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March 21, 2006

William S. Berens, Manager
Board of Directors
Los Molinos Mutual Water Company
Post Office Box 211
Los Molinos, California 96055

Re: Memorandum of Agreement for Implementation of Long-Term Cooperative
Management Plan for Mill Creek

Gentlemen:

Bill has provided me the subject Memorandum for my comment.

First, there has been a lot of history that has occurred in connection with the Mill Creek Conservancy with which I am not familiar. For example, in Paragraphs 15 and 16, there are references to a "partnership" that has been formed, a "Watershed Advisory Committee" intended to develop a "Watershed management process," and a document entitled the "Mill Creek Watershed Strategy Report." I'm not really clear on whether or not the partnership references a legal partnership or something less formal, and it is not really clear how the Watershed Strategy Report dovetails into this particular agreement. However, this agreement seeks to tie together all of the respective documents governing the actions of any of their particular parties into this MOA and to weave them into the collective process and strategy development that will be occurring. Therefore, I think it is important for everyone to make sure that all the pieces that are being cited are proper pieces to have. I have seen none of them, but once this MOA is signed, they become part of the legal landscape.

My comments are as follows:

1. It is not clear to me why this is called a "Memorandum of Agreement." Typically, a Memorandum would be a shorthand way of outlining and describing a broader and more comprehensive written agreement. This appears to be the ultimate document, not a summary

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document and I would tend to refer to it as an "agreement" as opposed to the introductory reference regarding "Memorandum."

2. In Paragraph 1, I am concerned with the use of the term "adequate" in discussing your irrigation water. Adequate is an extremely general term. What someone else thinks is "adequate" may be less than you need. I would prefer the last two lines read as follows:

"Consistent with and without loss or degradation of the water rights and supplies of irrigation water derived therefrom for the water users dependent upon Mill Creek (hereafter irrigation water)."

The goal is to utilize irrigation water rights through exchange agreements for purposes of enhancing salmon flows. The way this is framed, it is almost like there are two parallel purposes for the existing water in the stream and I would prefer to make it more clear that the "Chinook Flows" are derived from the irrigation water and the irrigation water rights, rather than state Chinook Flows and Irrigation are dual purposes of the stream.

3. In Recital 5, I am personally not aware of the background of Los Molinos organization. I had thought that Los Molinos Land Company had developed as a general corporation, but that Los Molinos Mutual Water Company had always been formed as a California mutual water company. The first two sentences of this paragraph almost suggest there are two different formations that occurred. I would suggest deletion of the first sentence and write the second sentence to read as follows:

"Los Molinos is a California mutual water company, originally formed in 1948 [check me on the date]. It owns and operates two dams . . . [the rest of the second sentence can remain as is]."

4. I typically don't recommend quoting one particular portion of an important document, such as the Decree, in this Agreement, such as occurs in Paragraph 10. The quoted language is an important provision of the Decree and certainly appears to lay the groundwork for transferring the water. However, placing one particular provision in this Agreement can produce an argument that they agree to have other provisions of the Decree move to the background. I would suggest the Decree simply be incorporated by reference. If we insert anything in Paragraph 10, it could be a general statement that ". . . the Decree sets forth the right, privileges and duties of the parties holding water rights in Mill Creek and also of Los Molinos as the Water Master, including rights with respect to the sale, transfer, lease or conveyance of rights."

5. In Paragraph 13, there is a reference to the Jones Agreement. It is my understanding

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this Agreement has a term and an upcoming expiration date. That should probably be included with this particular recital.

6. I have already commented that I really am not familiar with what occurred in connection with the formation of the Conservancy, as discussed in Recitals 15 and 16. If these are correct statements from your perspective, then I certainly have no problem with them.

7. In Recital 17, the language is that the MOA is intended to "manage the water consistent with the exchange agreements." I understood from Bill that the purpose from the MOA is to provide a long-range commitment of the Members to use their best efforts to continue the programs that were initiated through the exchange agreements. The problem with stating that the MOA will be the management document again, in my opinion, it sets up an overarching management authority composed of numerous entities, and it also could be argued that to some degree it is in replacement of terms and conditions of the respective underlying agreements. I think starting Recital 17 with the second sentence may be more accurate. I also think we need to get some language which would take away the word "commit" in the sense of providing assurance, and perhaps state that we will use our best efforts. What I am referring to is we can "commit to take action necessary to continue the current management of Mill Creek," but if the holder of the principal rights in the Jones Agreement decides not to continue it, there is not a whole lot that we can do. Perhaps using our best efforts or due diligence to continue those actions would be more appropriate than committing to take them. Again, in that same paragraph, it is difficult to say there can be certainty with respect to restoration efforts unless there is a certainty that the Jones Agreement will be extended. Again, from my perspective, I don't know what is happening with respect to that particular agreement except that it has an expiration date.

AGREEMENT

1. Paragraph 1. Let's insert that they will also have responsibility for repair and, as necessary, replacement as well as construction, operation and maintenance of the wells committed in the exchange agreement. I would also note that this may be a provision that they can assure us in connection with the Dry Creek Preserve, but it is not clear that they can make such a commitment in connection with the Jones Agreement, at least to my understanding. Note that the reference to "Exchange Agreement" covers both the Dry Creek and the Jones Agreement.

2. Paragraph 2. This paragraph deals with numerous "water right agreements," most of which do not yet exist. In addition, not all are "water rights." The only ones that exist are the two exchange agreements. I would not recommend we collectively refer to these as "water rights agreements." I would simply end the introductory paragraph 2 after the word "instruments." Thereafter, when it refers to "water rights agreements," I would simply refer to them as "water use agreements," set forth in "Paragraph 2," or some other type reference but most are not water

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rights. Also, bear in mind that in the last paragraph of Paragraph 2, you are agreeing, absolutely, to "strictly adhere to the operating provisions in Paragraphs 3, 4, and 5 which are set forth in this Agreement. Three is the exchange agreement language, four deals with flow management, and five deals with implementation. It is important to make sure you are comfortable with these restrictions on any future water that is acquired. I don't see anything wrong with agreeing to it, but you are the ones who are going to be operating under these restrictions.

3. Paragraph 3. With respect to this paragraph, I don't think it is appropriate to reference DWR's "rights" to call on Mill Creek flows pursuant to this MOA. The MOA doesn't give any independent rights. DWR does have a right to call on flows under the Exchange Agreement, and as we just discussed, the Water Right Agreements do not yet exist. I would also conclude the introductory paragraph of Paragraph 3 with the following:

"... construed in strict adherence with the terms and conditions of the Exchange Agreement."

I am not sure what is meant about the expression "as derived from," but it could be argued that, once again, the Exchange Agreement themselves aren't the governing documents, but this particular MOA is. Paragraph 3 a, b, and c, appear to be almost direct quotes from the Exchange Agreement and appear to accurately encapsulate how those agreements work. Again, bear in mind that the Jones Agreement is expiring soon.

4. Paragraph 4. There is another reference to management of flows pursuant to "water right agreements" that do not exist. I do not recommend incorporation of documents we intend to pursue as guiding documents in connection with this Agreement. The time to deal with how they will be woven into the agreement is the time they are acquired. I would recommend Paragraph 4 be rewritten as follows:

"Los Molinos as Water Master of Mill Creek shall manage Chinook flows and irrigation water pursuant to the entitled rights on Mill Creek, the exchange agreement, and the Decree."

Those agreements in and of themselves set out the cooperative relationship with DFG and, again, I don't like to keep restating what has already been agreed to. Note that under this Agreement you are agreeing to take action to protect all required Chinook flows in Mill Creek. I think that is an appropriate obligation of the Water Master and have no problem with it. However, I only wish to make it clear that to the extent there are attempts made to take the water, Los Molinos would be the one expected to defend and protect it under the terms and conditions of the Decree. You will not be able to complain about the burden, or the cost, of undertaking that action. If you expect contribution of expenses, now is the time to ask.

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5. The Management Committee has a lot of work to do. (Paragraph 6) If this is consistent with what you have been doing, and you see no problem in meeting the various deadlines and requirements that are set forth, it is up to you. I just want to make sure that someone is reviewing it to make sure it is going to be consistent with how Los Molinos Mutual operates and that it will be workable from Los Molinos Mutual's standpoint.

6. The dispute resolution is governed under Item 10, providing for arbitration. Bear in mind that disputes that can arise under the MOA could be just about anything in connection with operations of all the agreements referred to. The author of the document has inserted a well-written sentence to ensure that if the dispute involves a party's individual water rights and regulatory entitlement, then the arbitration clause does not apply. Therefore, anything that would affect your rights and/or involve your rights under the Decree or your duties as the Water Master, would still be resolved in Superior Court.

7. I would recommend serious consideration of whether you wish to leave the Attorneys' Fee clause at the very end of Paragraph 10. I would recommend that you substitute a clause that says the parties will bear their own attorney's fees and costs. This is a highly general agreement. It does seem to impose lots of requirements on many people, and could be argued from lots of perspective. The fact that it is so general makes the possibilities for disagreement in the future somewhat high and, therefore, the risk of having a good faith dispute go to arbitration and then paying the other side's attorney's fees is real. I think this is one where the parties should agree to bear their own costs. However, attorneys' fee clauses are clearly matters of policy, not so much a legal conclusion. I think with an agreement of this scope, you will regret, in the event of a dispute, that the clause was there. I also think that since this encourages an attempt to use arbitration, the parties should not be discouraged from doing that by virtue of the fact that they may have to pay the other party's attorney's fees.

With respect to arbitration, note that Fish and Game and DWR pick one arbitrator and you and the Conservancy pick one. That is fine if you and the Conservancy agree. However, I would assume that in your own agreement with the Conservancy there is some understanding how, in the event of a dispute, you would pick your joint arbitrator. The other point that comes to mind is if in fact there is no agreement between the Conservancy and Los Molinos Mutual, in fact in some kind of a disagreement, it may be very difficult to pick your arbitrator. In any event, this Agreement ties you to the Conservancy in exercising your rights to one-third (1/3) of the vote on any dispute.

8. The Cancellation Clause (Paragraph 11) is not clear. It suggests that any party may "request" to withdraw on a showing of good cause. That suggests "good cause" may be disputed. It also states ". . . if the request for withdrawal is accepted." If you want absolute termination rights, this doesn't give them to you.

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9. The final concern relates to Paragraph 13. There is a savings clause (except for documents otherwise referenced herein), but then it goes on to state that the MOU constitutes the entire agreement between the parties with respect to their collective Mill Creek restoration efforts. I am not sure of the purpose behind that particular clause. I do think it could lead to arguments in the event of a conflict between terms of the MOA and terms of the independent agreements. Perhaps we could solve that by pointing out that if there is any term or condition of the MOA which is inconsistent with the terms of the Decree, or the exchange agreement, then the terms of the Decree and/or the exchange agreement, respectively, shall govern. I am concerned that the clause, "... except for documents otherwise referenced herein" will not be specific enough to preserve the priority of those other documents.

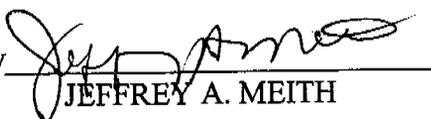
Overall, I think the MOA as drafted is a reasonable attempt to try to coalesce the parties into a long-term commitment, but it needs some work. I think the areas where it causes problems for me are the assumption that all that is there will remain the status quo when in fact we are currently aware that the Jones Agreement itself is expiring. I am also concerned that the MOA appears to, to some degree, swallow up the antecedent agreements as well as the Decree, although it then has saving language which should indicate that it does not intend to do so. I would rather be more specific in connection with ensuring that the MOA does not in any way limit or restrict the rights, not alter the language of those other documents and in an event of a dispute the other documents govern.

The MOA is a good attempt to try to bring the parties together in a long-range cooperative effort for the protection of Mill Creek which is beneficial both from the standpoint of the Chinook salmon resources, and protecting your own water rights. That certainly is a laudable goal, but I think it is important that the parties make sure they fully understand the obligations that will be imposed on them.

Please contact me if you have any questions.

Very truly yours,

MINASIAN, SPRUANCE, MEITH,
SOARES & SEXTON, LLP

By 
JEFFREY A. MEITH

JAM/jg

DRAFT

**Memorandum of Agreement for the Implementation of
a Long-Term Cooperative Management Plan for Mill Creek**

This Memorandum of Agreement (MOA) is made and entered this _____ day of _____, 2005, by and between *Los Molinos Mutual Water Company* ("*Los Molinos*"), *Department of Water Resources* ("*DWR*"), *Department of Fish and Game* ("*DFG*"), and *Mill Creek Conservancy* ("*Conservancy*"), collectively referred to as the "Parties."

A. BACKGROUND

1. The Parties desire to form a managing body ("Management Committee") for the implementation of a long-term cooperative management plan for Mill Creek, a tributary of the Sacramento River in Tehama County, in a joint effort to provide flows for the spring and fall run Chinook salmon (*Oncorhynchus tshawytscha*) ("Chinook Flows") and maintain adequate irrigation water (and water rights thereto) ("Irrigation Water") for the water users dependent upon Mill Creek.

2. Since 1990, the Parties have augmented the Mill Creek flows through water leases, groundwater exchange programs, and operational changes of facilities on Mill Creek. These efforts have proven beneficial for the Chinook salmon, but the Parties are concerned that these agreements can be subject to cancellation and, therefore, the Parties desire to create a long-term management structure for the restoration efforts.

3. The Anadromous Fish Restoration Program ("AFRP") was created pursuant to section 3406(b)(1) of the Central Valley Project Improvement Act ("CVPIA"), which directs the United States Secretary of Interior to develop and

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implement a program to double the natural production of anadromous fish in Central Valley streams. The AFRP recognizes Mill Creek as a high priority stream for the protection and enhancement of Chinook salmon spawning habitat. The AFRP acknowledges that implementation of restoration action needs to be flexible so that unforeseen opportunities can be pursued if they meet the intent of the CVPIA.

4. Upper Mill Creek currently provides sufficient habitat for spring-run holding, spawning, and early life stage development for Chinook salmon. Improved passage, however, may benefit migrating juvenile and adult salmon during late spring months (May 1 through June 15) ("Spring"). During the Spring, low flows may cause in-stream barriers, particularly in dry and critically dry years. Improved passage may also benefit migrating fall-run Chinook adult salmon in the fall months (October 15 through November 30) ("Fall") when low flows may cause in-stream barriers. For these reasons, the Parties have worked and continue to work together to further the AFRP purposes (and those stated in California Fish and Game Code sections 6900 *et seq.*) through active management of the Chinook salmon fisheries on Mill Creek.

5. ~~Los Molinos organized as a general corporation under the laws of the State of California in 1948.~~ ^{was first formed} ~~Los Molinos is a California mutual water company who owns and operates two dams (Upper Dam and Ward Dam), measuring stations, canals, conduits and appurtenant distribution facilities necessary for diverting Mill Creek water for distribution to shareholders of Los Molinos and other water rights holders.~~ ^{originally formed in 1948. It} ~~Los Molinos~~ ^{ad} ~~has substantial rights to water from Mill Creek and serves approximately _____ acres of land within Tehama County.~~ ^{at} ~~Los Molinos also serves _____~~ ^{the right to}

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6. *DWR* is responsible for the planning, investigation, and coordination of the development of the water resources of the State. *DWR* also assists local water agencies in water management and conservation activities.

7. *DFG* is a division of the State of California with regulatory duties to protect and conserve the fish and wildlife resources of the State. *DFG's* stated mission is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public.

8. The *Conservancy* organized as a corporation under the California Non-Profit Public Benefit Corporation laws in 1994. The *Conservancy* generally seeks to bring together landowners, interested members of the local community, and governmental representatives to strive to protect the natural resources and property rights in the Mill Creek watershed. The *Conservancy* emphasizes local management of valuable watershed assets.

9. On August 16, 1920, the Superior Court of the State of California in and for the County of Tehama entered a decree adjudicating entitlements to all flows below 203 cubic feet per second in the then Los Molinos River (now referred to as the "Mill Creek")("Decree"). Therein, *Los Molinos* (then referred to as the "Los Molinos Land Company") was appointed as "Water Master" for Mill Creek.

10. The Decree specifically states:

Each of said parties [to the Decree] is and will be at all times entitled to take and divert from said river the quantity of water herein and hereby

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allotted to such party at such point or points on said river as such party may see fit, and by such means as such party may see fit to adopt, or to procure such quantity of water to be diverted from said river for the benefit of such party under any arrangement with any other person or corporation, or by or through any diversion works constructed or operated by any other person or corporation. Each of said parties [to the Decree] is and will be at all times entitled to use or dispose of the share allotted to such party of the water of said river in any manner, at any place, or for any purpose which such party may desire, or in accordance with whatever agreement or arrangement such party may make with any other person or corporation. Except as herein expressly declared, no priority exists between said parties, the right of each of them in respect to said water being on a parity with the rights of all of the others of said parties, and all of them being entitled to exercise simultaneously and continuously their several rights as herein defined.

11. The Decree grants correlative water rights among the parties to the Decree, including *Los Molinos*. As WaterMaster, *Los Molinos* has express authority to distribute unused waters to other uses to avoid forfeiture or abandonment of the vested water rights. The Decree does not restrict the place of use or type of use for the decreed water rights. The parties to the Decree, however, must ensure that any use of water does not injure the other interests under the Decree.

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12. California, acting by and through *DWR* and *DFG*, and *Los Molinos* entered into an agreement with *Los Molinos* on May 1, 1990 ("1990 Agreement"). Through the 1990 Agreement, *DFG* and *DWR* agreed to take responsibility and authority, as well as pay all costs associated with, the design, construction, operation, and maintenance of groundwater wells for the purpose of increasing Chinook Flows in Mill Creek. *DFG* and *DWR* further committed to obtaining all rights of way, permits, and environmental documentation for the wells. *DFG* agreed to monitor and evaluate the effects of the 1990 Agreement on fishery populations in Mill Creek. *Los Molinos* agreed to provide, upon request of *DFG* and to the extent possible, decreed water rights for Chinook Flows in equal amount to the groundwater delivered from the wells into *Los Molinos'* canal system. The 1990 Agreement exempts *Los Molinos* from paying any costs associated with the water exchange for Chinook Flows.

13. On October 28, 1996, California, acting by and through *DWR* and *DFG*, entered into an agreement ("1996 Agreement") with *Los Molinos* and Jones Prune Orchards, a local landowner. Pursuant to the 1996 Agreement, *Los Molinos* and the local landowner committed to willingly forego the diversion of the landowner's water right when water was needed for Chinook Flows. In exchange, the State committed to pay for the landowner's increased cost of well operations and allow *Los Molinos* to use the landowner's water right during the irrigation season. To implement this exchange, *Los Molinos* committed to operate all water diversions. *DFG* committed to continue monitoring habitat conditions and conducting fish counts. *DWR* committed to monitoring flows, water quality, groundwater and operation of the State's groundwater wells. *Agreement*

Agreement

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14. The 1990 Agreement and 1996 Agreement collectively comprise the "Exchange Agreement" for Mill Creek.

15. In 1995, *Los Molinos* and the *Conservancy* formed a partnership to pursue a joint project that included a Watershed Management Strategy and Report. *Los Molinos* and the *Conservancy* created a Watershed Advisory Committee to seek to establish a local community and stakeholder partnership effort to develop a watershed management process to promote the protection, enhancement and stewardship of Mill Creek.

16. In 1997, the *Conservancy* published the Mill Creek Watershed Strategy Report that identifies numerous resource issues in the Mill Creek Watershed, including fish passage, protection of wild populations, restoration of threatened and endangered species and improved water quality.

17. This MOA is intended to manage the water in and from Mill Creek to manage the Chinook Flows and Irrigation water consistent with the terms of the Exchange Agreement. By this MOA the Parties further commit to take actions necessary to continue the current management of Mill Creek, including but not limited to renewing existing and entering into additional agreements to reserve certain flows for Chinook salmon in Mill Creek. The Parties intend for the MOA to provide certainty that current restoration efforts continue into the future.

18. The Parties are committed to applying flexible and adaptive management practices to the restoration efforts on Mill Creek. The Parties desire to continue these core principles by renewing existing leases and entering into new leases, water right

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purchases or transfers, easement agreements, and other water right arrangements to provide for Chinook Flows while maintaining adequate Irrigation Water.

19. The Parties want to ensure that members of the public and representatives of federal agencies have an avenue to voice their concerns and opinions with respect to the Parties' cooperative restoration efforts on Mill Creek.

B. AGREEMENT

In order to provide a long-term comprehensive plan and management structure to provide Chinook Flows and maintain Irrigation Water for the water users dependent upon Mill Creek, the parties hereby agree as follows:

1. Well Responsibility and Authority: DWR and DFG will maintain full responsibility and authority for, and pay all costs associated with the design and construction, operation, and maintenance of the wells as committed to in the Exchange Agreement.

own
responsibility
well

2. Water Right Agreements: The Parties will, in their individual capacities and discretion, actively pursue, acquire, maintain, and coordinate interests in Mill Creek water rights (to manage Chinook Flows and maintain adequate Irrigation Water) through any of the following instruments, collectively referred to as "Water Right Agreements":

- a. Lease agreements with Mill Creek water users, including but not limited to lease agreements existing at the time of this MOA;
- b. Purchases of fee interest in water rights from Mill Creek water users, including transfers of water rights from *Los Molinos* and *Conservancy*;

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- c. Purchases of easement interests in Mill Creek water rights as necessary to provide for sufficient Chinook Flows in the Spring and Fall;
- d. Cooperative agreements with any existing water right holder or water user on Mill Creek as necessary to coordinate management of Chinook Flows and/or Irrigation Water consistent with this MOA;
- e. Any other agreement hereafter determined by the Parties to be necessary for the management of Chinook Flows and Irrigation Water to implement the stated terms and express goals of this MOA.

The management of flows set forth in any Water Right Agreement entered into pursuant to this MOA must strictly adhere to the management and implementation structure hereby agreed to, as set forth in paragraph 3, 4, and 5 below.

3. Call on Mill Creek Flows: DFG will maintain responsibility for establishing the times and the amounts of water that are necessary to remain in lower Mill Creek for Chinook Flows in the Spring and Fall. DFG has the right to "call" on Mill Creek flows pursuant to this MOA and Water Right Agreements for the sole purpose of providing, as necessary, Spring and Fall flows for adult migration of Chinook salmon.

Should be limited to water

??

The rights and obligations associated with this call upon Mill Creek flows shall be construed in strict adherence with the following terms as derived from the Exchange Agreement:

limited set forth in the Exchange Agreement

- a. DFG is responsible for establishing the times and the amounts of water that are desirable to remain in lower Mill Creek for Chinook Flows during the Spring and Fall.

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- b. Upon request of *DFG*, *Los Molinos* agrees to provide, within its ability to supply natural flows, an amount of water for Chinook Flows in lower Mill Creek equal to the proportion of its decreed water rights matched by an instantaneous capacity of replacement groundwater.
- c. There may be times when *DFG* determines that the Chinook Flow requirements exceed the instantaneous capacity of groundwater supplies or when *DFG* requests that water remain in Mill Creek for purposes other than for Chinook Flows. In either event, *Los Molinos* may, in its sole discretion, when requested by *DFG*, allow water to remain in lower Mill Creek in an amount greater than the instantaneous capacity of replacement groundwater. Arrangements for replacement water and/or other compensation may be made only upon mutual consent of *DWR*, *DFG*, and *Los Molinos*. Nothing in this Agreement requires *Los Molinos* or any other party to provide or forego Mill Creek surface water for Chinook Flows beyond the amount of instantaneous flow from groundwater sources available for replacement Irrigation Water. Nothing in this Agreement requires *Los Molinos* or any other party to provide or forego Mill Creek surface water for purposes other than Chinook Flows.

4. Manage Flows: Through cooperation with *DFG*, *Los Molinos*, as Water Master of Mill Creek, shall manage Chinook flows and Irrigation Water pursuant to entitled water rights on Mill Creek, the Exchange Agreement, the Decree, and the Water

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Right Agreements. Pursuant to the Decree and as required by this MOA, *Los Molinos* shall enforce the authorized irrigation diversions on Mill Creek to protect the Chinook Flows called for by *DFG* from unauthorized appropriation.

5. Implementation of Agreements: *DWR* and *DFG* shall implement the terms of the Water Right Agreements pursuant to and consistent with the goals of this MOA. The implementation of any Water Right Agreement entered into pursuant to this MOA must specifically further the primary objective of managing of Chinook Flows in Mill Creek while maintaining adequate Irrigation Water for Mill Creek water users. This primary objective derives from and is consistent with the Exchange Agreement and existing lease agreements in effect as of this MOA. The Parties do not intend for this MOA, or any provision thereof, to affect or supersede the rights and obligations of parties to the Exchange Agreement and/or existing leases in effect on the date set forth above.

6. Management Committee: The Management Committee comprises, and is limited to, representative(s) from each of the Parties. Unless otherwise described in this MOA, the Management Committee shares responsibility for the ongoing operational duties associated with the restoration efforts and may (upon unanimous approval of the Management Committee) designate subcommittees or enter into consultant contracts at any time for any of the duties listed below. The Management Committee shall:

- a. Produce an annual written report to disclose pertinent financial data for restoration efforts, summarize monitoring data for Mill Creek, provide a narrative description of the Management Committee's restoration efforts during the preceding year, and state the objectives for following year

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("Annual Report"). Confidential information about parties to any Water Right Agreement must not be disclosed; however, the Annual Report should describe the quantity of new and existing Water Right Agreements for the preceding year.

- b. Obtain funding to support the restoration efforts through cost-share, grants, loans, and charitable donations.
- c. Ensure and pursue landowner and water user involvement in restoration efforts, including but not limited to Water Right Agreements and *Conservancy* membership.
- d. Conduct, at a minimum, the following seasonal monitoring in the Mill Creek watershed:
 - (1) Water temperature, flows, Chinook salmon population.
 - (2) Groundwater and surface water monitoring: water quality and water supply.
- e. Ensure full cooperation and sharing among the Parties of technical and scientific information related to the Mill Creek restoration efforts.
- f. Implement the terms of this MOA and all implementing agreements, including but not limited to Water Right Agreements, among any of the Parties in accordance with federal, state and local laws and regulations.
- g. Undertake any requisite regulatory or environmental compliance necessary to continue the restoration efforts on Mill Creek. The Parties hold mutual responsibility for undertaking any necessary Decree

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modifications or State Water Resource Control Board water right proceedings hereafter deemed necessary to continue restoration efforts on Mill Creek.

7. Advisory Committee: The Management Committee will provide the Annual Report to an "Advisory Committee." The Advisory Committee comprises a representative from the United States Fish and Wildlife Service ("USFWS"), the National Marine Fisheries Service ("NMFS"), the Tehama Flood Control and Water Conservation District ("Tehama FCWCD"), and other entities or persons invited at any time by the Parties. The Parties expect that the Advisory Committee will meet annually and as otherwise necessary. The responsibilities of the Advisory Committee are expressly limited to the following:

- a. Review the Annual Report; and
- b. Make recommendations to Management Committee.

8. Annual Meeting: Pursuant to article IV, section 1, of the *Conservancy* Bylaws, the *Conservancy* must hold annual membership meetings. The Management Committee must submit to the *Conservancy* a summary of the Annual Report for Mill Creek restoration efforts in advance of said annual meeting. The annual meeting shall include a forum for reviewing the Annual Report summary and provide any member of the public an opportunity to comment on the Mill Creek restoration efforts. Nothing in this section limits the rights of any Parties to hold additional meetings at any time and for any reason.

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9. Notice: The Parties must ensure that the party that entered into any Water Right Agreement records the Water Right Agreement with the County of Tehama County. *Los Molinos* must also provide written notice of any Water Right Agreement to all reasonably known and identifiable water users on Mill Creek. The notice must explain that the Spring and Fall flows are reserved for Chinook Flows and not subject to use by any party unless expressly authorized by *Los Molinos* as Water Master of Mill Creek.

10. Dispute Resolution: The Parties shall make reasonable efforts to resolve any disputes that may arise from this MOA. If the Parties cannot reach resolution, the matter shall be subject to arbitration unless the irreconcilable dispute involves the Parties' individual water rights and regulatory entitlements to water on Mill Creek. *DFG* and *DWR* shall select one arbitrator. The *Conservancy* and *Los Molinos* shall select a second arbitrator. The Parties shall collectively select a third arbitrator. The arbitration shall commence pursuant to the arbitration rules set forth in the California Civil Code, including an award of attorneys' fees and costs to the prevailing party. 

11. Cancellation and Amendment: This MOA shall remain in full force and effect as to all signatory Parties, effective _____, 2005, provided that any party may request to withdraw upon _____ days written notice to the Parties and a showing of good cause. Upon receipt of such notice, the Parties must mutually agree to allow such withdrawal. If the request for withdrawal is accepted, the remaining Parties must determine whether, and under what terms, to continue, amend, or terminate this MOA. This MOA may be amended from time to time with the written consent of all Parties who

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have not withdrawn. The withdrawal of any party to this MOA shall not effect the terms of any Water Right Agreement entered pursuant to this MOA. The cancellation or amendment of this MOA shall not effect the terms of any Water Right Agreement entered pursuant to this MOA.

12. Successors and Assigns: All references to the *Conservancy, Los Molinos, DFG, DWR, the Parties, USFWS, NMFS, and Tehama FCWCD*, shall refer also to any agents, representatives, successors, and assigns of said entity. The responsibilities herein assigned to *Los Molinos* in its capacity as Water Master of Mill Creek shall be binding upon any successor Water Master for Mill Creek.

13. Entire Agreement: Except for documents otherwise referenced herein, this MOA constitutes the entire agreement between the Parties with respect to their collective Mill Creek restoration efforts. Each party has made its own independent investigation of the matters settled, has been advised concerning the terms of this Agreement by counsel, or has had an opportunity for such counsel, and is not relying upon any representation not specified herein. This MOA may be signed in any number of counterparts by the Parties, each of which signatures are deemed an original, and all of which together shall be deemed one instrument binding on all Parties.

14. Applicable Law: This MOA shall be construed under and governed by the laws of the State of California and of the United States.

IN WITNESS WHEREOF, authorized legal representatives of the parties hereby execute this MOA, rendering it effective on the date first set forth above:

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Date: _____

X

Department of Water Resources

Date: _____

X

Department of Fish and Game

Date _____

X, Secretary

Los Molinos Mutual Water Company

Date _____

X, President

Los Molinos Mutual Water Company

Date _____

X

Mill Creek Conservancy

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