



November 4, 2014

TO: San Luis & Delta-Mendota Water Authority Board of Directors, Alternates, and Interested Parties

FROM: Dan Nelson, Secretary (by Susan)

RE: **Thursday, November 6, 2014, 9:30 a.m.  
Board of Directors' Meeting**

Attached for your review in preparation of the **November 6, 2014**, Board of Directors' meeting is:

- 1) *Draft* Agenda
- 2) *Draft* Resolution #2014-385 Authorizing Execution of Amendment No. 5
- 3) Amendment 5 to the Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority Under the Dry Year Water Purchase Program
- 4) *Draft* Resolution #2014-386 Authorizing Execution of Yuba Transfer 2015-2025 Activity Agreement

Thank you, and please give us a call if you have any questions or concerns regarding this information.



**San Luis & Delta-Mendota Water Authority  
Board of Directors  
Regular Meeting  
Thursday, November 6, 2014  
9:30 a.m.  
842 6<sup>th</sup> Street, Los Banos**

### **AGENDA**

1. Call to Order/Roll Call
2. Opportunity for Public Comment

### **ACTION ITEMS**

3. **Board to Consider Approval of Minutes/Acceptance of Listed Financial Reports<sup>1</sup>**
  - a. **October 9, 2014 Meeting Minutes**
  - b. **Financial & Expenditures Report, Wamocho/Mederios**
4. **Board to Consider Resolution #2014-385 Authorizing Execution of Amendment No. 5 to the Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority Under the Dry Year Water Purchase Program, SWPAO No. 14-XXX; Making Determinations Related to California Environmental Quality Act, and Authorizing Actions Related Thereto**
5. **Board to Consider Resolution #2014-386 Authorizing Execution of Yuba Transfer 2015-2025 Activity Agreement, Determining that Action is Exempt from California Environmental Quality Act, and Authorizing Actions Related Thereto**

### **Report Items**

6. Committee Reports
  - A. Water Resources Committee Activities, Birmingham
  - B. Finance & Administration Committee Activities, Pucheu
  - C. O & M Technical Committee Activities, White
  - D. DHCCP Steering Committee, McIntyre
7. Self-Funding Report, Mederios
8. Administration Report, Mizuno
9. Operations & Maintenance Report, Mizuno
10. Operations Update, Boardman
11. Transfers Update, Mizuno
12. Water Policy Administrator Report, Azhderian
13. San Luis Transmission Project Update, Mizuno

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<sup>1</sup> The Chairman may determine on his own or at the request of any Director or Alternate Director in the absence of the respective Director to consider separately or to table any sub-item in this Agenda Item.

14. Executive Director's Report
15. Drainage Activity
  - A. Grassland Basin Drainage Activity Report, Falaschi/Rathmann
  - B. Westside Regional Drainage Plan Report, Rathmann
  - C. San Joaquin Valley Drainage Authority, Rathmann
16. **CLOSED SESSION**

Conference with Legal Counsel on Anticipated Litigation – Initiation of Litigation Pursuant to Subdivision (c) of Government Code Section 54956.9 – 4 potential cases

Conference with Legal Counsel on Existing Litigation Pursuant to Subdivision (a) of Government Code Section 54956.9

  - A. San Luis & Delta-Mendota Water Authority et al. v. United States Department of Interior et al, US District Court, ED Cal, Case No 1:11-cv-00952-OWW-GSA (CVPIA 3411b case)
  - B. Natural Resources Defense Council, et al., v. Salazar et al. US Court of Appeals, 9<sup>th</sup> Cir., Appeal No. 09-17661; Natural Resources Defense Council et al. v Jewell et al., US District Court, ED Cal. No. 1:05-cv-01207, LJO-BAM (Old FWS – OCAP BO/Contracts)
  - C. San Luis & Delta-Mendota Water Authority, et al., v. Salazar, et al.,US District Court, ED Cal, Case No. 1:09-CV-00407-OWW-DLB (Salazar/2008 Delta Smelt BiOp)
  - D. San Luis & Delta-Mendota Water Authority and Westlands Water District v. Gary R. Locke, et al, US District Court, ED Cal, Case No.1:09-CV-1053 (Locke/2009 NMFS BiOp)
  - E. Central Delta Water Agency and South Delta Water Agency v. California Department of Water Resources, et al., Sacramento County Superior Court Case No. 34-2009-80000229 (Field Studies)
  - F. South Delta Water Agency et al. v. State Water Resources Control Board, et al, Sacramento Superior Court Case No. 34-2009-80000200 (CDWA&SDWA Writ of Prohibition/JPOD)
  - G. Central Delta Water Agency v. State Water Resources Control Board et al., Sacramento County Superior Court Case No. 34-2010-80000520 (Petition to Prohibit CDO proceedings)
  - H. Young, et al., v. State Water Resources Control Board, San Joaquin County Superior Court Case 39-2011-00259191-CU-WM-STK, 3<sup>rd</sup> District Court of Appeal, Civ. No.C-688559 (Appeal of Writ of Mandate setting aside CDO issued to Woods Irrigation Company)
  - I. Modesto Irrigation District, et al., v. State Water Resources Control Board & Woods Irrigation Company, Sacramento County Superior Court Case Nol. 34-2011-80000803 (Complaint for Declaratory Relief re Woods Irrigation Company)
  - J. San Luis & Delta-Mendota Water Authority et al., v. State Water Resources Control Board, et al., Sacramento County Superior Court Case No. 34-2013-800001486 (Dunkel Order)
  - K. SWRCB Water Rights Complaints: Modesto Irrigation District, State Water Contractors, San Luis & Delta-Mendota Water Authority, Interested Persons in SWRCB CDO Enforcement Proceedings and/or Petitions for Reconsideration: Woods Irrigation Company; Pak & Young; Mussi et al; George Speckman Testamentary Trust (Water Rights Complaints)
  - L. Sacramento Regional County Sanitation District v. California Regional Water Quality Control Board, Central Valley Region, et al., Sacramento Superior Court, Case No. 34-2011-80001028 (Sac Regional NPDES Permit Appeal)
  - M. Pacific Coast Federation of Fishermen's Associations, California Sportfishing Protection Alliance, Friends of the River, San Francisco Crab Boat Owners Association, Inc., The Institute for Fisheries Resources, and Felix Smith, v. Donald R. Glaser and San Luis & Delta-Mendota Water Authority, U.S. District Court, E.D. Cal., 2:11-CV-02980-KJM-CKD ("PCFFA v Glaser" or "GBP Citizens Suit")
  - N. San Luis & Delta-Mendota Water Authority and Westlands Water District v. Delta Stewardship Council, et al., Sacramento County Superior Court No. 34-2013-80001500 ("Delta Plan Litigation")
  - O. San Luis & Delta-Mendota Water Authority and Westlands Water District v Jewell, et al., U.S. District Court, E.D. California, No 1:13-CV-01232-LJO-GSA (Trinity Releases)
  - P. Friant Water Authority, et. al., v. Jewell, et al., US District Court, ED Cal, Case No. 1:14-CV-000765-LJO-BAM
17. Return to Open Session
18. Report from Closed Session, if any Required by Government Code Section 54957.1
19. Reports Pursuant to Government Code Section 54954.2
20. **ADJOURNMENT**

*Persons with a disability may request disability-related modification or accommodation by contacting Susan Mussett or Cheri Worthy at the San Luis & Delta-Mendota Water Authority Office, 842 6<sup>th</sup> Street, P O Box 2157, Los Banos, California, telephone: 209/826-9696 at least (3 for regular, 1 for special) day(s) before the meeting date.*

## SAN LUIS &amp; DELTA-MENDOTA WATER AUTHORITY

## RESOLUTION NO. 2014-385

RESOLUTION AUTHORIZING EXECUTION OF AMENDMENT 5 TO THE  
AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER BY THE  
DEPARTMENT OF WATER RESOURCES UNDER THE  
DRY YEAR WATER PURCHASE PROGRAM SWPAO NO. 14-803,  
MAKING DETERMINATIONS RELATED TO THE  
CALIFORNIA ENVIRONMENTAL QUALITY ACT  
AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, on December 3, 2007, the Water Resources Committee of the San Luis & Delta-Mendota Water Authority (the “Water Authority” or “Federal Water Contractors”), acting pursuant to an express delegation of authority from the Water Authority Board of Directors (the “Board”) adopted Resolution 2007-277, Resolution Authorizing Execution of Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California to the San Luis & Delta-Mendota Water Authority (the “DWR Dry Year Purchase Agreement”).

WHEREAS, the Executive Director of the Water Authority has executed and the Water Authority has entered into performance of the DWR Dry Year Purchase Agreement, as amended by Amendments Nos. 1-4.

WHEREAS, the Department of Water Resources (“DWR”) has requested that the Water Authority enter into Amendment 5 to the DWR Dry Year Purchase Agreement (“Amendment 5”) to establish prices for surface water made available after September 30, 2015 through December 31, 2020, and the parties may terminate the Agreement if they fail to enter further amendments for water made available after September 30, 2020.

WHEREAS, certain State Water Project contractors (the “State Contractors”) entered into agreements substantially similar to the DWR Dry Year Purchase Agreement and DWR has requested that the State Contractors enter into amendments to those agreements, which are substantially similar to Amendment 5.

WHEREAS, DWR has prepared a document entitled, “Notice to State and Federal Water Contractors Participating in the Dry Year Water Purchase Program Pursuant to the Yuba River Accord Water Purchase Agreement,” summarizing the requested amendment, a copy of which has been presented to the Board and is on file with the Secretary hereof.

WHEREAS, the Board has considered Amendment 5, a copy of which has been presented to the Board and is on file with the Secretary hereof.

WHEREAS, on October 23, 2007, the Yuba County Water Agency (“YCWA”) as the Lead Agency certified the Final Environmental Impact Report/Environmental Impact Statement including addenda for the Proposed Lower Yuba River Accord (the “Final Yuba Accord EIR”) that is the source of water supplies for the DWR Dry Year Purchase Agreement, including certain California Environmental Quality Act (“CEQA”) Findings of Fact, a Statement of Overriding Considerations, and a Mitigation Monitoring and reporting/Environmental Commitments Plan.

WHEREAS, to support approval of Amendment 5 to the Water Purchase Agreement YCWA as Lead Agency considered the Final Yuba Accord EIR including addenda to evaluate whether the Amendment 5 changes to the approved Yuba Accord project would result in any new significant environmental impacts beyond those already identified and mitigated in the the Yuba Accord EIR including addenda, would result in any substantially more sever environmental impacts than those disclosed in the Final Yuba Accord EIR including addenda or would create any other conditions that could require a subsequent or supplemental environmental impact report. WHEREAS, the Water Authority has considered the documents prepared by the YCWA as Lead Agency to support Amendment 5.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board hereby finds and determines that the documents prepared under CEQA by the YCWA is adequate under CEQA for Water Authority purposes of entering into Amendment 5 and finds that no subsequent or supplemental CEQA analysis is required for the Water Authority to execute Amendment 5.

Section 3. The Board hereby authorizes the Executive Director to execute Amendment . 5 as presented for and on behalf of the Water Authority and its members, subject to such further additions, deletions or revisions as the executing officer may approve prior to execution, said execution to constitute conclusive proof of such approval.

Section 4. The Executive Director, Assistant Executive Director or such Water Authority employee or consultant as either of such officers may designate, is further authorized and directed to take such additional steps, and to execute such additional documents as may be required or reasonably necessary to complete and implement the DWR Dry Year Purchase Agreement as amended by Amendment 5.

PASSED, APPROVED AND ADOPTED this 6th day of November, 2014, by the following vote:

AYES:

NAYS:

ABSTAIN:

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Michael Stearns, Chairman  
SANLUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

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Daniel G. Nelson, Secretary

**STATE OF CALIFORNIA**  
**THE RESOURCES AGENCY**  
**DEPARTMENT OF WATER RESOURCES**  
  
**AMENDMENT 5 TO THE**  
**AGREEMENT FOR THE SUPPLY AND CONVEYANCE OF WATER**  
**BY THE DEPARTMENT OF WATER RESOURCES**  
**OF THE STATE OF CALIFORNIA**  
**TO THE SAN LUIS & DELTA-MENDOTA WATER AUTHORITY**  
**UNDER**  
**THE DRY YEAR WATER PURCHASE PROGRAM**  
**SWPAO NO. 14-803**

THIS AMENDMENT 5 (Amendment) to the December 21, 2007 “Agreement for the Supply and Conveyance of Water by the Department of Water Resources of the State of California Under the Dry Year Water Purchase Program” (Participation Agreement, or Agreement) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2014 pursuant to the provisions of the California Water Resources Development Bond Act, the State Central Valley Project Act, and other applicable laws of the State of California, between the Department of Water Resources of the State of California, herein referred to as “DWR,” and the San Luis & Delta-Mendota Water Authority, a public agency in the State of California, herein referred to as the “AUTHORITY.” DWR and the AUTHORITY are herein referred to separately as the “Party” and collectively as the “Parties.” Unless otherwise provided in this Amendment, the definitions in the Agreement, the Yuba Water Purchase Agreement, and the exhibits to that agreement shall apply to this Amendment.

## RECITALS

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



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

**AMENDMENT 5 to the Participation Agreement**

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

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

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

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

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

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

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

**2. EFFECTIVE DATE OF AMENDMENT**

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

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

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

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

**4. CHANGES TO SECTION 3, “PURCHASED WATER”**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“6. Pursuant to the negotiations described in Section 3.B.4.c in which a letter agreement has been executed as provided in Section 3.B.4.d, the AUTHORITY will comply with Delta conveyance priority, as determined by the Management Committee representatives as provided in Section 3.B.4.c, in its scheduling with Reclamation for any Groundwater Substitution Component water requested under the Agreement relative to any other AUTHORITY transfer water that Reclamation conveys at the Jones Pumping Plant for the members of the AUTHORITY that will receive water pursuant to this Agreement, provided that the Groundwater Substitution Component water will not have a higher priority than Storage Component water provided under the Agreement.”

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

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

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

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

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

**A. Invoicing and Payment of Purchased Water**

1. On or about May 22 (or within 9 days of the date that DWR receives an invoice from Yuba), DWR will invoice the AUTHORITY for fifty percent of the payment for the estimated amount of Storage Component water that the AUTHORITY scheduled as Purchased Water for that calendar year minus any credits due to the AUTHORITY as provided in Sections 5.C and 5.D. DWR will simultaneously invoice the AUTHORITY for 50 percent of the



amount of Accrued Groundwater Substitution Component water that the AUTHORITY has committed to purchase under Section 4.A.3. Within 32 days of the date that the AUTHORITY receives an invoice from DWR, the AUTHORITY will submit payment to DWR.”

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

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

Water Purchase Agreement, DWR will invoice the AUTHORITY for final payment for Accrued Groundwater Substitution Component water provided under this Amendment. The AUTHORITY will submit payment to DWR within 32 days of invoicing by DWR.

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

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

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

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

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

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



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

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

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

“E. PROVISION OF DEPOSIT FUNDS TO SECURE PRICING GUARANTEE

1. The AUTHORITY has elected to be a Contributing Participating Contractor and shall deposit money with DWR towards the \$20,000,000 deposit for purchases of Water from Yuba.
  - a. The AUTHORITY shall pay a deposit of \$4,823,100 to DWR within 10 working days of executing Amendment 5 to the Agreement as its share of the \$20,000,000 deposit towards all purchases of Storage Component water by all Participating Contractors beginning after September 30, 2015. DWR will remit these deposit funds to Yuba by December 31, 2014 as part of the \$20,000,000 deposit as provided in the Yuba Water Purchase Agreement.
  - b. As Yuba credits the deposit funds to Storage Component water purchases by all Participating Contractors, DWR will, in turn, credit these deposit credits to all purchases of Water by the AUTHORITY beginning October 1, 2015 in proportion to the AUTHORITY's contribution to the deposit until the entire deposit has been credited and the AUTHORITY has received full credit for or repayment of its deposit amount during the term of the Agreement as provided herein. In the event that the AUTHORITY's purchases of Water in any Water

Accounting Year are less than the credits available to the AUTHORITY under the Agreement, DWR will pay such credit amounts to the AUTHORITY upon receipt of an invoice.

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

**7. YUBA WATER SALES TO THIRD PARTIES**

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

**"31. SALES TO THIRD PARTIES**

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

transfer as not protective of DWR and the AUTHORITY as legal users of water during the time the AUTHORITY remains a Participating Contractor. The AUTHORITY also agrees that while a Participating Contractor, it will not purchase water from Yuba other than through the Yuba Water Purchase Agreement.”

**8. NO OTHER CHANGES**

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

**9. COUNTERPARTS OF THE AGREEMENT**

This Amendment may be signed in any number of counterparts by the Parties, each of which will be deemed to be an original, and all of which together will be deemed to one and the same instrument. This Amendment, if executed in counterparts, will be valid and binding on a Party as if fully executed all in one copy.

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

Approved as to legal form  
and sufficiency:

STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES

\_\_\_\_\_  
Cathy Crothers  
Chief Counsel

\_\_\_\_\_  
Mark W. Cowin  
Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to legal form  
and sufficiency:

THE AUTHORITY

\_\_\_\_\_  
Jon Rubin  
General Counsel

\_\_\_\_\_  
Daniel G. Nelson  
Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## RESOLUTION NO. 2014-386

**RESOLUTION AUTHORIZING EXECUTION OF THE  
YUBA TRANSFER 2015-2025 ACTIVITY AGREEMENT, FINDING THAT  
CALIFORNIA ENVIRONMENTAL QUALITY ACT DOES NOT APPLY  
AND AUTHORIZING ACTIONS RELATED THERETO**

WHEREAS, the Board of Directors of the San Luis & Delta-Mendota Water Authority (the “Authority” and the “Board,” respectively) has previously adopted Resolution No. 2007-277, dated December 3, 2007, authorizing execution of the DWR Dry Year Purchase Agreement and related actions.

WHEREAS, on May 18th, 2008, the Board adopted Resolution 2008-287, authorizing execution of the Yuba Transfer Activity Agreement (the “2008 Yuba Transfer Activity Agreement”) among the Water Authority and its Members who wished to participate in all the benefits and incur all obligations of receiving transfers from the Yuba County Water Agency (“YCWA”) made available under the 2007 DWR Dry Year Purchase Agreement.

WHEREAS, the Board expects to enter into a new amendment of the DWR Dry Year Purchase Agreement for YCWA water transfers for the period from 2015-2020 that will substantially change the terms of the existing DWR Dry Year Purchase Agreement and therefore desires to implement an updated activity agreement for such purpose.

WHEREAS, the Board has considered that certain proposed form of Yuba Transfer 2015-2025 Activity Agreement (the “Yuba Transfer 2015-2025 Activity Agreement”) between the Water Authority and certain of its Members, a copy of which has been presented to the Board and is on file with the Secretary hereof.

WHEREAS, the Yuba Transfer 2015-2025 Activity Agreement provides a mechanism for the Water Authority to administer, and for the participating Members of the Water Authority to obtain and share, the benefits and the obligations of obtaining supplemental water supplies acquired by the Water Authority by entering into the DWR Dry Year Purchase Agreement, as amended.

WHEREAS, the Water Authority Members that have agreed to participate in the Yuba Transfer 2015-2025 Activity Agreement include some or all of the following: the Byron Bethany Irrigation District, Broadview Water District, Del Puerto Water District, Eagle Field Water District, , Mercy Springs Water District, Pacheco Water District, Panoche Water District, San Benito County Water District, San Luis Water District, Santa Clara Valley Water District, and the Westlands Water District.

WHEREAS, by executing the Yuba Transfer 2015-2025 Activity Agreement, participating Members of the Water Authority agree to indemnify and hold harmless the Water Authority and its Members who do not participate in the Yuba Transfer 2015-2025 Activity Agreement with respect to any and all costs, losses, damages, claims and liabilities arising under the Activity Agreement.

WHEREAS, the Board anticipates that the 2008 Yuba Transfer Activity Agreement will be terminated once all the benefits and obligations incurred for Yuba transfers under the DWR Dry Year Purchase Agreement prior to 2015 are fully satisfied, and thereafter, that all activities associated with the amended terms of the DWR Dry Year Purchase Agreement will be administered through the Yuba Transfer 2015-2025 Activity Agreement.

**NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:**

Section 1. The facts stated in the recitals above are true and correct, and the Board so finds and determines.

Section 2. The Board hereby finds and determines that authorizing the execution of the Yuba Transfer 2015-2025 Activity Agreement does not constitute a Project under the California Environmental Quality Act [14 CCR 15378 (b)(4) and (5)].

Section 3. The Board hereby authorizes the Executive Director to execute the Yuba Transfer 2015-2025 Activity Agreement in substantially the form presented for and on behalf of the Water Authority and its members, subject to such further additions, deletions or revisions as the executive officer may approve prior to execution, and further subject to at least one of the participating Members of the Water Authority having executed the Activity Agreement.

Section 4. The Executive Director, Assistant Executive Director or such Water Authority employee or consultant as either of such officers may designate, is further authorized and directed to take such additional steps, and to execute such additional documents, as may be required or reasonably necessary to complete and implement the Yuba Transfer 2015-2025 Activity Agreement, including but not limited to, executing a termination agreement for the 2008 Yuba Transfer Activity Agreement on such terms as the Water Authority and the 2008 Yuba Transfer Activity Agreement Members may agree, effective once all the benefits and obligations incurred for Yuba transfers under the DWR Dry Year Purchase Agreement prior to 2015 are fully satisfied.

**PASSED, APPROVED AND ADOPTED**, this 6th day of November, 2014, by the following vote:

AYES:  
NAYS:  
ABSTAIN:

\_\_\_\_\_  
Michael Stearns, Chairman  
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Attest:

\_\_\_\_\_  
Daniel G. Nelson, Secretary