24.5 to create additional spawning/rearing habitat. See Table B9.1-J of the Tuolumne River Agreement for Healthy Rivers and Landscapes</p>	<p>MID, TID, and SF</p>	<p>Timely permitting and completion of appropriate environmental review.</p> <p>San Francisco's funding commitments are subject to the budget and fiscal provisions of San Francisco's Charter. San Francisco's financial obligations will accrue only after prior written authorization certified by the San Francisco Controller, and the amount of San</p>	

<p>Implementation Agreement. (attached hereto as Exhibit 3)</p>		<p>Francisco's obligation under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. San Francisco has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. San Francisco budget decisions are subject to the discretion of the San Francisco Mayor and the Board of Supervisors. The assumption of risk of possible non-appropriation is part of the consideration for this Agreement.</p>	
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## EXHIBIT 1

**Table B9.1-A – Tuolumne AHRL Volume Summary**

Critical Year Type <sup>1</sup>

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne AHRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne AHRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne AHRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne VHRL Flows <sup>5</sup>  (Percent of AHRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions  (AF)
Fry Rearing	Adult Habitat	1/1-2/28	17,554	86,559 (17,039) <sup>6</sup>	0%	20,479
Juvenile Rearing	Spawning	3/1-3/31	9,223		60% to 100%	67,818 (22,298) <sup>7</sup>
		4/1-4/15	4,463			5,950
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	30,193			0% to 40%
		5/1-5/15			7,141	
	Juvenile Rearing	5/16-5/31	4,760		7,438 (7,438) <sup>9</sup>	
	Rearing	6/1-6/30	2,975			
Jan-Jun Totals:			69,168	86,559 (17,039) <sup>6</sup>		155,727 (86,207) <sup>6</sup>

**Table B9.1-B – Tuolumne AHRL Volume Summary**

**Dry Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne AHRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne AHRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne AHRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne AHRL Flows <sup>5</sup>  (Percent of AHRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions  (AF)
Fry Rearing	Adult Habitat	1/1-2/28	19,309	139,720 (39,604) <sup>6</sup>	0%	23,405
Juvenile Rearing	Spawning	3/1-3/31	10,146		60% to 100%	93,951 (23,835) <sup>7</sup>
		4/1-4/15	4,909			6,694
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	46,308			0% to 40%
		5/1-5/15			8,727	
	Juvenile Rearing	5/16-5/31	5,236		7,438 (7,438) <sup>9</sup>	
	Rearing	6/1-6/30	4,463			
Jan-Jun Totals:			90,371	139,720 (39,604) <sup>6</sup>		230,091 (129,975) <sup>6</sup>



**Table B9.1-C – Tuolumne AHRL Volume Summary**

**Below Normal Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne AHRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne AHRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne AHRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne HRLA Flows <sup>5</sup>  (Percent of AHRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions  (AF)
Fry Rearing	Adult Habitat	1/1-2/28	27,793	127,368 (97,616) <sup>6</sup>	0%	26,330
Juvenile Rearing	Spawning	3/1-3/31	14,603		60% to 100%	114,545 (84,793) <sup>7</sup>
		4/1-4/15	7,066			7,438
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	89,087			116,364
		5/1-5/15				
	Juvenile Rearing	5/16-5/31	7,537		9,521	
	Rearing	6/1-6/30	9,670		8,926 (8,926) <sup>9</sup>	
Jan-Jun Totals:			155,756	127,368 (97,616) <sup>6</sup>		283,124 (253,372) <sup>6</sup>

**Table B9.1-D – Tuolumne AHRL Volume Summary**

**Above Normal Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne AHRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne AHRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne AHRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne AHRL Flows <sup>5</sup>  (Percent of AHRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions  (AF)
Fry Rearing	Adult Habitat	1/1-2/28	35,107	138,515	0%	26,330
Juvenile Rearing	Spawning	3/1-3/31	18,446		60% to 100%	114,545
		4/1-4/15	8,926			7,438
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	107,733			0% to 40%
		5/1-5/15			9,521	
	Juvenile Rearing	5/16-5/31	14,876		8,926 (8,926) <sup>9</sup>	
		6/1-6/30				
		Jan-Jun Totals:	194,609	138,515		333,124

**Table B9.1-E – Tuolumne AHRL Volume Summary**

**Wet Year Type <sup>1</sup>**

Fall Run Chinook Salmon Life Stage <sup>2</sup>	O. mykiss Life Stage <sup>2</sup>	Period	Volume Summary of 1996 FERC Order Amending the License for the Don Pedro Project, Excluding Interpolation Water <sup>3a,3b</sup>	Volume of Tuolumne AHRL Flow Measures <sup>4</sup>		Volume Summary of Implementing Schedule for Tuolumne AHRL <sup>4</sup>
			Total Minimum Flow Requirement at La Grange  Base Flow + Pulse Flows  (AF)	Tuolumne AHRL Flows: Increase in Minimum Instream Flow Requirement from 1995 FERC License  (AF)	Flexible Ranges of Tuolumne AHRL Flows <sup>5</sup>  (Percent of AHRL Flow Measure Volume)	Estimated Minimum Net Flow Past Infiltration Galleries  Base Flow + Pulse Flows - Infiltration Gallery Diversions (AF)
Fry Rearing	Adult Habitat	1/1-2/28	35,107	138,515	0%	26,330
Juvenile Rearing	Spawning	3/1-3/31	18,446		60% to 100%	114,545
		4/1-4/15	8,926			7,438
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	107,733			0% to 40%
		5/1-5/15			9,521	
	Juvenile Rearing	5/16-5/31	14,876		8,926 (8,926) <sup>9</sup>	
		6/1-6/30				
		Jan-Jun Totals:	194,609	138,515		333,124

**Table B9.1-F – Tuolumne AHRL Implementing Schedule, Base Flows**

Implementing Schedule for Tuolumne AHRL <sup>4</sup> Instream Flow Requirement at La Grange Base Flows (CFS)								
Fall Run Chinook Salmon Life Stage <sup>2</sup>	<i>O. mykiss</i> Life Stage <sup>2</sup>	Period	Water Year Type <sup>1</sup>					
			Critical		Dry		Below Normal, Above Normal, and Wet	
			Instream Flow Requirement at La Grange <sup>10</sup>	Expected Infiltration Gallery Diversions <sup>11</sup>	Instream Flow Requirement at La Grange <sup>10</sup>	Expected Infiltration Gallery Diversions <sup>11</sup>	Instream Flow Requirement at La Grange <sup>10</sup>	Expected Infiltration Gallery Diversions <sup>11</sup>
Fry Rearing	Adult Habitat	1/1-2/28	175	0	200	0	225 <sup>15</sup>	0
Juvenile Rearing	Spawning	3/1-3/31	200	0	225	0	250	0
		4/1-4/15	200	0	225	0	250	0
Rearing and Outmigration	Incubation/Fry Rearing	4/16-4/30	200	0	250	0	275	0
		5/1-5/15	200	0	250	0	275	0
	Juvenile Rearing	5/16-5/31	225	0	275	0	300	0
		6/1-6/30	200 (125) <sup>11</sup>	75	200 (125) <sup>11</sup>	75	200 (150) <sup>11</sup>	50

**Table B9.1-G – Tuolumne AHRL Implementing Schedule, Pulse Flows**

Implementing Schedule Including Tuolumne AHRL <sup>4</sup> Instream Flow Requirement at La Grange Pulse Flows <sup>12, 13, 14</sup> (AF)								
Period	Water Year Type <sup>1</sup>							
	Critical	Successive Critical	Dry	Successive Dry	Below Normal	Successive Below Normal	Above Normal	Wet
1/1-2/28	0	0	0	0	0	0	0	0
3/1-3/31	55,521	10,000 <sup>7</sup>	80,116	10,000 <sup>7</sup>	99,174	69,421 <sup>7</sup>	99,174	99,174
4/1-4/15	0	0	0	0	0	0	0	0
4/16-4/30	35,000	11,000 <sup>8</sup>	75,000	45,000 <sup>8</sup>	100,000	100,000	150,000	150,000
5/1-5/15								
5/16-5/31	0	0	0	0	0	0	0	0
6/1-6/30	0	0	0	0	0	0	0	0

**Notes for Tables B9.1-A through B9.1-G:**

- 1.** The Tuolumne Agreement for Healthy Rivers and Landscapes implementing schedule uses the San Joaquin Index Water Year Types as defined in D1641.
- 2.** The timing of life stages is approximate and may depend on hydrologic cues or other factors that vary from year to year.
- 3a.** The 1996 FERC Order Amending the License for the Don Pedro Project has 10 water year type classifications as set by the 1995 Settlement Agreement that have been converted to the 5 SJI Water Year Type classifications by averaging minimum flow requirements. A crosswalk for year type classifications is provided below:

1995 Settlement Agreement Water Year Type	Crosswalk to D1641 SJI Water Year Type
CRITICAL WATER YEAR AND BELOW	Critical
MEDIAN CRITICAL WATER YEAR	
INTERMEDIATE C-D WATER YEAR	
MEDIAN DRY	Dry
INTERMEDIATE D-BN	
MEDIAN BELOW NORMAL	Below Normal
INTERMEDIATE BN-AN	
MEDIAN ABOVE NORMAL	Above Normal
INTERMEDIATE AN-W	
MEDIAN WET/ MAXIMUM	Wet

- 3b.** The minimum instream flow requirements shown in this column exclude interpolation water. Interpolation water requirements are described in the 1996 FERC Order amending the license for the Don Pedro Project. The volume of interpolation water that is required varies from year to year and is not always required. If it is required in a given year, the interpolation water is typically applied in October.
- 4.** The Tuolumne Agreement for Healthy Rivers and Landscapes implementing schedule occurs from January through June. The effective FERC license for the Don Pedro and La Grange hydroelectric projects will determine July through December flow requirements.
- 5.** The flexibility in the Tuolumne Agreement for Healthy Rivers and Landscapes can be achieved through adjusting the timing of the two spring pulse flows. Such adjustments will be made to increase benefits to salmonids in the lower Tuolumne River based on the timing of hydrologic conditions and results of salmonid monitoring.

6. The increase from 1995 minimum instream flows shown in parentheses occurs when dry-year relief is applied to the Tuolumne Agreement for Healthy Rivers and Landscapes implementation schedule. See the description of dry-year relief in notes 7 and 8 below.

7. The March (floodplain) pulse volume is reduced in Dry or Critical water year types that follow a Dry or Critical water year type; such years are referred to here as successive Dry and successive Critical water year types, respectively. The March pulse volume is also reduced as shown in Below Normal years that follow a Dry or Critical water year type; these years are referred to as successive Below Normal water year types. Below Normal years that follow a successive Below Normal water year are also considered successive Below Normal years and have a reduced March pulse volume as shown.

As described here, the March pulse flows contain a “dry-year relief” plan. Specifically, in a successive Dry or Critical year, the floodplain pulse is set at the dry-year relief level for that year and any following successive Dry or Critical years. In any Below Normal year occurring in a sequence of Critical and/or Dry years, the floodplain pulse flow will be set to the dry-year relief level for Below Normal years. Any Below Normal year occurring within a sequence of Dry and/or Critical years does not interrupt the dry-year relief sequence. For example, in the water year type sequence of C, D, BN, C, D, the first and second Dry and second Critical years in the sequence would be considered successive Dry or Critical years and would have dry-year relief applied because a Below Normal year does not interrupt the dry-year relief sequence. In this example, there would also be dry-year relief in the Below Normal year. Similarly, in a water year type sequence of C, BN, D, there would be dry-year relief in the Below Normal year and in the Dry year.

In a 3rd successive Below Normal year, the Districts, San Francisco and CDFW shall meet and confer to see what if any water is available for a March floodplain pulse. For example, in a sequence of W, BN, BN, BN water years, the meet-and-confer would occur in the third BN water year.

For purposes of determining dry year relief, a sequence cannot start with a Below Normal year (excluding sequential Below Normal years as set forth above). For example, in a water year type sequence of BN, C, D, there would be no dry-year relief in the Below Normal year or in the Critical year, but dry-year relief would be applied in the Dry year.

8. The April-May (outmigration) pulse volume is reduced as shown in Dry years that follow a Dry or Critical water year, and also in Critical years that follow a Dry or Critical water year. These years are referred to here as Successive Dry Years and Successive Critical Years, respectively.

Similar to the March pulse flows, the April-May pulse flows include the provision for “dry-year relief”. In successive occurrences of Dry and/or Critical water years, the spring outmigration pulse flows are as shown above. Examples of this dry-year relief are enumerated below.

Example 1: If there were a sequence of six water years of type C, D, C, D, C, D, the second and third Critical years and each of the three Dry years would be considered successive Dry or Critical years and would have dry-year relief applied to the April-May pulse.

Example 2: If there were a sequence of four water years of type C, C, D, D, the second Critical year and each of the two Dry years would be considered successive Dry or Critical years and would have dry-year relief applied to the April-May pulse.

Example 3: If there were a sequence of six years of type C, D, BN, C, D, C, both Dry years and the third Critical year would be considered successive Dry or Critical years and would have dry-year relief applied to the April-May pulse.

**9.** Values in parentheses are interim minimum instream flows that will be released at La Grange Diversion Dam until both infiltration galleries are operational. Both infiltration galleries are expected to be constructed and operating by year 6 of the Agreement for Healthy Rivers and Landscapes implementation.

**10.** Base flows and pulse flows will be measured at the USGS La Grange stream gage below La Grange Diversion Dam.

**11.** Diversions at the infiltration galleries will be measured by flow meters in the galleries. Flow in the Tuolumne River downstream of the infiltration galleries will be calculated by subtracting the flow measured in the infiltration galleries from the flow measured at the La Grange stream gage.

**12.** Base flows and pulse flows will be measured at the USGS La Grange stream gage below La Grange Diversion Dam.

**13.** The default timing of pulse flows will be to start the March pulse in mid-March, and to start the April-May pulse in mid-April. The Tuolumne Agreement for Healthy Rivers and Landscapes includes flexibility to adjust the start timing of these pulses to optimize benefits to salmonids in the lower Tuolumne River.

**14.** Pulse volumes are inclusive of any required ramping in the FERC license for the Don Pedro and La Grange Hydroelectric Projects.

**15.** Fry rearing flows from 1/1-2/28 in Below Normal, Above Normal, and Wet water years are contingent upon VA terms being included in the FERC license. Unless FERC indicates otherwise, flows in this time period will be consistent with the current FERC flow schedule.



**Table B9.1-H – Tuolumne River Agreement for Healthy Rivers and Landscapes General Notes Regarding Flow Commitments**

1. The Tuolumne Agreement for Healthy Rivers and Landscapes is not expected to cause redirected adverse impacts. Tuolumne River Parties have offered Additional Maximum Tuolumne Flows (in thousands of AF), that may be deployed upon the occurrence of certain conditions that Tuolumne River Parties agree upon with the California Department of Water Resources (DWR), the U.S. Bureau of Reclamation (Reclamation), and other Agreement for Healthy Rivers and Landscapes parties, up to the volumes listed below:

	C	D	BN	AN	W
<b>Additional Maximum Tuolumne Flows</b>	16	19	30	8	0

2. Tuolumne Parties will work collaboratively with DWR, Reclamation, and other Agreement for Healthy Rivers and Landscapes parties to set the terms and conditions (e.g., additional flows will only occur when the Delta is in balanced conditions, etc.) of providing additional flow contributions consistent with Sections 8.1 and 8.3 of the Term Sheet.

3. Real-time hydrology dependent. The Tuolumne Parties will work collaboratively with DWR, Reclamation, and other Agreement for Healthy Rivers and Landscapes Parties in each year where Tuolumne Agreement for Healthy Rivers and Landscapes Flows are provided to determine the total volumetric need for these additional flows. The Tuolumne's additional flow contribution shall equal 1/3 of this agreed upon volume, or the Additional Maximum flow contribution, whichever is less. These volumes, when provided, will provide instream flow benefits, but will not be subject to flow protection below La Grange Diversion Dam.

4. Tuolumne Parties are releasing or bypassing flow contributions at their lowest point of control, which is La Grange Diversion Dam. This is the point at which the State Water Board will have authority to enforce the flow measures as contemplated by Term Sheet section 7.2.

5. Modeling done by the State predicts that with implementation of the Tuolumne Agreement for Healthy Rivers and Landscapes that Tuolumne River flows as measured at the Modesto gage, on average by water year type, will exceed the average January-June flows in the base case (flow resulting under current conditions with the 1995 FERC Settlement Agreement in effect). The State's modeling projects the following resultant flows at Modesto Gage that will be protected as Delta outflows:

	C	D	BN	AN	W
Resultant Tuolumne River flows at the Modesto Gage (TAF)	37	62	78	27	0

6. Consistent with Term Sheet Section 8.3 these flows will be protected in the Tuolumne River as Agreement for Healthy Rivers and Landscapes flows that implement the native fishes water quality objective and will be protected as Delta outflow. Term Sheet Section 8.1 anticipates that the State Water Board will use its legal authorities to protect Agreement for Healthy Rivers and Landscapes flows and obligates Agreement for Healthy Rivers and Landscapes parties to support the State Water Board in its proceedings to protect Agreement for Healthy Rivers and Landscapes flows. The Tuolumne Parties will assist and partner in this endeavor consistent with section 8.1 of the Term Sheet. The resultant flows at Modesto Gage are not flow commitments that will be enforceable against the Tuolumne Parties pursuant to Term Sheet Section 2.2(C).

7. The State and Tuolumne Parties understand these flows will be included in the systemwide assessment as specified in Footnote 3 in Appendix 1 Flow Tables, Table 1a: “An assessment based on the accounting procedures to be developed pursuant to Term Sheet section 8.4 will be conducted prior to year 8 of Agreement for Healthy Rivers and Landscapes to determine if the flows in this table have materialized on average above baseline by water year type. The Agreement for Healthy Rivers and Landscapes parties acknowledge that, if this analysis does not demonstrate that flows have materialized as shown in this table, then the Agreement for Healthy Rivers and Landscapes will be subject to Term Sheet provisions of Section 7.4(B)(ii) or (iii).”

8. The Tuolumne Parties and State Parties recognize that the State Water Board has previously adopted 2018 Amendments to the Bay-Delta Plan, including a water quality objective and program of implementation applicable to the Tuolumne River, and the intent of the parties is to present for State Water Board consideration revisions to the 2018 Bay-Delta Plan that would authorize a Agreement for Healthy Rivers and Landscapes implementation pathway for the Tuolumne Parties consistent with this Memorandum of Understanding and the Term Sheet it advances. The resolution of pending litigation concerning the 2018 Bay-Delta Plan and 401 water quality certifications that implement the 2018 Bay-Delta Plan will be the subject of future negotiations consistent with MOU section 1.3(B), as explained in the “401 WQC & Litigation” bullets of the Tuolumne Agreement for Healthy Rivers and Landscapes Principals’ Deal Points (Aug. 31, 2022).

## EXHIBIT 2

**Table B9.1-I – Tuolumne AHRL Habitat Restoration <sup>1</sup>**

					Implementation timing <sup>2</sup>				
Project No.	Project and location	Description	Life stage	Benefits	Early Implementation (Dec 2018-2024) <sup>3</sup>	Years 1-3	Years 4-6	Years 7-8	Total
1	Riffle A2 Rehabilitation River Mile (RM) 50.6/50.7	Add appropriately sized gravel to improve substrate conditions for spawning and incubation	Spawning and incubation	Increased spawning opportunity and improved egg-to-emergence survival		0.15 acres			0.15 acres
2	Riffle A3 Rehabilitation RM 50.4 to 50.6	Add appropriately sized gravel to improve substrate conditions for spawning and incubation	Spawning and incubation	Increased spawning opportunity and improved egg-to-emergence survival		1.00 acres			1.00 acres
3	Riffles 3A and 3B RM 49.2 to 49.6	Add appropriately sized gravel; restore banks to appropriate floodplain elevation and function; remove invasive hardwood	Spawning incubation and juvenile rearing	Improved egg-to-emergence survival and expanded floodplain rearing habitat			0.50 acres		0.50 acres
4	Gravel Cleaning RM 45-49	Clean select gravel patches to expand availability of high-quality gravel to improve spawning and incubation	Spawning and incubation	Improved spawning habitat quality and egg-to-emergence survival		Clean selected gravel patches in the lower Tuolumne River at or below the confluence of intermittent streams downstream			

					Implementation timing <sup>2</sup>				
Project No.	Project and location	Description	Life stage	Benefits	Early Implementation (Dec 2018-2024) <sup>3</sup>	Years 1-3	Years 4-6	Years 7-8	Total
						from La Grange Diversion Dam, including Gasburg Creek (RM 50.3) and Peaslee Creek (RM 45.5), for two to three weeks each year for 5 years			
5	Lower Tuolumne River Habitat Improvement Program RM 5-48	\$19M capital fund shall be used for a variety of improvement and restoration projects to be developed in conjunction with the TRPAC (below). Examples of likely projects include floodplain lowering, floodplain connectivity, riparian plantings, in-channel placement of LWD	Juvenile rearing, smolt outmigration	Expanded floodplain rearing; expanded in-channel rearing; and improved smolt outmigration survival			77 acres		77 acres
6	Riffle A5 RM 51.2	Construct alternative riffle/pool morphology	Over-summering <i>O. mykiss</i> juvenile and adults	Improved juvenile rearing; improved foraging; improved spawning habitat	2.78 acres				2.78 acres
7	Riffle A6 RM 51.0	Construct alternative riffle/pool morphology	Over-summering <i>O.</i>	Improved juvenile rearing; improved foraging;	2.29 acres				2.29 acres

					Implementation timing <sup>2</sup>				
Project No.	Project and location	Description	Life stage	Benefits	Early Implementation (Dec 2018-2024) <sup>3</sup>	Years 1-3	Years 4-6	Years 7-8	Total
			<i>mykiss</i> juvenile and adults	improved spawning habitat					
8	Basso Pool RM 47.0-47.3	Construct medial bar: riffle pool-tail morphology	Over-summering <i>O. mykiss</i> juvenile and adults	Improved juvenile rearing; improved foraging; improved spawning habitat			8.78 acres		8.78 acres
9	Large Woody Debris	Improve instream habitat complexity through targeted addition of LWD to the lower Tuolumne River	<i>O. mykiss</i> Juvenile rearing	Improved juvenile rearing and increased in-channel rearing area		Place 6,535 cubic feet of large woody material			6,535 cubic feet of large woody material
10	Infiltration Galleries (IG) RM 26	Construct IG#2 and operate IG#1 (existing) and IG#2 (proposed) from June through mid-October, enabling an increase of flow between La Grange and the IGs to benefit <i>O. mykiss</i>	<i>O. mykiss</i> Juvenile rearing and over-summering adults.	Improve temperature conditions for <i>O. mykiss</i> juvenile rearing and adult habitat		Operate IG #1	Construct IG #2		
11	Riffle A3/A4 (RM 51.5); Gravel Augmentation	Spawning gravel size and distribution integrated with Agreement for Healthy Rivers and Landscapes flow regime	Stream geomorphology	Resorting gravels and improved gravel size for Chinook spawning			5.85 acres		5.85 acres

					Implementation timing <sup>2</sup>				
Project No.	Project and location	Description	Life stage	Benefits	Early Implementation (Dec 2018-2024) <sup>3</sup>	Years 1-3	Years 4-6	Years 7-8	Total
12	Fish Counting Barrier and Weir RM 25	Improve rearing and migration conditions upstream of the weir by preventing access by striped bass and other predators	Fry and juvenile rearing; smolt outmigration	Reduce predation on fry and juvenile fall-run Chinook Salmon		Construct Fish Counting and Barrier Weir			
13	Predator Control	Improve rearing and migration conditions by reducing predation	Fry and juvenile rearing; smolt outmigration	Reduce predation on fry and juvenile fall-run Chinook salmon			Implement Predator Control		
14	Reduce Redd Superimposition (seasonal weir) RM 47-52	Construct a seasonal weir when upstream gravel patches are at capacity to encourage use of suitable habitats at downstream locations	Spawning and incubation	Improve overall fall-run Chinook spawning success by reducing red superimposition		Implement seasonal weir operational when >5,000 female spawners are observed in the Tuolumne River.			

1. The projects and their associated attributes listed in above table were derived as part of on-going FERC relicensing activities and are subject to adjustment as part of ongoing and future project specific design. Tuolumne Parties will work to define the habitat projects above in collaboration with the California Department of Fish and Wildlife – that were drawn from the prior 15-year Agreement for Healthy Rivers and Landscapes habitat list – that will be funded by the Tuolumne Parties and implemented, subject to and depending on obtaining applicable requirements for project-specific environmental review or regulatory approval, within the 8-year term of the agreement.

2. The Agreement for Healthy Rivers and Landscapes timeframes identified in the table for implementation include the expected timeframe for construction to be completed as well as the timeframes associated with performing activities associated with project implementation. For example, under “Predator Control,” the fish counting and barrier weir would be in place by Year 3 and the predator suppression would occur in tandem with placement and continue through Years 4 through 8.

3. The Tuolumne Parties may develop additional projects that can qualify as early implementation projects to be added consistent with timing in the strategic plan.

### Exhibit 3

**Table B9.1-J – Tuolumne AHRL Habitat Restoration – Gravel Augmentation Volumes for Specific Non-Flow Measure Projects**

Riffle location	Volume (cu. yds.)	Tons
Project 1: Riffle A2	519	700
Project 2: Riffle A3	3,707	5,000
Project 6: Riffle A5	9,637	13,000
Project 7: Riffle A6	14,456	19,500
Project 8: Basso Pool	27,281	36,800
<b>Totals</b>	<b>55,600</b>	<b>75,000</b>
Project 11: Riffle A3/A4 <sup>1</sup>	TBD	TBD
Project 3: Riffle 3A/3B <sup>1</sup>	TBD	TBD
New Project(s) TBD between RM 39 and 24.5	18,535	25,000

<sup>1</sup> These riffle projects will include gravel augmentation above the Agreement for Healthy Rivers and Landscapes MOU commitment of 75,000 tons of new gravel between RM 52 and 39.



**Appendix 2.**

**FORM OF ORDER BY THE STATE WATER RESOURCES CONTROL BOARD**

**Appendix 3.**

**CONTACT INFORMATION FOR RESPONSIBLE PARTIES**

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# **Exhibit C10.**

## **Yuba River**

# **ENFORCEMENT AGREEMENT RELATED TO IMPLEMENTATION OF HEALTHY RIVERS AND LANDSCAPES PROGRAM IN THE YUBA RIVER**

**March 29, 2024 Draft**

This “Enforcement Agreement related to Implementation of Healthy Rivers and Landscapes Agreement Program in the Yuba River is entered into by and between the California State Water Resources Control Board and the signatories hereto for the purpose of providing for regulatory enforcement of those flow, habitat restoration, and other measures stated in Appendix 1 hereto.

## **RECITALS**

**A.** The State Water Board and the nine regional water quality control boards administer the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) to achieve an effective water quality control program for the state and are responsible for the regulation of activities and factors that may affect the quality of the waters of the state.

**B.** The State Water Board is authorized to adopt a water quality control plan in accordance with the provisions of Water Code sections 13240 through 13244, insofar as they are applicable (Wat. Code, § 13170).

**C.** The State Water Board first adopted a Bay-Delta Plan in 1978, amending it in 1995, and 2006. In 2008, it initiated its periodic review and began proceedings to update the current Bay-Delta Plan, as further described in Recital G.

**D.** The Bay-Delta Plan designates beneficial uses of the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, establishes water quality objectives for the protection of those beneficial uses, and establishes a program of implementation to implement those objectives.

**E.** On December 12, 2018, the State Water Board adopted Resolution No. 2018-0059 to update the 2006 Bay-Delta Plan. First, it amended the water quality objectives for the protection of fish and wildlife beneficial uses in the Lower San Joaquin River and its three eastside tributaries, the Stanislaus, Tuolumne, and Merced Rivers, and agricultural beneficial uses in the southern Delta. It also amended the program of implementation for those objectives. It approved and adopted the Substitute Environmental Document for the Lower San Joaquin River. Ordering paragraph 7 of Resolution No. 2018-0059 states:

“The State Water Board directs staff to provide appropriate technical and regulatory information to assist the California Natural Resources Agency in completing a Delta watershed-wide agreement, including potential flow and non-flow measures for the Tuolumne River, and associated analyses no later than March 1, 2019. State Water Board staff shall incorporate the Delta watershed-wide agreement, including potential amendments to implement agreements related to the Tuolumne River, as an alternative for a future, comprehensive Bay-Delta Plan update that addresses the reasonable protection of beneficial uses across the Delta watershed, with the goal that comprehensive amendments to the Bay-Delta Plan across the Delta watershed may be presented to the State Water Board for consideration as early as possible after December 1, 2019.”

F. The Parties who sign this Enforcement Agreement, known as Responsible Parties, intend that they are subject to regulatory authority for enforcement of their obligations to implement flow, habitat restoration and other measures as specified in Appendix 1.

## **TERMS OF AGREEMENT**

**1. Purpose.** This Enforcement Agreement states the specific obligations of Responsible Parties for implementation of flow, habitat restoration, and other measures for the Yuba River as specified in Appendix 1. It states the remedies for enforcement of such obligations under authority of Government Code section 11415.60 with respect to non-federal Responsible Parties, and under [authority] with respect to federal Responsible Parties.

**1.1. Settlement of Disputed Issues.** This Agreement resolves disputed issues related to the Bay-Delta Plan and specifically, resolves disputed issues that could otherwise be considered by the State Water Board in adjudicative and other proceedings related to implementation.

**1.2. Timeliness.** The State Water Board and Responsible Parties agree to the terms stated herein, in order to expedite implementation of Covered Water Quality Objectives and provide reasonable protection of the beneficial uses of waters in the Bay-Delta watershed.

**2. Definitions.** The Global Agreement states definitions applicable to all Healthy Rivers and Landscapes Agreements. This Enforcement Agreement restates certain common definitions for clarity, and it includes additional definitions as needed herein.

2.1. **Applicable Law** means: state or federal law that (a) exists independently of this Agreement, including a Constitution, statute, regulation, court decision, or common law, and (b) applies to obligations or activities of Responsible Parties contemplated by this Agreement.

2.2. **Bay-Delta Plan** means: Water Quality Control Plan for the San Francisco Bay/Sacramento/San Joaquin Delta Estuary (as amended December 12, 2018).

2.3. **CDFW** means: the California Department of Fish and Wildlife.

2.4. **CDWR** means: the California Department of Water Resources.

2.5. **Central Valley Project or CVP** means: the project authorized by 50 Stat. 850 (1937) and subsequent statutes, and operated by the U.S. Department of the Interior Bureau of Reclamation, for water supply, power, flood control and other purposes.

2.6. **Covered Entities** means: entities who hold water rights within, or contracts for water supplies from, the Bay-Delta watershed and are identified as Covered Entities in an Enforcement Agreement for the water source which is the basis for their diversion or use as appropriate.

2.7. **Covered Water Quality Objectives** means: the objectives that the Healthy Rivers and Landscapes Program will implement. These are: (i) the narrative water quality objective entitled “Salmon Protection” as stated in Bay-Delta Plan Table 3, p. 14 (“Narrative Salmon Objective”); and (ii) a new narrative objective to achieve the viability of native fish populations (“Narrative Viability Objective”), as stated in Exhibit A section 1.

2.8. **Enforcement Agreements** means: with respect to non-Federal Parties, an agreement executed by a Party and the State Water Board pursuant to Government Code section 11415.60, to specify regulatory authority for enforcement of flow, habitat restoration, and other measures in the Healthy Rivers and Landscapes Program for a given water source. With respect to federal Parties, the term means: an agreement executed by such a Party and the State Water Board pursuant to Government Code 11415.60 to implement any Healthy Rivers and Landscapes Agreement -related modifications to water rights held by such Party, or a memorandum of understanding to implement other commitments, to provide regulatory authority for enforcement of measures in the Healthy Rivers and Landscape Program for a given water source. When the term is used in the plural, it means Enforcement Agreements for all water sources in the Healthy Rivers and Landscapes Program.

2.9. **Final Action means:** final action by the State Water Board to amend the Bay-Delta Plan to approve the Supported Amendments authorizing the implementation of the Healthy Rivers and Landscapes Program.

2.10. **Global Agreement** means: “Global Agreement Proposing Program to Update and Implement the Bay-Delta Water Quality Control Plan.” That agreement states the overall structure and content of the Healthy Rivers and Landscapes Program, along with the obligations of the Parties to support implementation.

2.11. **Healthy Rivers and Landscapes Agreements** means: the Global Agreement, the Implementing Agreements, and the Enforcement Agreements.

2.12 **Healthy Rivers and Landscapes Program** means: the measures, rights and obligations stated in the Global Agreement and its Exhibits A – E. This Enforcement Agreement is Exhibit CX thereto.

2.13. **Implementing Agreements** means: the agreements stating responsibilities to implement flow, habitat restoration, and other measures in the Tributaries and Delta. In this Enforcement Agreement for the Yuba River, the term refers to the Implementing Agreement for this same water source.

2.14. **Implementing Entities** means: Parties and other entities that have responsibilities and legal authority to implement flow, habitat restoration, and other measures as specified in the Implementing Agreements, and specifically Appendix 1 thereto. Responsible Parties are Implementing Entities that sign an Enforcement Agreement.

2.15. **Parties** means: signatories to the Global Agreement, who will also sign the applicable Enforcement and Implementing Agreement. Parties who sign an Enforcement Agreement are Responsible Parties in that context. Parties who sign an Implementing Agreement are Implementing Entities in that context.

2.16. **Program of Implementation** means: the program of measures, schedule, and monitoring necessary to achieve the water quality objectives in the Bay-Delta Plan, as adopted pursuant to Water Code sections 13241 and 13242. The Supported Amendments, as approved, amend this program to authorize implementation of the Healthy Rivers and Landscapes Program.

2.17. **Responsible Parties** means: the Parties who are Implementing Entities under an Implementing Agreement and sign the corresponding Enforcement Agreement. Responsible Parties under this Agreement are called “Yuba River Responsible Parties.”

2.18. **State Water Board** means: the State Water Resources Control Board.

2.19. **State Water Project or SWP** means: the project authorized by California Water Code sections 11000 et seq., and operated by CDWR, for water supply, power, flood control and other purposes.

2.20. **USBR** means: the United States Bureau of Reclamation.

2.21. **Yuba River Governance Entity** is responsible for oversight of implementation, reporting, and decision-making related to implementation of the measures specified in the Implementing Agreement Appendix 1.

2.22. **Year** means: time starting on the Effective Date of the Global Agreement. Year 0 begins on that date.

### **3. Obligations of Yuba River Responsible Parties.**

3.1. **Implementation.** Each Responsible Party under this Agreement will implement the obligations assigned to that entity in Appendix 1.

A. Implementation will occur in the manner and time specified in Appendix 1, subject to any conditions precedent stated therein. Non-performance will be subject to the remedies stated therein and in Section 5 below.

B. If an obligation is assigned to multiple Responsible Parties under this Agreement, each will be responsible for performance to the extent of its control over such performance. If an obligation is assigned to an individual Responsible Party, other such entities will not be responsible for performance.

3.2. **Progress Reports and Inspections.** The Yuba River Governance Entity will prepare Annual and Triennial Reports with respect to implementation. The entity will provide the reports to the Systemwide Governance Committee as provided in the Governance Program (Exhibit D section 1.5).

### **4. Obligations of State Water Board**

4.1. **Execution of Order.** The Executive Director of the State Water Board signs the Order approving this Agreement (Appendix 3 hereto), concurrent with the signing of this Agreement.



4.2. **Additional Contributions.** The State Water Board will not seek additional contributions from the Responsible Parties, other Implementing Entities, or Covered Entities listed in Appendix 1 in the Yuba River, for the purpose of implementation of the Covered Water Quality Objectives. This assurance will be implemented through the procedures, and subject to the requirements in limitations, stated in Exhibit A section 5 as incorporated into the Program of Implementation.

4.3. **Protection of Flows.** The State Water Board will use the protections identified in Exhibit A Section 3].

A. Responsible Parties will be available to assist the State Water Board in its proceedings to provide these protections. Responsible Parties who so participate will support these protections, provided they agree with the authorities cited by the State Water Board, the scope, and the technical methodology, used in a proceeding.

B. The State Water Board will issue a public report on those actions it has taken to protect these flows from unauthorized uses.

4.4. **Expedited Process.** The State Water Board will undertake an expedited process for considering any petition by a Responsible Party or other Implementing Organization pursuant to Water Code sections 1700-1725, changing the place and purpose of use for its water rights to implement its obligations hereunder.

## **5. Enforcement and Dispute Resolution Procedures.**

5.1. **General.** Pursuant to Government Code section 11415.60, the State Water Board may enforce obligations of non-federal Responsible Parties using: administrative civil liability, imposed pursuant to the procedures in Water Code sections 1050 et seq.; a cease-and-desist order adopted pursuant to the procedures stated in Water Code sections 1825 et seq.; or both. The State Water Board may enforce obligations of federal Responsible Parties using the procedures stated in the Memorandum of Understanding regarding Enforcement.

A. No Responsible Party will contest an enforcement action brought pursuant to this Section 5.1 on the ground that the State Water Board does not have jurisdiction or authority under the Water Code to seek enforcement with respect to an obligation assigned to it in Appendix 1.

B. The State Water Board may not commence an enforcement action pursuant to this Section 5 against a Responsible Party based on the non-performance of an obligation assigned to another Responsible Party.

5.2. **State Water Board.** Responsible Parties may seek legal relief as permissible by law for alleged non-compliance by the State Water Board to conform to the terms of this Agreement.

5.3. **Dispute Resolution Procedures.** Prior to taking any enforcement action pursuant to Section 5, the State Water Board will provide Notice to the Responsible Party that the State Water Board alleges has violated an obligation, a written description of the alleged violation, and a reasonable opportunity for the Responsible Party to cure the alleged violation.

5.4. **Force Majeure.** No Party shall be liable for any failure of, or delay in, the performance of duties under this Agreement for the period that such failure or delay is due to Acts of God or the public enemy; war, insurrection, or riots; fires, explosions, or serious accidents; facility failures; flood; strikes or labor disputes; or any final determination by a court of competent jurisdiction that renders the performance of any duty under this Agreement unlawful.

## **6. Effective Date and Term.**

6.1. This Agreement takes effect when signed by the Responsible Parties and will be binding as to such Parties when signed.

6.2. The term of the Agreement will be concurrent with the term of the Global Agreement. As to any Party, this Agreement will terminate upon that Party's withdrawal from the Global Agreement.

7. **No Admission of Liability.** Responsible Parties enter into this Agreement voluntarily. Responsible Parties agree that nothing contained in this Agreement is to be construed as an admission of liability, responsibility, or procedural requirement as to any of the parties, other than for purposes of enforcing this Agreement. The Responsible Parties do not admit any liability or responsibility under the Fish and Game Code, Water Code, Article X, section 2 of the California Constitution, or the public trust doctrine, for providing the flows, habitat restoration, and other measures stated in Appendix 1, or otherwise admit that the enforcement authorities provided in Section 5 would be available against them with respect to the Covered Water Quality Objectives or the Program of Implementation. The State Water Board does not admit that any of the obligations established herein would otherwise be required of the State Water Board.

**8. Compliance with Applicable Laws.** Each Responsible Party represents that it believes that this Agreement is consistent with its statutory, regulatory, or other legal obligations for conservation, use, or management of affected resources.

**9. Reservations.**

9.1. **Generally.** Nothing in this Agreement is intended or will be construed to affect or limit the authority or obligation of any Responsible Party to fulfill its constitutional, statutory, and regulatory responsibilities or comply with any judicial decision. Nothing in this Agreement will be interpreted to require any public agency to implement any action which is not authorized by Applicable Law or where sufficient funds have not been appropriated for that purpose by Congress or the State. The Responsible Parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

9.2. **Availability of Funding.** Funding by any public agency Responsible Party is subject to the requirements of Applicable Law. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation, reprogramming or expenditure of any funds by any such public agency except as otherwise permitted by Applicable Law; provided that the Parties recognize that timely and sufficient funding is necessary to implement the Healthy Rivers and Landscapes Program.

9.3. **Federal Appropriations.** All actions required of any federal Responsible Party are subject to appropriations by Congress. Nothing in this Agreement will be interpreted as or constitute a commitment or requirement that any federal Responsible Party obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other Applicable Law. Nothing in this Agreement is intended or will be construed to commit a federal official to expend federal funds not appropriated for that purpose by Congress. Nothing in this Agreement is intended to or will be construed to require any official of the executive branch to seek or request appropriations from Congress to implement any provision of this Agreement.

9.4. **Environmental Review.** Nothing in this Agreement is intended or will be construed to modify the application of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), or other Applicable Law, to the environmental review of any action under this Agreement.

**10. Notices.** Any Notice required by this Agreement will be written. Notice will be provided by electronic mail, unless the sending entity determines that first-class mail or an alternative form of delivery is more appropriate in a given circumstance. A Notice will be

effective upon receipt, but if provided by U.S. Mail, seven days after the date on which it is mailed. For the purpose of Notice, the list of authorized representatives of the Responsible Parties as of the Effective Date is attached as Exhibit C. Each such entity will provide Notice of any change in the authorized representatives designated in Exhibit C, and [administrative entity] will maintain the current distribution list of such representatives.

**11. Attorney's Fees and Costs.** The State Water Board and each Responsible Party will bear its own attorney's fees and costs with respect to the negotiation, adoption, and enforcement of this Agreement.

**12. Entire Agreement.** This Agreement contains the entire agreement of the Responsible Parties with respect to the subject matter thereof, and supersedes all prior understandings and agreements, whether written or oral.

**13. Construction and Interpretation.** This Agreement has been arrived at through negotiation. Each Responsible Party has had a full and fair opportunity to revise the terms of the Agreement. The rule of construction that any ambiguities are to be resolved against the drafter will not apply to the construction or interpretation of this Agreement.

**14. Amendment.** This Agreement may only be amended in writing by all Yuba River Responsible Parties still in existence, including any successors or assigns. A Responsible Party may provide Notice of a proposed amendment at any time. The Responsible Parties agree to meet in person or by teleconference within 20 days of receipt of Notice to discuss the proposed amendment.

**15. Addition of New Responsible Parties.** A non-covered entity may become a Responsible Party by signing the Agreement and the other Healthy Rivers and Landscapes Agreements, subject to the State Water Board's approval of the entity's proposed contribution under Appendix 1 hereto.

**16. Successors and Assigns.** This Agreement will apply to, be binding on, and inure to the benefit of the Responsible Parties and their successors and assigns, unless otherwise specified in this Agreement. No assignment may take effect without the express written approval of the other parties, which approval will not be unreasonably withheld.

**17. No Third Party Beneficiaries.** This Agreement is not intended to and will not confer any right or interest in the public, or any member thereof, or on any persons or entities that are not Responsible Parties hereto, as intended or expected third-party beneficiaries hereof, and will not authorize any non-party to maintain a suit at law or equity based on a cause of action deriving from this Agreement. The duties, obligations, and

responsibilities of the Responsible Parties with respect to third parties will remain as imposed under Applicable Law.

**18. Elected Officials Not to Benefit.** No elected official will personally benefit from this Agreement or from any benefit that may arise from it.

**19. Severability.** This Agreement is made on the understanding that each term is a necessary part of the entire Agreement. However, if any term or other part of this Agreement is held to be unlawful, invalid, or unenforceable, the Responsible Parties will undertake to assure that the remainder of the Agreement will not be affected thereby. The State Water Board and Responsible Parties will negotiate in good faith in an attempt to agree to another provision (instead of the provision held to be unlawful, invalid, or unenforceable) that is lawful, valid, and enforceable and carries out the intention of this Agreement to the greatest lawful extent.

**20. Authority to Bind.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity will be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

**21. Counterpart Signatures; Facsimile and Electronic Signature.** This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as if all Responsible Parties had signed the same instrument. The signature pages of counterparts of this Agreement may be compiled without impairing the legal effect of any signatures thereon. Signature may be in facsimile or electronic form.

State of California  
State Water Resources Control Board

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By:

Dated: \_\_\_\_\_

Approved as to legal form  
and sufficiency:

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Chief Counsel

Yuba County Water Agency

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By:

Dated: \_\_\_\_\_

Approved as to legal form  
and sufficiency:

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Paul M. Bartkiewicz, Special Legal Counsel

## **Appendix 1**

### **RESPONSIBILITIES FOR IMPLEMENTATION IN YUBA RIVER**

#### **1. YWA Flow Component (Implementing Agency: YWA)**

**1.1** During the term of this Agreement, YWA will operate the Yuba River Development Project (YRDP) to provide up to 50,000 AF per year of water during Above-Normal, Below-Normal and Dry water years. This water will be made available by: (a) YWA providing all Yuba Accord Water Purchase Agreement transfer releases during April, May and June during Above Normal, Below Normal and Dry water years that cannot be backed into Oroville Reservoir or exported by CDWR rather than transferring this water to others; and (b) by releasing water from New Bullards Bar Reservoir that would otherwise remain in storage at the end of September between elevation 1,881.45 ft msl and elevation 1,867.63 ft msl (650,000 acre-ft and 600,000 acre-ft), resulting in an end of September storage to achieve the 50,000 acre-ft to contribute to Delta outflow. Subsections 1.1.1 and 1.1.2 further describe the elements of YWA's Healthy Rivers and Landscapes Flow Component. When planning releases of the YWA Healthy Rivers and Landscapes Flow Component, YWA and CDWR will consult with CDFW on local and Delta conditions and the biological benefits of options for flow deployment. These flows will be managed by CDWR for Delta outflows as part of the Yuba River Healthy Rivers and Landscapes Program.

**1.2** During the term of this Agreement, YWA will operate the YRDP to provide 9,000 AF per year of water during Above-Normal, Below-Normal and Dry water years<sup>1</sup> based on the operational commitments described in Section 1.1, as YWA's Base Flow Contribution.

**1.3** During the term of this Agreement, YWA will operate the YRDP to provide up to 41,000 AF per year of water during Above-Normal, Below-Normal and Dry water years based on the operational commitments described in Section 1.1, as YWA's Supplemental Flow Contribution. These flows will be managed by CDWR for Delta outflows as part of the Yuba River Healthy Rivers and Landscapes Program.

**1.4** Yuba River Healthy Rivers and Landscapes Program operations and the corresponding additional flows will be supplemental to Yuba Accord flows and YRDP operations and water transfer operations, including the requirements for instream flows specified in the State Water Board's Corrected Order WR 2008-0014, and transfer

<sup>1</sup> Unless otherwise stated, water year types are based on the Sacramento Valley Index (SVI) determined by CDWR as published in Bulletin 120.

operations and accounting provisions of the Yuba Accord Water Purchase Agreement, as summarized in Appendix 2.

**1.5** “YWA’s Healthy Rivers and Landscapes Flow Component” includes water available under subsection 1.1 of this Appendix.

**1.6** Reservoir refill accounting as detailed in the Yuba Accord Water Purchase Agreement, as amended from time to time and supplemented by the YWA Healthy Rivers and Landscapes accounting principles, will apply to refilling of New Bullards Bar Reservoir storage evacuated due to YWA Healthy Rivers and Landscapes Program releases that exceed 9,000 AF annually, which are accounted as impacts to CVP and SWP water supplies.

**1.7** Table 1 presents the default plan and flexibility bracket for the Yuba River Healthy Rivers and Landscapes flow measures:

**Table 1: Timing of Healthy Rivers and Landscapes Healthy Rivers and Landscapes Flow Measures. (Bolded numbers represent the default plan for Healthy Rivers and Landscapes flow measures, and numbers in parentheses represent the flexibility bracket for any given year. YWA does not provide Yuba River Healthy Rivers and Landscapes flow measures during wet and critical water years.)**

<b>Water Year</b>	<b>Apr</b>	<b>May</b>	<b>Jun</b>
<b>Above-Normal and Below Normal</b>	<b>50%</b> (33-66%)	<b>50%</b> (33-66%)	<b>0%</b> (0-33%)
<b>Dry</b>	<b>50%</b> (33-66%)	<b>50%</b> (33-66%)	<b>0%</b> (0-33%)

- A.** The flow contribution can be flexibly allocated across April through June, including in response to recommendations from the Yuba River Healthy Rivers and Landscapes Program Systemwide Governance Committee, at the discretion of YWA and consistent with the regulatory constraints on the YRDP.
- B.** When planning releases of the flow contribution, YWA and CDWR will consult with CDFW in the scheduling of deployment of flows on local and Delta conditions. YWA will manage flow contribution by YWA using the Yuba Accord Water Purchase Agreement’s existing framework for coordination of operations with CDWR and Reclamation.



- C. In some years, the flexibility shown in the table may be available (i.e., 33-66% in April, 33-66% in May, and 0-33% in June), while in other years, the flexibility may be significantly limited by the YRDP's regulatory and operational constraints. YWA will provide the total amount of flow contribution under the default plan to the extent of limitations under the flexible plan. The total amount of flow contribution required under this Agreement will not exceed 50,000 AF in any year.

## **2. YWA Habitat Enhancement Component (Implementing Agency: YWA)**

**2.1** During the term of this Agreement, consistent with the MOU (including the provision for early implementation of habitat projects), the Yuba River Healthy Rivers and Landscapes habitat action is the restoration of 50 acres of instream habitat and 100 acres of floodplain habitat for juvenile Chinook salmon rearing. YWA's commitment is subject to the funding commitments and limitations set forth in Section 3 of this Agreement. To achieve the habitat enhancement commitments, YWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals. YWA will receive credit for both acreage and funding contributions toward this obligation for early implementation of habitat measures completed prior to the effective date of this Agreement as follows:

- A. Hallwood Side Channel and Floodplain Restoration Project between River Mile (RM) 8-10
- B. Lower Long Bar Salmonid Habitat Enhancement Project near RM 15
- C. Upper Rose Bar Enhancement Project near RM 20

**2.2** Habitat measures will be designed and constructed to include a mixture of habitat features intended to enhance Chinook salmon in-river productivity to contribute toward achieving the Narrative Salmon Objective.

**2.3** Habitat measures will be developed and selected by YWA in coordination with CDWR and CDFW.

**2.4** Potential habitat measures during the term of this Agreement (subject to selection by YWA in coordination with CDWR and CDFW) include:

A. Rose Bar Comprehensive Enhancement Plan between RM 20-21

B. Upper Long Bar Habitat Project near RM 16

**2.5** Instream (i.e., in-channel) habitat is defined as certain components (i.e., “features”) of the habitat portfolio that occur within the bankfull boundaries of the lower Yuba River. Importantly, instream habitat is not defined by a specific flow threshold. Rather, instream habitat occurs within the bankfull channel geospatial boundary generally associated with 5,000 cfs<sup>2</sup>. Instream habitat associated with Yuba River Healthy Rivers and Landscapes habitat measures are intended to provide physical habitat structure (i.e., complexity, sinuosity, diversity, instream object and over-hanging cover), refugia from predators and high flows, and improved food availability. The measures can comprise various features including perennial side-channels, ephemeral side-channels, backwater and alcoves, and channel edge habitats.

**2.6** Floodplain habitats are intended to increase aquatic habitat productivity (primary and secondary) and food availability (as well as quality and diversity) to encourage juvenile Chinook salmon growth. As specified in the March 2022 MOU, the Yuba River Healthy Rivers and Landscapes floodplain habitats would be constructed to be inundated at 2,000 cfs and would be suitable (i.e., meeting the State Team’s depth and velocity criteria) when inundated. Since drafting of the MOU, the Healthy Rivers and Landscapes Science Committee has refined design criteria and habitat accounting procedures, including floodplain inundation duration and frequency criteria, identifying floodplain habitat functionality over a range of flows that will encompass 2,000 cfs.

**2.7** Floodplain habitat associated with Yuba River Healthy Rivers and Landscapes Program habitat measures consists of broad areas that may be flat or have a gentle slope, and tend to be characterized by relatively low velocities with little to no concentrated flow paths.

**2.8** Table 1 presents the default implementation schedule for YWA’s Healthy Rivers and Landscapes habitat measures:

**Table 2. Default Implementation Schedule for Healthy Rivers and Landscapes Habitat Measures on the Yuba River.**

<sup>2</sup> Wyrick, J. and G. Pasternack. 2012. Landforms of the Lower Yuba River. Prepared for the Lower Yuba River Accord Planning Team. Lower Yuba River Accord Monitoring and Evaluation Program. April 2012.

<b>Description of Measures</b>	<b>Early Implementation<sup>1</sup> (Dec 2018 - 2024)</b>	<b>Years 1-3 (2025 – 2027)</b>	<b>Years 4-6<sup>1</sup> (2028 – 2031)</b>	<b>Years 7-8<sup>2</sup> (2032-2033)</b>	<b>Total</b>
Hallwood Side Channel and Floodplain Restoration Project (Constructed in 4 phases)	Total Floodplain habitat: ~138 ac  Total Instream habitats: ~6 ac  Total Other habitats: ~13 ac				Approximate 157 ac project footprint
Long Bar Salmonid Habitat Restoration Project (Lower Long Bar)	Floodplain habitat: ~ 18 ac  Instream habitat: ~12 ac  Other habitats: ~13 ac				Approximate 43 ac project footprint
Upper Rose Bar Restoration Project <sup>3</sup>	Spawning habitat <sup>4</sup> : ~5 ac  Instream habitat: ~1.2 ac  Other habitats and construction areas: ~37 ac				Approximate 43 ac project footprint
Upper Long Bar Habitat Enhancement Project		Preliminary concept is to create a diversity of seasonal off-channel juvenile salmonid rearing habitat types (e.g., floodplain, side channel, alcove). Project contingent upon funding and permitting, timeline for implementation is TBD <sup>5</sup> , but could occur within the term of this Agreement.			Approximately 100 ac <sup>6</sup> of floodplain and instream rearing habitat

Rose Bar Comprehensive Restoration Plan		Preliminary concept includes creating instream/rearing, spawning, floodplain, and fish food production habitat functionalities. Project contingent upon funding and permitting, timeline for implementation is TBD, but could occur within the term of this Agreement.	Approximately 50 ac <sup>6</sup> of floodplain and instream rearing habitat
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<sup>1</sup> As specified in the Healthy Rivers and Landscapes Strategic Plan, as of Jan. 1, 2024, projects that have been completed since December 2018 or that are in more advanced stages of the project lifecycle (i.e., permitting, in-progress/implementation, or construction) will be considered as Early Implementation projects.

<sup>2</sup> Assumes adequate funding exists at the time of implementation.

<sup>3</sup> Permits have been drafted, ESA consultation initiated and funding application submitted to CDFW Fisheries Enhancement Grant Program during April 2022.

<sup>4</sup> The Yuba River Healthy Rivers and Landscapes Program does not include spawning habitat enhancement actions.

<sup>5</sup> Funding for project planning has been secured from YWA and the Wildlife Conservation Board. Implementation funding sources have not yet been identified, but may potentially include YWA and other grant funds (e.g., Prop 68), among others.

<sup>6</sup> Proportionate amount of instream and floodplain habitats that will be created under this habitat project will be determined through further design development.

### 3. YWA Funding Component (Implementing Agency: YWA)

**3.1** During the term of this Agreement, YWA will contribute \$667,000 per year for habitat enhancement measures. The Parties expect that additional state and federal funds will be provided as needed to fully implement habitat measures under this Agreement. To achieve the habitat enhancement commitments, YWA will, in cooperation and coordination with other Parties, pursue all available funding sources, including State, federal, and grant sources and the issuance of all necessary permits and approvals. YWA will receive credit for both acreage and funding contributions toward this obligation for early implementation of habitat measures included in section 2.1 above

**3.2** During the term of this Agreement, YWA will contribute \$2 per AF diverted for irrigation use for YWA's Member Units for funding the Yuba River Science Program,

including monitoring, adaptive management and reporting, as described in Appendix 4 of YWA's Healthy and Rivers and Landscapes Implementation Agreement. The Parties expect that additional state and federal funds will be provided as needed to fully implement the Yuba River Science Program.

**3.3** Funds contributed by YWA under this section will be accounted for and managed in accordance with the governance procedures set forth in Appendix 3 of YWA's Healthy and Rivers and Landscapes Implementation Agreement.

#### **4. CDWR Funding Component (Implementing Agency: CDWR)**

**4.1** CDWR and YWA entered into a "Funding Agreement for Healthy Rivers and Landscapes Early Implementation for the Yuba River" (dated February 9, 2024), under which CDWR will compensate YWA for YWA's Healthy Rivers and Landscapes Flow Component from January 1, 2025 through December 31, 2032, which is described in the Funding Agreement as follows:

YWA will provide up to 50,000 acre-feet (AF) per year of water during Above-Normal, Below-Normal and Dry water years during the period January 1, 2025 through December 31, 2032, as measured at the Marysville Gage. These flows will be managed for additional Delta outflows and will involve the following:

- YRDP operations to make the Flow Contribution will be supplemental to Yuba Accord flows and YRDP operations, including the requirements for instream flows specified in the State Water Resources Control Board's Corrected Order WR 2008-0014, and transfer operations and accounting provisions of the Yuba Accord Water Purchase Agreement (WPA).
- All Yuba Accord transfer releases during April, May and June that cannot be backed into Lake Oroville or exported by DWR will be repurposed from potential exports under the WPA to Delta outflows.
- Additional storage releases from New Bullards Bar Reservoir will result from operating to a new target September 30 storage level of 600,000 AF, which is 50,000 AF below the Yuba Accord target September 30 storage level of 650,000 AF.
- WPA refill accounting provisions will apply to New Bullards Bar Reservoir storage releases that exceed 9,000 AF annually in Above-Normal, Below-Normal and Dry year types, which are accounted as impacts to CVP and SWP water supplies.

This payment constitutes full compensation for YWA's Flow Component through December 31, 2032.

**4.2** To the extent that YWA provides YWA's Healthy Rivers and Landscapes Flow Component under this Agreement (including an extension of the term of this Agreement) after the expiration of YWA's obligation to provide YWA's Healthy Rivers and Landscapes Flow Component under the "Funding Agreement for Healthy Rivers and Landscapes Early Implementation for the Yuba River" referenced in section 4.1 above, then YWA and CDWR will meet and confer for the purpose of reaching agreement for compensation for such amounts of YWA's Healthy Rivers and Landscapes Healthy Rivers and Landscapes Flow Component under per AF pricing provisions that are comparable to compensation for Healthy Rivers and Landscapes flow contributions applicable to other tributaries in the Sacramento Basin.

## **5. Conditions**

**5.1** YWA's commitment to provide YWA's Supplemental Flow Contribution will be subject to CDWR providing the funding specified in Section 4 of this Appendix.

**5.2** YWA's commitment to implement habitat enhancement measures will not exceed YWA's funding component commitment as described in Section 3 of this Appendix.

**5.3** YWA's commitment to implement the Yuba River Science Program will not exceed YWA's funding commitment as described in Section 3 of this Appendix.

**5.4** The Parties intend that Yuba River Healthy Rivers and Landscapes Program measures include all of YWA's commitments to contribute to the implementation of the Bay-Delta Plan's water quality objectives. Accordingly, YWA has asked the State Water Board to include in the Bay-Delta Plan amendments provisions confirming that: (a) the State Water Board will not take any water-quality or water-right actions that would affect YWA beyond the actions described as YWA's contributions to the Yuba River Healthy Rivers and Landscapes Program, or any other actions that would increase any of YWA's commitments to contribute to the implementation of any of the Bay-Delta Plan's water-quality objectives, during the term of this Agreement; and (b) if the State Water Board takes any such actions, then YWA may terminate or withdraw from this Agreement.

**5.5** During the term of this Agreement, YWA's commitment to provide the Base Flow Contribution and Supplemental Flow Contribution will be subject to suspension or termination by YWA if the new FERC license for the YRDP (including the provisions of water quality certification), or YWA's water rights for the YRDP, are amended to include instream flow requirements that are a Material Modification from YWA's instreamflow proposal to FERC for the new license under the Federal Power Act for the YRDP.

**5.6** “Material Modification” means (a) a Regulatory Approval; or (b) an action or inaction with respect to a Party’s ability to perform its obligations under this Agreement, that increases the obligations or other costs, reduces assurances or otherwise impairs bargained-for benefits of a Party to a significant extent. Such conditions may arise from subsequent actions by the State Water Board, FERC, other regulatory agencies or courts, or from other changes in Applicable Law. Section 5 establishes the procedures under this Agreement for a response to a potential Material Modification.

## **6. Guiding Principles for the Administration, Interpretation and Extension of this Agreement.**

**6.1** The following principles will guide the Parties in the administration, interpretation and potential extension of the term of this Agreement:

**A.** New contributions to Delta inflows, habitat enhancement, funding and other measures from YWA in implementing the Bay-Delta Plan should be comparable and proportionate to the contributions required of water users in other tributaries in the Sacramento River Basin, except as otherwise agreed to by YWA.

**B.** New contributions to Delta inflows, habitat enhancement, funding and other measures from water users in the Yuba River Watershed should be comparable and proportionate to their respective diversions of unimpaired flow from the Yuba River Watershed.

**C.** The Yuba River Watershed comprises about 9% of the average annual applied water use of the Sacramento River hydrologic region. Diversions by YWA comprise about one-third of the annual average diversions from the Yuba River Watershed. Therefore, YWA’s comparable and proportionate share of flow contributions to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation would be about 3% of the flow contributions relative to contributions from water users in the tributaries in the Sacramento River Basin.

**D.** “The Yuba River has been extensively developed for hydropower generation and water supply. Development in the upper watersheds of North, Middle, and South Fork Yuba River and Deer Creek include parts of the South Feather Water and Power Agency’s South Feather Hydroelectric Project (FERC No. 2088), Yuba County Water Agency’s Yuba River Development Project (FERC No. 2246), Nevada Irrigation District’s

Yuba-Bear Hydroelectric Project (FERC No. 2266), PG&E's Drum Spaulding Project (FERC No. 2310), and U.S. Army Corps of Engineers' (USACE) Englebright and Daguerre Point Dams (^SacWAM 2023). The many hydropower reservoirs and diversions in the upper watershed affect the timing of inflows to New Bullards Bar and Englebright Reservoirs. Additionally, there are major transfers of water out of the watershed. The Slate Creek Diversion (discussed in Section 2.2.6.1, Feather River) diverts on average about 80 TAF/yr from North Fork Yuba River into the Feather River watershed. The South Yuba Canal and the Drum Canal divert on average about 430 TAF/yr from the South Fork Yuba River at Lake Spaulding to the Deer Creek and Bear River watersheds." (State Water Board's Draft Staff Report for the Bay-Delta Plan Update, at page 2-53.)

**E.** The Base Flow Contribution generally reflects the comparable and proportionate share of contributions to Delta inflows by YWA under the Healthy Rivers and Landscapes Program.

**F.** YWA will provide the Supplemental Flow Contribution during the term of this Agreement in order to advance the overall objectives of the Healthy Rivers and Landscapes Program, and not as a comparable and proportionate share of contributions to Delta inflow.

**G.** CDWR will not assert that YWA providing the Supplemental Flow Contribution for Delta inflow should be a precedent for future regulatory proceedings.

**H.** CDWR will not assert that YWA is responsible for providing flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than YWA and its Member Units.

## **7. Covered Parties.**

**7.1** This Agreement covers the contribution of YWA and YWA's Member Units to achieving the water quality objectives in the Bay-Delta Plan through the Program of Implementation.

**7.2** This Agreement does not cover the contribution of other water users in, or diverters of water from, the Yuba River Watershed to achieving the water quality objectives in the Bay-Delta Plan.



**7.3** Nothing in this Agreement will require or be construed to require YWA or YWA's Member Units to provide flows, habitat enhancement, funding or other measures as contributions to achieving the water quality objectives in the Bay-Delta Plan for any water user other than YWA and its Member Units.

## **Appendix 2**

### **YUBA RIVER FLOW ACCOUNTING**

#### **APPROACH**

The Yuba Water Agency (YWA) proposal for a Bay-Delta Healthy Rivers and Landscapes Agreement is founded on the Yuba Accord, including the requirements for instream flows identified in the Fisheries' Agreement and transfer operations and accounting provisions of the Water Purchase Agreement (WPA). Healthy Rivers and Landscapes Agreement operations are intended to be supplemental to the Accord flows and YRDP operations. The YWA Healthy Rivers and Landscapes Agreement proposal includes two quantifiable water components, (Healthy Rivers and Landscapes Agreement Component A) Accord transfer releases in April, May and June that cannot be backed or exported by DWR and (Healthy Rivers and Landscapes Agreement Component B) storage releases from New Bullards Bar Reservoir that occur by operating to a new target storage level for September 30<sup>th</sup> of 600,000 AF, 50,000 AF below the Accord target storage of 650,000 AF. The YWA Healthy Rivers and Landscapes Agreement proposal includes accounting for refill of storage releases that are compensated which are the volumes accounted from Healthy Rivers and Landscapes Agreement Component A and B which exceed 9,000 AF annually in Above Normal, Below Normal and Dry water year types<sup>3</sup>.

Accord Transfer Flows Dedicated to Delta Outflow (YWA Healthy Rivers and Landscapes Agreement Flow Component A Water) accounting principles are already documented in the Yuba Accord Exhibit 1 Accounting Principles except for specific terms listed below to provide for the differences between this Healthy Rivers and Landscapes Agreement and the Accord transfer program. The Yuba Accord transfer program accounting is meant to ensure only water that is released and exported for delivery to a participating water user is accounted, while this Healthy Rivers and Landscapes Agreement program accounting is intended to determine volumes of water exiting the Yuba River which will result in Delta outflow (with the cooperation of the CDWR and the USBR).

Transfer operations of the YRDP under the Accord are classified into two categories, operations to the Accord instream flows that are above baseline flows, and releases of water from New Bullards Bar Reservoir that result in storage below 705,000 AF, which is the

<sup>3</sup> Unless otherwise specifically identified, all water year types are defined using the Sacramento Valley Index (SVI)

baseline September 30<sup>th</sup> target, and which are not releases of water to meet Accord instream flows. The releases of transfer water generated by operating for the Accord target end of September storage are always scheduled for the months of July and August when there is high confidence of balanced conditions and accuracy in forecasted operations. For Healthy Rivers and Landscapes Agreement storage releases the planned primary months for releases are April to June which presents a greater challenge for forecasted operations. Scheduling and accounting for the volumes and timing of these releases will be based on the information available at the time of release planning and may need to be adjusted through the springtime to adjust to changing conditions. YWA will prepare forecasts of operations of the YRDP and resulting flows for release of Healthy Rivers and Landscapes Agreement water. These forecasts will be compared to forecasts that are prepared for Yuba Accord operations (including baseline operations) to determine the additional storage releases for Healthy Rivers and Landscapes Agreement purposes. Springtime Accord Released Transfer Water (as defined in the WPA accounting) will also be forecast as required in the WPA and will be accounted as Healthy Rivers and Landscapes Agreement Component B through the Accord accounting, with added determination that the water meet criteria included in these Healthy Rivers and Landscapes Agreement accounting principles.

YWA will prepare preliminary operations plans for release of Healthy Rivers and Landscapes Agreement water in coordination with DWR, USBR and CDFW. Prior to April 1, which would be the earliest date that a release of Healthy Rivers and Landscapes Agreement water from New Bullards Bar Reservoir storage would occur, YWA will meet with CDFW, DWR and USBR to discuss and formulate the preliminary operations plan using information provided by DWR and USBR on Delta conditions and SWP and CVP forecasted operations. YWA may begin a release of stored water for Healthy Rivers and Landscapes Agreement purposes as early as April 1 based on this planning. YWA will revise the plan as new forecast information is available but will finalize the plan in most years no later than May 15<sup>th</sup> with minor adjustments after that date that may be needed due to changing conditions. Due to the complexity of regulatory and operational criteria of the YRDP, YWA will retain sole decision authority for final plans and scheduling water operations to implement Healthy Rivers and Landscapes Agreement water releases, however DWR must approve releases of Healthy Rivers and Landscapes Agreement water that are scheduled to occur after June 30<sup>th</sup>.

### **Accounting Principles**

The following are the set of accounting principles for use in quantifying the water released from the Yuba River under this Agreement.

- 1) WPA Accounting of transfer water for purchase by DWR will not change.
- 2) The control points for determining releases of Healthy Rivers and Landscapes Agreement flows from re-operation of New Bullards Bar Reservoir storage and Accord WPA Released Transfer Water to be applied to Healthy Rivers and Landscapes Agreement purposes are a) Daily New Bullards Bar Reservoir storage values and b) Mean Daily flow measured at USGS Gage 11421000 Yuba River near Marysville.
- 3) Two sources of water will qualify as water provided under the Healthy Rivers and Landscapes Agreement as Healthy Rivers and Landscapes Agreement Flow Measure Water, Healthy Rivers and Landscapes Agreement Component A; April through June WPA Released Transfer Water that is not Delivered Transfer Water as those terms are defined in the WPA Accounting Exhibit and Healthy Rivers and Landscapes Agreement Component B; releases of stored water from New Bullards Bar Reservoir that is not used to meet Accord instream flows and are a result of releases of water to achieve levels on September 30<sup>th</sup> below 650,000 AF.
- 4) Healthy Rivers and Landscapes Agreement Component A is Released Transfer Water as defined in the WPA Exhibit 1 “Scheduling and Accounting Principles” and is further defined as water that occurs during April, May and June and is not accounted as Delivered Transfer water as determined by DWR for delta conditions and export facility operations.
- 5) Accounting for Accord WPA Release Transfer Water that is not Delivered Transfer Water occurring from April 1 to June 30 each Above Normal, Below Normal and Dry water year (SVI as of the date of the water occurrence) will be accounted as Healthy Rivers and Landscapes Agreement Component A volume and no other accounting will be required (except refill accounting will still be completed).
- 6) Healthy Rivers and Landscapes Agreement Component B is water that is made available through releases of stored water from New Bullards Bar Reservoir to achieve an end of September Storage below 650,000 AF and which are not releases to comply with the Accord required instream flows.
- 7) Flows from the Yuba River in April through June that result from operation to the Accord that are accounted as negative values (negative flows in Accord accounting terms) will reduce the amount of Accord flow credited to the Healthy Rivers and Landscapes Agreement (Component A) but will not reduce the amount of stored water releases for Healthy Rivers and Landscapes Agreement purposes (Component B). Negative flows for Accord operations are already included in the Accord

accounting provisions and the Healthy Rivers and Landscapes Agreement Component B releases are always additive to the “without Healthy Rivers and Landscapes Agreement” condition. In other words, the Healthy Rivers and Landscapes Agreement Component B baseline is the flow that occurs under the Accord and all other YRDP constraints and Healthy Rivers and Landscapes Agreement Component B water volumes will be measured from the “Yuba River outflow resulting from Accord operations” line and therefore can never be negative flows.

- 8) Negative Healthy Rivers and Landscapes Agreement flows which are defined as actual recorded Yuba River flows at Marysville Gage that are less than Healthy Rivers and Landscapes Agreement Baseline flows as calculated in the Healthy Rivers and Landscapes Agreement accounting that occur in the months of October to March will not be accounted against the Healthy Rivers and Landscapes Agreement Component water volumes except as further defined for refill impacts to SWP/CVP water supplies.
- 9) Flows volumes to be credited for Healthy Rivers and Landscapes Agreement purposes must meet the WPA accounting rules for Released Transfer Water as defined in Section 4 of Exhibit 1 of the WPA except the Healthy Rivers and Landscapes Agreement Component B storage release baseline will be the flow that would occur under the Accord without any storage releases to reduce New Bullards Bar Storage below 650,000 AF (i.e. standard Accord releases).
- 10) YWA operations planning, forecasting and exchange of information will follow Section 11 of Exhibit 1 of the WPA with an added item that is the Forecasted flow at Marysville Gage with Healthy Rivers and Landscapes Agreement Component B releases (i.e. YWA will provide forecasts for Baseline Flow, Accord flows without any Healthy Rivers and Landscapes Agreement Component B flow and Accord flow with Healthy Rivers and Landscapes Agreement Component B flow). Forecast updates will be provided each time a significant change in flows is anticipated due to changed conditions or updated forecast information that requires a change in planned flows.
- 11) The first 9,000 AF of water accounted as Healthy Rivers and Landscapes Agreement water (either Healthy Rivers and Landscapes Agreement Component A or B) will not be added to the volume of Healthy Rivers and Landscapes Agreement water to be accounted under the Healthy Rivers and Landscapes Agreement refill accounting rules (uncompensated water) and since this water would not be Delivered Transfer Water as defined in the Accord Accounting would not be subject to refill under the

Accord refill accounting. If for any reason there is additional Healthy Rivers and Landscapes Agreement Flow Measure Water that is not compensated, that additional water will not be included in the refill accounting volume. However, the refill of compensated water will be deemed to the first Healthy Rivers and Landscapes Agreement evacuated storage to refill (i.e. uncompensated water not subject to refill impact repayment will be accounted as the last increment of storage attributable to Healthy Rivers and Landscapes Agreement releases to refill).

- 12) If a volume of water is being accounted for refill in one refill accounting for impact (WPA or Healthy Rivers and Landscapes Agreement) then it is not subject to refill in the other refill accounting.
- 13) Healthy Rivers and Landscapes Agreement refill accounting will be done through comparison of measured New Bullards Bar Reservoir storage and associated reservoir releases with Healthy Rivers and Landscapes Agreement operations to Accord operations without a Healthy Rivers and Landscapes Agreement New Bullards Bar Reservoir storage and releases (i.e. the Accord transfer uses a refill storage line the Healthy Rivers and Landscapes Agreement refill will not use this line).
- 14) If a refill impact is accounted due to previous Healthy Rivers and Landscapes Agreement operations, then YWA will release water during Balanced Conditions on a schedule that is agreed to by YWA and DWR at a time when such releases will not create or affect deficiencies in local deliveries or instream flows, and these releases will be coordinated with releases for other (if any) water transfers of YWA. The water released to offset refill impacts will be delivered by YWA as Delivered Transfer Water, as that term is defined in the WPA, and the accounting provisions and refill conditions of the WPA refill accounting exhibit will apply to those quantities.
- 15) Accounting of Healthy Rivers and Landscapes Agreement Component A, the Released Transfer Water generated by Accord instream flows and Healthy Rivers and Landscapes Agreement Component B may occur simultaneously.
- 16) Healthy Rivers and Landscapes Agreement component water is accounted at the Marysville Gage as defined in the accounting of Release Transfer Water in the Accord WPA.
- 17) During the springtime, accounting of timing and volume of Healthy Rivers and Landscapes Agreement Component B releases will be based on actual flows which determine the Healthy Rivers and Landscapes Agreement operation and the

forecasted operations for the Accord and Baseline operations that are in effect at the time of operation. Forecasted operations will use CNRFC ensemble based daily forecasts of runoff in the Yuba River watershed. YWA will document the method for calculating a time series of runoff derived from the CNRFC ensembles.

- 18) YWA Healthy Rivers and Landscapes Agreement flows are to be provided in SVI year types of Dry, Below Normal and Above Normal. YWA will make releases based on the current water year type as determined by DWR using the Bulletin 120 forecasts as these forecasts are made. If DWR determines that it will not be operating to provide Healthy Rivers and Landscapes Agreement flows for Delta outflow, then YWA will not be operating to release Healthy Rivers and Landscapes Agreement flows.
- 19) Even with the proceeding method for scheduling and accounting of Healthy Rivers and Landscapes Agreement component releases, there may be times when changing conditions require re-scheduling Healthy Rivers and Landscapes Agreement Component B releases beyond the April to June period. Changes to the schedule resulting in releases of Healthy Rivers and Landscapes Agreement water in the months of July through September (and possibly October) will require prior agreement by DWR.
- 20) YWA will prepare the accounting for Healthy Rivers and Landscapes Agreement water and will submit the accounting to DWR for review and concurrence. Procedures for accounting of Healthy Rivers and Landscapes Agreement Components A and B will generally follow those described in Section 6 of the WPA except where the accounting provisions listed here are in conflict with Section 6, these accounting principles will govern.
- 21) Because of the near real time operations nature of the Healthy Rivers and Landscapes Agreement flows, after the fact accounting may result in corrections to Healthy Rivers and Landscapes Agreement accounted volumes. Upon review by DWR of the submitted accounting, if it is determined that a portion of accounted Healthy Rivers and Landscapes Agreement flows that were relied upon by DWR for its operations to ensure the Healthy Rivers and Landscapes Agreement water resulted in Delta outflow were not actually provided by YWA, then repayment provisions of the refill accounting will be relied upon to repay the miss-accounted volume.

### **Appendix 3**

#### **FORM OF ORDER BY THE STATE WATER RESOURCES CONTROL BOARD**

It is hereby ORDERED that the attached Enforcement Agreement between the State Water Board and Responsible Parties is approved.

1. The Responsible Parties shall implement the flow, habitat restoration, and other measures as stated in Section 3 of the Enforcement Agreement; and
2. The State Water Resources Control Board shall implement its obligations as stated in Section 4 of the Enforcement Agreement.
3. The State Water Board and Responsible Parties shall follow the enforcement and dispute resolution terms stated in Section 5 of the Enforcement Agreement.



## **Appendix 4**

### **DESIGNATED REPRESENTATIVES FOR RESPONSIBLE PARTIES FOR THE YUBA RIVER**