

Fisheries Agreement For 2006 Lower Yuba River Pilot Program

1. INTRODUCTION

1.1 *Parties*

The Parties to this Agreement are: Yuba County Water Agency; California Department of Fish & Game; and the following non-governmental organizations: South Yuba River Citizens League; Friends of the River; Trout Unlimited; and The Bay Institute.

1.2 *Purpose of Agreement*

This Fisheries Agreement for the 2006 Lower Yuba River Pilot Program applies to the Yuba Project as it affects the Lower Yuba River during the term of this Agreement.

1.2.1. Scope and Purpose of Agreement. This Agreement specifies the minimum instream flows that will occur in the Lower Yuba River between April 1, 2006 and February 28, 2007, and the temporary amendment to the State Water Resources Control Board's Revised Water-Right Decision 1644 (RD-1644) that the parties will ask the SWRCB to make for the period between April 1, 2006 and February 28, 2007. The Parties agree that this Agreement fairly, reasonably and appropriately specifies instream flows and temporary amendments to RD-1644 for this period, while the parties are working to complete the Yuba Accord.

1.2.2. Issues Outside Scope of Agreement. Except for the potential Fisheries Agreement for the 2007 Lower Yuba River Pilot Program that is discussed in section 1.3, this Agreement does not address or resolve the issues that are contemplated to be addressed by the Yuba Accord after February 28, 2007, the requirements in paragraph 8 on pages 180-181 of RD-1644 regarding fish losses at the North Canal or the South Canal, the requirements in RD-1644 regarding local districts' water rights, or any litigation concerning such requirements. These issues will be resolved through separate agreements and, if necessary, separate proceedings.

This Agreement does not address or resolve any issues that may arise during the FERC proceeding regarding the relicensing of YCWA's FERC License for the Yuba Project. This Agreement does not address or resolve any issues that may arise in FERC proceedings concerning projects in the Upper Yuba River basin, specifically, the Yuba Bear-NID, Drum-Spaulding, and South Feather Power Project relicensings.

This Agreement does not address or resolve any issues that may arise during or in separate proceedings, forums, or venues involving the Lower Yuba River, for example, the Upper Yuba River Studies Program (fish passage at Englebright Dam) or the Daguerre Dam Fish Passage Improvement Project. This Agreement does resolve the

issues regarding the temporary amendments to RD-1644 that are described in Section 4.1 and the issues covered in Section 5.

1.3 *Yuba Accord*

YCWA has developed the Yuba Accord, which consists of the Proposed Lower Yuba River Fisheries Agreement and several other elements. The other elements of the Yuba Accord are: (a) the Conjunctive Use Agreements, under which YCWA and Member Units will implement programs to conjunctively use available surface water and groundwater supplies to ensure that local water supplies are not reduced to implement the Yuba Accord; (b) the Water Purchase Agreement among YCWA, DWR and Reclamation, under which YCWA will transfer water, including water made available by the instream-flow schedules in the Fisheries Agreement, to DWR and Reclamation, and DWR and Reclamation will make payments to YCWA that YCWA will use to make payments to the River Management Fund, to Member Units under the Conjunctive Use Agreements, and to fund flood-control and water-supply projects in Yuba County; and (c) an agreement, memorandum of understanding or similar document with PG&E amending or regarding the PG&E/YCWA Power Purchase Contract so that YCWA can implement the Fisheries Agreement, the Water Purchase Agreement and the Conjunctive Use Agreements. All of these elements of the Yuba Accord must be in place for any of the elements of the Yuba Accord to go into effect. The Parties to the Yuba Accord are pursuing regulatory approvals of the various elements of the Yuba Accord in appropriate venues, with the goal and intention of implementing the Yuba Accord on March 1, 2007.

If the Yuba Accord is not implemented on or before March 1, 2007, but substantial progress has been made by March 1, 2007 to implement the Yuba Accord sometime after that date, and if YCWA decides to pursue a 2007 Lower Yuba River Pilot Program, then the Parties to this Agreement intend to execute a Fisheries Agreement for 2007 Lower Yuba River Pilot Program, with provisions substantially the same as the provisions in this Agreement, except that the period covered by the new agreement will be from March 1, 2007 through February 29, 2008.

1.4 *NEPA/CEQA Compliance*

The Parties' agree that this Agreement is exempt from CEQA under Water Code section 1729 because the transfer and purchase of water that will be made possible by the instream flow schedules in this Agreement and the associated temporary change to RD-1644 that is described in Section 4.1.1 will be made pursuant to Water Code sections 1725-1732 and will be for a period of one year or less. This Agreement is exempt from NEPA because it does not involve any federal actions.

2. DEFINITIONS

“2006 Water Purchase Agreement” means the 2006 water purchase agreement between YCWA and DWR that is described in Section 4.2.

“ADR” means alternative dispute resolution.

“Agreement” means this Fisheries Agreement for the 2006 Lower Yuba River Pilot Program.

“CDFG” means the Department of Fish and Game of the State of California.

“CEQA” means the California Environmental Quality Act.

“Conjunctive Use Agreements” mean the agreements described in section 4.3.

“CVP” means the Central Valley Project, which is operated by Reclamation.

“DWR” means the Department of Water Resources of the State of California

“Exhibit” and “exhibit” refer to exhibits to this Agreement, unless the context clearly indicates otherwise.

“FERC” means the Federal Energy Regulatory Commission.

“FERC License” means the license that was issued to YCWA by FERC for the operation of the Yuba Project and any amendments to that license that FERC has made or makes during the term of this license. The term of this license expires on April 30, 2016.

“FERC Annual License” means one or more annual licenses issued by FERC to YCWA for the operation of the Yuba Project following the expiration of the term of the FERC License.

“FERC Long-Term License” means the long-term license that FERC will issue to YCWA for the operation of the Yuba Project following the expiration of the term of the FERC License and the last FERC Annual License.

“Fisheries Agreement” means the Proposed Lower Yuba River Fisheries Agreement.

“Flow Schedule” and “Flow Schedules” mean the flow schedules in Exhibit 1.

“FOR” means Friends of the River.

“Force Majeure Event” mean any of the *force majeure* events described in section 6.4.1.

“Groundwater Substitution Program” means a program in which water users in Yuba County will pump groundwater, in lieu of receiving surface water from YCWA, and an equivalent amount of surface water then will be released from Englebright Dam to flow down the Lower Yuba River to the Feather River for a water transfer for uses

outside of Yuba County. “Groundwater Substitution Program” does not include groundwater pumping made for other purposes, including, but not limited to, pumping made to reduce deficiencies in deliveries of surface water to water users in Yuba County that is not made in connection with a water transfer for use outside of Yuba County.

“Lower Yuba River” means the Yuba River from Englebright Dam to the Yuba River-Feather River confluence.

“Material Violation of Agreement Flow Schedules” is defined in section 6.1.1.

“Member Unit” means “Member Unit” as defined in section 2(g) of the Yuba Act.

“Narrows II Powerhouse Full Flow Bypass” means the proposed action described in the Preliminary Biological Opinion for Yuba Project (FERC No. 2246) dated January 26, 2005.

“NEPA” means the National Environmental Policy Act.

“NGOs” means SYRCL, FOR, TU and TBI.

“NOAA Fisheries” means the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service

“Non-Material Violation of Agreement Flow Schedules” is defined in section 6.2.1.

“North Yuba Index” is defined in Exhibit 4.

“Operations Group” means the River Management Team Operations Group described in section 5.2.

“Parties” mean YCWA, CDFG, SYRCL, FOR, TU and TBI. Parties sometimes are referred to in this Agreement as the “Parties to this Agreement.”

“PG&E” means the Pacific Gas and Electric Company.

“PG&E/YCWA Power Purchase Contract” means the contract dated May 13, 1966 between PG&E and YCWA regarding the operation of the Yuba Project for hydroelectric power generation.

“Planning Group” means the River Management Team Planning Group described in section 5.2.

“RD-1644” means Revised Water Right Decision 1644, adopted by the SWRCB on July 16, 2003.

“Reclamation” means the United States Department of the Interior, Bureau of Reclamation.

“Regulatory Change Event” means any of the regulatory change events described in section 6.4.2.

“River Management Fund” or “RMF” means the fund described in section 5.3.

“River Management Team” or “RMT” means the team described in section 5.2.

“RMT Participants In RMF Issues” means the Parties to this Agreement, NOAA Fisheries and USFWS.

“Schedule” and “Schedules” mean the flow schedules in Exhibit 1.

“Section” and “section” refer to sections of this Agreement, unless the context clearly indicates otherwise.

“Short-Term Phase 8 Bay-Delta Settlement Agreement” means the “Short-Term Agreement to Guide Implementation of Short-Term Water Management Actions to Meet Local Water Supply Needs and to Make Water Available to the SWP and CVP to Assist in Meeting the Requirements of the 1995 Water Quality Control Plan and to Resolve Phase 8 Issues,” effective March 24, 2003.

“Significant Change” in the assumed operating assumptions for the Yuba Project is defined in Exhibit 10.

“Surface Water Supplemental Transfer” means a transfer to surface water from storage in New Bullards Bar Reservoir for use outside of Yuba County, where: (a) the transferred water is not part of a Lower Yuba River flow that is reasonably needed to meet the requirements in Section 5.1.1 (or an operational buffer for such a requirement); (b) the release of water from storage in New Bullards Bar Reservoir is in addition to releases reasonably needed to reach the applicable September 30 storage target and instead causes the September 30 New Bullards Bar Reservoir storage to be less than the applicable storage target; and (c) the transfer is not part of a Groundwater Substitution Program.

“SWRCB” means the California State Water Resources Control Board.

“SWP” means the State Water Project, which is operated by DWR. The SWP also is known as the “State Water Facilities,” as defined in Water Code section 12934, subdivision (d).

“SYRCL” means the South Yuba River Citizens League.

“TAF” means thousand acre-feet.

“TBI” means The Bay Institute.

“Technical Variation of Agreement Flow Schedules” is defined in section 6.2.5.

“Technical Working Group” means the River Management Team Technical Working Group described in section 5.2.

“TU” means Trout Unlimited.

“USFWS” means the United States Department of the Interior, Fish and Wildlife Service.

“Water Year” means a 12-month period from an October 1 through the following September 30.

“YCWA” means the Yuba County Water Agency.

“YFA” means this Lower Yuba River Fisheries Agreement.

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

“Yuba Project” means FERC Project No. 2246, which sometimes is called the “Yuba River Development Project” or the “Yuba River Project.”

“Yuba Accord” means the Lower Yuba River Accord described in section 1.3.

3. TERM OF FISHERIES AGREEMENT

3.1 *Term of Lower Yuba River Fisheries Agreement*

This Agreement will become effective once the conditions precedent, described in Section 4, have been satisfied. The term of this Agreement then will be from the effective date until February 28, 2007 unless it is superseded before then by the Yuba Accord or some other agreement.

4. CONDITIONS PRECEDENT

This Agreement will become effective when all of the following conditions have been met.

4.1 State Water Resources Control Board Actions

This Agreement will not become effective unless and until the SWRCB adopts, without any substantial modifications, YCWA's petitions to change to YCWA's water rights permits and RD-1644 that are described in this Section 4.1.

The Parties understand that the SWRCB may reject or modify some or all of the proposed changes in these petitions. If the SWRCB rejects or substantially modifies any of these proposed changes, then the Parties will make a good faith effort to try to reach agreement on appropriate revisions to this Agreement to accommodate the rejections or modifications made by the SWRCB. However, if the Parties do not reach such agreement, then this Agreement will not go into effect.

4.1.1. Revisions To RD-1644 Instream Flow Requirements. This Agreement will not become effective unless and until the SWRCB adopts an order granting, without any substantial modifications, YCWA's petition to the SWRCB to change the effective date of RD-1644's Long Term instream-flow requirements from April 21, 2006 to March 1, 2007.

While the SWRCB will maintain its lawful authority over YCWA's water rights, nothing in this Agreement will be construed as limiting or expanding that authority, and all Parties will retain their rights to disagree, object to or challenge any attempted exercise of that authority.

4.1.2. This Section left blank.

4.1.3. This Section left blank.

4.1.4. Changes To Implement 2006 Water Purchase Agreement. This Agreement will not become effective unless and until the SWRCB adopts an order granting, without any substantial modifications, YCWA's petition to the SWRCB to amend YCWA's water-right Permits 15026, 15027 and 15030 to add, during the term of the 2006 Water Purchase Agreement, the SWP and CVP points of diversion/rediversion and places of use that are necessary to implement the 2006 Water Purchase Agreement.

4.2 2006 Water Purchase Agreement for the 2006 Lower Yuba River Pilot Program

This Agreement also will not become effective unless and until: (i) YCWA and DWR execute the 2006 Water Purchase Agreement; and (ii) the 2006 Water Purchase Agreement goes into effect. YCWA will advise the other Parties to this Agreement in writing when these events have occurred.

4.3 Conjunctive Use Agreements

This Agreement also will not become effective unless and until YCWA executes Conjunctive Use Agreements with a sufficient number of YCWA's Member Units so that

YCWA can meet its obligations under this Agreement and the 2006 Water Purchase Agreement. YCWA will advise the other parties to this Agreement in writing when these agreements have been executed.

4.4 This section left blank.

4.5 This section left blank.

5. **OBLIGATIONS OF PARTIES**

5.1 *Lower Yuba River Instream Flows*

5.1.1. Specific Flow Schedule. Except as otherwise provided in this Agreement, YCWA will comply with the Schedule 1-6 and A-B instream flow requirements in Exhibit 1 (plus the 30,000 acre-feet of additional water in Schedule 6 Water Years that is described in section 5.1.3) during April 1, 2006 to February 28, 2007. The instream flow requirements in these schedules will be maintained as measured by a five-day running average of the mean daily stream flows with instantaneous flows never less than 90 percent of the applicable flow requirements specified in the schedules. In addition, instantaneous flows will not be less than the applicable flow requirements specified in the schedules for more than 48 consecutive hours unless CDFG concurs to a longer period of time, which may not exceed 5 days. During the parts of September through December of Schedule A Water Years when the Narrows 2 Powerhouse is shut down for maintenance or construction activities, the Smartville Gage requirements will be 700 cfs or the full release capacity of the Narrows 1 Powerhouse at the Englebright Reservoir level that occurs at that time, whichever is less. During such periods in 2006 or 2007 in which the Narrows II powerhouse is shut down for construction of the Narrows II Full Flow Bypass Project, minimum flows at the Marysville gauge will be 350 cfs. YCWA, in consultation with Parties to this Agreement, will make reasonable efforts to make flows greater than 350 cfs available at the Marysville gauge during such periods in 2006 or 2007 in which the Narrows II powerhouse is shut down for construction of the Narrows II Full Flow Bypass Project. YCWA will consult with the Parties to this Agreement regarding the timing of such additional flows.

The specific flow schedule that will be implemented at any time will be determined by the value of the North Yuba Index and the rules in Exhibit 2, with the adjustments described in Exhibit 3 (if applicable). The North Yuba Index is defined in Exhibit 4. The procedure for calculating the North Yuba Index is described in Exhibit 5.

5.1.2. Right To Request Specific Performance Of Flow Schedules. Each Party to this Agreement will have the right to ask a court of competent jurisdiction to order YCWA to specifically perform its obligations under this Agreement. This right will include the rights to ask the court to issue a temporary restraining order, a preliminary injunction or a final injunction after entry of judgment. YCWA will not oppose such a request on the

grounds that any other Party lacks standing, failed to join necessary parties or has adequate remedies at law.

Consistent with the portion of section 7.8 regarding the location of execution of this Agreement, each Party agrees that any action requesting specific performance of this Agreement may be filed in Yuba County or Sacramento County. In any such action, any Party may file a motion under California Code Civil Procedure section 394, provided that: (a) such motion is filed within 30 days of the filing of the initial action; and (b) in lieu of requesting a transfer of the action to another county, such motion instead requests that the action remain in the original county but that the chairperson of the Judicial Council assign a disinterested judge from a neutral county to hear the action. For the purposes of any such motion under Code of Civil Procedure section 394, the Parties further agree that Alameda, Marin, Nevada, Sacramento and Yuba Counties are not neutral counties from which a disinterested judge may be assigned.

5.1.3. Groundwater-Substitution Program. YCWA will operate a groundwater-substitution program if Schedule 6 is in effect between April 1, 2006 and February 28, 2007, which will result in an additional 30,000 acre-feet of water not shown in Schedule 6 flowing in the Lower Yuba River at the Marysville Gage during the portions of this period when this water is transferable to the 2006 Water Purchase Agreement transferees. Subject to the preceding requirement of transferability, the River Management Team, through a decision by its Planning Group, will determine the flow schedule for the 30,000 acre-feet if a Schedule 6 Water Year is in effect between April 1, 2006 and February 28, 2007. This flow schedule will be set to achieve maximum fish benefit during the transfer period.

5.1.4. Temporary Alteration of Flow Schedule. The River Management Team (through a decision by its Planning Group) may decide to temporarily alter the applicable instream flow requirements in Schedules 1 through 6 at any time during the term of this Agreement, so long as the agreed-to instream flows comply with the applicable requirements of YCWA's FERC license and YCWA's water-right permits.

Any agreed upon alterations to the instream flows must: (a) occur only during March through October; (b) not cause decreases from the flows specified in Schedules 1 through 6 of more than 20%; (c) not shift water from the amounts specified in Schedules 1 through 6 by more than 6 weeks; (d) not reduce the amount of stored water remaining in New Bullards Bar Reservoir at the end of the calendar year during which the temporary alteration occurs below the amount that would occur without the temporary alteration; and (e) not result in a net decrease in the total amount of water released for the applicable schedule of instream flow requirements for the calendar year. The process in section 6.6.3 will apply to any RMT decision to temporarily alter schedules. Absent River Management Team consensus, no changes to applicable instream flow requirements in Schedules 1 through 6 will occur while this Agreement is in effect.

5.1.5. This section left blank.

5.1.6. Operations Assumptions and Parameters for Defining Future Significant Changes. YCWA's commitment to provide the instream flows in Exhibit 1 is based on the assumption that the Yuba Project will be operated consistent with Exhibit 10. The Parties acknowledge that a Significant Change in YCWA operations under this Agreement may be required because of a Force Majeure Event or a Regulatory Change Event. Absent such a Significant Change, YCWA will operate the Yuba River Project according to this Agreement and the terms of its water rights permits.

If YCWA must make any Significant Change in the assumed operations parameters described in Exhibit 10 because of a Force Majeure Event or a Regulatory Change Event, then the River Management Team will work to try to develop an alternative consensus flow schedule. In such circumstances, Section 6.4 will apply.

("Significant Changes" in assumed operations parameters are defined in Exhibit 10.)

5.1.7. Surface Water Supplemental Transfers Between April 1, 2006 and February 28, 2007. Hydrologic conditions prevented completion of a surface water transfer by YCWA during the summer and fall of 2005. As a result, the North Yuba Index will be approximately 62,000 acre-feet higher on October 1, 2005 than it would have been if a Surface Water Supplemental Transfer had taken place in 2005. If hydrologic conditions permit, then YCWA intends to make a Surface Water Supplemental Transfer of up to 62,000 acre-feet in addition to any transferable water that is needed to implement the applicable Flow Schedule in Exhibit 1 between April 1, 2006 and February 28, 2007. If YCWA makes any Surface Water Supplemental Transfer between April 1, 2006 and February 28, 2007, then the following conditions will apply to the transfer: (a) The flow schedule for the water involved in the Surface Water Supplemental Transfer will be set to achieve maximum fish benefit during the transfer period, as determined by the RMT, or, if the RMT does not agree on this issue, by the SWRCB; (b) the minimum flow at the Marysville gauge after May 31, 2006 and before any increase of Lower Yuba River flows above the flows specified in the applicable Flow Schedule as a result of the Surface Water Supplemental Transfer will remain within 300 cfs (or greater than 300 cfs upon consent of the RMT) of the maximum flow above the Flow Schedule that will occur as a result of the Surface Water Supplemental Transfer; (c) any change in flows will (within YCWA's operational ability) be in a gradual manner, will not exceed 300 cfs per day total, and will be as close as possible to 100 cfs in any four-hour period as is operationally feasible, although a buffer of 50 cfs (resulting in a potential flow change of up to 150 cfs per four-hour period) will be allowable provided that all reasonable efforts are made to adhere to a limit of 100 cfs per four-hour period; (d) any ramp-down of flows will be gradual and not exceed 400 cfs per day, and will be as close as possible to 100 cfs in any four-hour period as is operationally feasible, but may include the 50 cfs operational buffer described in this Section; (e) ramp down from any transfer flow level to the applicable flow schedule shall be completed by the end of August; and (f) the flow at the Marysville Gauge on September 1 should not be less than the minimum instream flow required on October 15, unless the Narrows II Bypass is under construction, during which time the flow schedules and operations described in Section 5.1.1 shall be in effect.

If the Flow Schedules in Exhibit 1 are used to determine minimum instream flows after February 28, 2007, then the Flow Schedule in Exhibit 1 that will be used after October 1, 2006 will be based on the New Bullards Bar Reservoir September 30 actual Active Storage (as defined in Exhibit 4) on September 30, 2006, without any adjustment for any Surface Water Supplemental Transfer that may have occurred before that date.

If it appears that hydrologic conditions will allow YCWA to make a Surface Water Supplemental Transfer between April 1, 2006 and February 28, 2007, then on April 10, 2006 YCWA will provide a preliminary indication of the supplemental transfer amount. On May 1, 2006, YCWA will provide a refinement of the preliminary transfer indication. This May 1 refinement will include a draft implementation schedule, after consultation with the River Management Team, for the Surface Water Supplemental Transfer. Unless otherwise indicated by YCWA, the implementation schedule for the transfer will become final no later than May 15, 2006.

5.1.8. Supplemental Flows For Groundwater Substitution Programs: If YCWA operates any Groundwater Substitution Program between April 1, 2006 and February 28, 2007, then the following criteria will apply to such program:

- Schedule 1 years: All supplemental transfer flows that occur as part of the Groundwater Substitution Program will be scheduled to occur on or after July 1. The total of such supplemental transfer flows plus the Exhibit 1 flows (700 cfs in July) will not exceed the June Exhibit 1 flows (1,500 cfs) or the actual flow at the Marysville Gage on June 30, whichever is greater.
- Schedule 2, 3, 4 and 5 years: Up to 10 percent of the Groundwater Substitution Program's total transfer volume may be scheduled by the River Management Team to flow between the end of the higher spring flows (which end on May 31 in Schedule 2 and 3 years, and on May 15 in Schedule 4 and 5 years) and the latest day on which the transfer may be allowed to start (based on Delta and other conditions), even though such water may not be transferable under the 2006 Water Purchase Agreement. No more than 10 percent of the Groundwater Substitution Program's total transfer volume will be at risk of not being transferable. The remainder of the total transfer volume will be scheduled during the period when the water will be transferable.
- Schedule 6 years: The entire Groundwater Substitution Program transfer volume will be scheduled to flow during the transferable period under the 2006 Water Purchase Agreement. The schedule for such flows will be developed in consultation with the River Management Team. The flow schedule will be set to achieve maximum fish benefit during the transfer period.

YCWA also will make additional water available for supplemental flows during Schedule 4 and 5 years according to the following criteria:

- Schedule 4 years: 10 percent of the Groundwater Substitution Program total transfer volume (if any), or 9,000 acre-feet, whichever is less, will be provided for supplemental fisheries flows, to be scheduled for any time after May 1 by the River Management Team. Some or all of this water may not be transferable under the 2006 Water Purchase Agreement. At the discretion of the RMT, some or all of this water for supplemental fisheries flows may be scheduled to flow before May 1.
- Schedule 5 years: 10 percent of the Groundwater Substitution Program total transfer volume (if any), or 6,000 acre-feet, whichever is less, will be provided for supplemental fisheries flows, to be scheduled for any time after May 1 by the River Management Team. Some or all of this water may not be transferable under the 2006 Water Purchase Agreement. At the discretion of the RMT, some or all of this water for supplemental fisheries flows may be scheduled to flow before May 1.

If YCWA intends to implement a Groundwater Substitution Program between April 1, 2006 and February 28, 2007, then on or before April 10, 2006 YCWA will provide a preliminary indication of the amount of water that will be transferred as part of the program, and it will prepare a preliminary schedule of the supplemental Lower Yuba River flows that will be used to implement the program after consultation with the River Management Team. On May 1, 2006, YCWA will provide a refinement of the preliminary transfer indication and prepare an update to the flow schedule. If the applicable flow schedule is Schedule 4 or Schedule 5, and if the River Management Team elects to allocate some or all of the 10 percent of the Groundwater Substitution Program total transfer volume described in the immediately preceding paragraph, then that water will be included in the updated flow schedule and will be provided by YCWA. If the final Groundwater Substitution Program amount is less than the amount planned for in the May 1 update and the some or all of the additional water that is required by this section already has been released, then that additional water will not be counted for as part of the Groundwater Substitution Program amount.

Unless otherwise agreed to by the River Management Team, the implementation schedule for the Groundwater Substitution Program will become final no later than May 15, 2006, unless the applicable flow schedule, as determined by Exhibits 2-5, changes after May 15, 2006 because of a change in the North Yuba Index.

For all flow schedule years, any Groundwater Substitution Program or surface-water transfer made by YCWA under the Short-Term Phase 8 Bay-Delta Settlement Agreement will be scheduled pursuant to the rules for transfers under that agreement, and any such transfers by Member Units will be subject to the rules for those transfers. Such transfers by YCWA or Member Units will not be subject to the above rules in this Agreement for Surface Water Supplemental Transfers or Groundwater Substitution Programs. YCWA will notify the RMT of any planned transfer under the Short-Term Phase 8 Bay-Delta Settlement Agreement as far in advance of the transfer as possible.

5.2 *River Management Team*

The River Management Team will consist of a Planning Group and an Operations Group. The Planning Group will include representatives of each Party to this Agreement and the 2006 Water Purchase Agreement, NOAA Fisheries, USFWS and PG&E. The Operations Group will include one representative each of: (a) YCWA; (b) PG&E; (c) CDFG, NOAA Fisheries and USFWS, where the one representative will rotate between these three agencies; (d) the NGO's; and (e) DWR and Reclamation, where one representative will rotate between these two agencies.

The Planning Group will hold regularly scheduled meetings with prior notification of agenda items, and it may hold special meetings as needed. The Planning Group's authority will be limited to the actions described in section 5.2.1.

The Operations Group will meet and hold conference calls as necessary to carry out the actions listed in section 5.2.2. The Operations Group's authority will be limited to the actions described in section 5.2.2.

If necessary to carry out its functions, the Planning Group may convene a Technical Working Group, which will include such members as the Planning Group may appoint. Each Planning Group principal representative may designate one or more secondary representative or representatives who may participate in the Planning Group discussion of a given issue. Each Operations Group member may designate at their discretion additional technical experts to participate in the Operations Group's discussions of issues.

5.2.1. Planning Group Actions

The Planning Group may take any of the following actions:

1. set the flow schedule for the 30,000 acre-feet of Groundwater Substitution Program water that will occur if 2006 is a Schedule 6 year;
2. decide to temporarily alter the applicable instream flow requirements in Schedules 1-6, subject to the conditions described in Section 5.1.4, if necessary or appropriate for the aquatic resources, Yuba Project operations or maintenance, or SWP or CVP operations or maintenance;
3. decide, if 2006 is a Schedule 5 year, to adjust the Marysville Gage instream-flow requirements to 400 cfs during all or part of the period from October 1 until the February Bulletin 120 forecasts are available, when it is authorized to do so under Exhibit 3.
4. schedule any water made available for supplemental instream flows in connection with a Groundwater Substitution Program (as specified in section 5.1.8);
5. determine the planned operations of the upper and lower outlets from New Bullards Bar Dam into the New Colgate Penstock and any temperature adjustment device that is constructed at Englebright Dam;
6. develop and implement studies of Lower Yuba River fish or fish habitat, monitoring of flows or water temperatures, or fry studies.

7. make decisions to spend money in the River Management Fund for any authorized purpose;
8. comment on YCWA's plans for Narrows I and II Powerhouse maintenance outages.

Only the Parties to this Agreement, NOAA Fisheries and the USFWS will participate in making formal decisions on Planning Group actions 1 through 7 above. Decisions on these actions will be made by unanimous consent of the parties and entities named in the preceding sentence, and section 6.6 of this Agreement, which details a specific alternative dispute resolution process, will apply as necessary. Parties to this Agreement, NOAA Fisheries and the USFWS will consult with DWR, Reclamation and PG&E on these actions as necessary and appropriate through the RMT Planning Group process.

The RMT Participants In RMF Issues will select five mutually agreeable fisheries experts and five mutually agreeable mediators for the purposes of dispute resolution, as described in section 6.6. For both selection processes, the RMT Participants In RMF Issues will take into account candidates' cost, skill, and demonstrated record of success in resolving similar disputes. Either list of five experts may be modified as necessary, but only upon unanimous written consent of the RMT Participants In RMF Issues.

Any agreement on Planning Group action 2 or 3 (temporary flow alterations) will be presented to the Chief of the Division of Water Rights of the SWRCB. If the Chief of the Division of Water Rights does not object to the alterations within 10 calendar days, the alterations will remain in effect.

Subject to the preceding provisions, any Party may take any action that it is authorized to take that does not violate this Agreement or any applicable regulatory requirement.

5.2.2. Operations Group Actions

The Operations Group will provide specific guidance to YCWA for YCWA's implementation of:

1. the flow schedule set by the Planning Group for the 30,000 acre-feet of Groundwater Substitution Program water if 2006 is a Schedule 6 year;
2. any temporary alterations in the applicable instream flow requirements in Schedules 1-6 that have been agreed to by the Planning Group;
3. any supplemental instream flows that have been scheduled by the Planning Group in connection with a Groundwater Substitution Program;
4. any Planning Group decisions regarding the operations of the upper and lower outlets from New Bullards Bar Dam into the New Colgate Penstock or any temperature adjustment device that is constructed at Englebright Dam; and
5. any other recommendations or directions from the Planning Group to the Operations Group.

The Operations Group will act only upon unanimous consent of all of its members and in the absence of such unanimous consent will act pursuant to section 6.7, which details a specific dispute resolution process. Any agreement on Operations Group action 2 (temporary flow alterations) will be presented to the Chief of the Division of Water Rights of the SWRCB. If the Chief of the Division of Water Rights does not object to the alterations within 10 calendar days, the alterations will remain in effect.

Subject to the preceding provisions, any Party may take any action that it is authorized to take that does not violate this Agreement or any applicable regulatory requirement.

Parties to this Agreement acknowledge that the Operations Group's actions and efforts are time sensitive and will often be made in real-time or close to real-time situations.

5.3 River Management Fund

5.3.1. YCWA Funding of Ongoing Studies and Data Collection. YCWA will continue to directly fund certain data collection activities and studies on the Lower Yuba River. Specifically, YCWA will continue to fund the collection of flow and water temperature data required by paragraph 5 on page 179 of RD-1644. Additionally, YCWA will continue to fund and conduct the redd dewatering and fry stranding studies required by paragraph 7 on page 180 of RD-1644, through the completion of the study plan that has been submitted to the SWRCB.

5.3.2. YCWA Funding of RMF. In 2006, YCWA will provide funding to the River Management Fund (RMF). The RMF will consist of a "General Account." Money from the General Account may be used for any of the purposes described in section 5.3.4.

YCWA will contribute \$550,000 for 2006 to the RMF, General Account. This contribution amount and the following in-kind contributions together make a total estimated budget of \$628,500 per year for core monitoring and focused studies during the projected entire period of this Agreement and the Fisheries Agreement, reduced by: (a) in-kind contributions of \$50,000 per year or more (average) from CDFG; (b) in-kind contributions of \$15,000 per year or more (average) from YCWA; and (c) average savings of \$15,000 per year over the term of the Yuba Accord from discontinuing the Chinook salmon carcass surveys in the Lower Yuba River upstream of Daguerre Point Dam after 2010. In-kind contributions from YCWA and CDFG may be in the form of labor, materials, or equipment, and must be documented as costs that otherwise would be paid from the RMF, General Account.

The contribution to the RMF for 2006 will be subject to YCWA's receipt of funds pursuant to the 2006 Water Purchase Agreement. If less than the full C1 payment amount (as defined in the 2006 Water Purchase Agreement) is paid to YCWA, then the amount of payment to the RMF by YCWA shall be pro-rated by the following formula: the amount contributed by YCWA will be directly pro-rata to the amount received by YCWA in revenues above the first \$500,000 (which amount is for YCWA's expenses related to the transfer). For example, if the C1 component payment to YCWA for 2006 is

supposed to be \$3.0 M, but YCWA actually receives only \$2.0 M in payment, then the YCWA contribution to the RMF will be \$330,000 ($\$2.0 \text{ M} - \$500,000 = 1.5 \text{ M}$, $\$3.0 \text{ M} - \$500,000 = 2.5 \text{ M}$, $\$1.5\text{M}/\2.5M is 60% of \$3.0 M, so the contribution is 60% x \$550,000 = \$330,000). All in-kind contributions (by CDFG & YCWA) also will be subject to this same pro-ration formula.

If YCWA is successful in completing Surface Water Supplemental Transfer between April 1, 2006 and February 28, 2007 in accordance with Section 5.1.7, then YCWA will provide additional funding to the RMF to fulfill the commitment for funding the RMF in 2005. The amount contributed by YCWA will be directly pro-rated to the amount received by YCWA in revenues, after deducting the RMF expenditures made by YCWA in 2005. The formula for additional contribution shall be 10% of all revenues after the first \$1.0 M in revenue, up to a maximum total of \$550,000 minus the contributions that YCWA made to the RMF in 2005. For example, if the Supplemental Surface Water Transfer in 2006 results in revenues to YCWA of \$3.0M, and YCWA's payments to the RMF in 2005 are \$350,000 or less, then YCWA's contribution to the RMF will be \$200,000 ($\$3.0 \text{ M} - \$1.0 \text{ M} = \2.0 M, $2.0 \text{ M} \times 10\% = \$200,000$). All in-kind contributions (by CDFG & YCWA) also will be subject to this same pro-ration formula.

5.3.3. Participants in RMF Decisions. Only the Parties to this Agreement, NOAA Fisheries and the USFWS will participate in making RMF decisions. Such decisions will be made by unanimous consent of all such parties and entities, or will be made pursuant to section 6.6, which details a specific alternative dispute resolution process.

5.3.4. Purpose of RMF. To ensure reasonable and prudent disbursement of funds, the RMT will adopt a structure for fund allocation based on specific prioritized goals for monitoring, studies, actions and activities. Money from the RMF may be spent for any of the following actions:

1. monitoring and evaluating the effectiveness of the implementation of the Lower Yuba River Accord, including flow schedules, and the Water Purchase Agreement;
2. evaluating the condition of fish resources in the Lower Yuba River;
3. evaluating the viability of Lower Yuba River fall-run Chinook salmon and any subpopulations of the Central Valley steelhead and spring-run Chinook salmon Evolutionarily Significant Units (ESUs) that may exist in the Lower Yuba River;
4. implementing habitat improvement and non-flow enhancement actions and activities;
5. purchasing water for instream flows in the Lower Yuba River above the flows specified in Exhibit 1;
6. retaining expert advice for specific technical questions;
7. retaining an expert or experts for dispute resolution processes; and
8. paying local shares of grant-funded projects for fish or fish habitat in the Lower Yuba River, specifically to facilitate unique grant matching opportunities.

Some of these actions are described in more detail in Appendix A.

5.3.5. Geographic Scope of RMF. Funds from the RMF will only be used for projects in the Lower Yuba River (i.e., downstream of Englebright Dam), unless the RMT Participants In RMF Issues unanimously approve using funds from the RMF in another area.

5.3.6. Activities Excluded from RMF. Funds from the RMF will not be used towards studies pertaining to groundwater basin dynamics, groundwater/surface water interactions or any other study related to the sustainability of groundwater transfers, unless the RMT Participants In RMF Issues unanimously approve using funds from the RMF for such studies. Funds from the RMF will not be used to comply with section 5.3.1.

5.3.7. Recording Responsibilities for RMF Supported Studies. The RMT Participants In RMF Issues will maintain a record, which states: (1) each study conducted; (2) year or years conducted; (3) purpose of study; (4) the data collected, and (5) whether any dispute between members existed regarding study protocol or data. Section 6.8 details a specific dispute resolution process for possible study protocol and data protocol disputes. These ongoing records will be submitted to FERC at appropriate times (e.g., concurrent with YCWA's Notice of Intent to file a new license application and at the expiration of this Agreement, and at other agreed upon times) in report format prepared collectively by the RMT Participants In RMF Issues. These reports will only contain data and the additional information described in this paragraph and not interpretations or conclusions. To the extent permitted by applicable law, RMT Participants In RMF Issues will support these submissions in the future FERC relicensing.

5.3.8. RMF Fiscal Agent and Reporting. YCWA shall act as fiscal agent for all expenditures from the RMF during the term of this Agreement. At the RMT Planning Group's budget and allocation meeting, the fiscal agent will make a reporting of accounts, including actual expenditures, anticipated expenditures, and unspent allocations. This reporting will include accountings of YCWA's and CDFG's in-kind contributions under Section 5.3.2.

5.3.9. This Section left blank.

5.3.10. This Section left blank.

5.3.11. RMF Remainder Balance. If a remainder balance exists in the RMF General Account at the termination or expiration of this Agreement, and if the Yuba Accord or subsequent Pilot Program agreement is in effect, then any remainder balance will be transferred into the RMF General Account that is established in the Yuba Accord or subsequent Pilot Program agreement. If a remainder balance exists in the RMF General Account at the termination or expiration of this Agreement, and if no Yuba Accord or subsequent Pilot Program agreement is in effect, then any remainder balance of the River Management Fund General Account will be returned to YCWA. This section will survive the termination or expiration of this Agreement.

5.3.12. RMF Ongoing Studies at Termination or Expiration. At the termination or expiration of this Agreement, the RMT Participants In RMF Issues will seek to ensure that ongoing studies that are being funded by the RMF are completed.

5.3.13. Additional CEQA/NEPA Compliance. Any projects that are funded by the RMF will be subject to all applicable requirements of CEQA and NEPA.

5.4 *Miscellaneous*

5.4.1. Duty to Cooperate. The Parties will cooperate in the implementation of this Agreement. The Parties and members of the River Management Team will cooperate in conducting studies, performing monitoring, and conducting all other activities within their control and statutory or regulatory authorities related to implementation of this Agreement and River Management Team tasks.

5.4.2. Duty to Support YCWA Petitions To SWRCB. All of the Parties to this Agreement will actively support before the SWRCB YCWA's petition to change its water-right permits and RD-1644 that is described in section 4.1.

5.4.3. Ramping Rate Commitments. YCWA will comply with the flow ramping requirements that are specified in its existing FERC License for the Yuba Project and the more stringent requirements that are described in the Preliminary Biological Opinion for the Yuba Project (FERC No. 2246) dated January 26, 2005.

5.4.4. Grant Funding Commitments. YCWA will continue to diligently pursue grant funding for the Narrows II Powerhouse Intake Extension Project at Englebright Dam. The other Parties to this Agreement will make best reasonable efforts to support and assist YCWA in its pursuit of grant funding for this project, for example, with letters of support regarding submitted grant applications. YCWA will provide a progress report on these efforts in its annual report to the SWRCB.

5.4.5. Monitoring Commitments. YCWA will install and operate automated water temperature recorders in the Lower Yuba River and collect the water-temperature data required by paragraph 5 on page 179 of RD-1644. YCWA will include this data in the reports that it prepares and submits to the SWRCB, as required by paragraph 6 on page 180 of RD-1644. The costs to install and operate such recorders will not be paid from the River Management Fund.

5.4.6. Studies of Fish and Fish Habitat in Lower Yuba River. All Parties to this Agreement will disclose, and coordinate the development and scoping of, any studies regarding or related to fish or fish habitat in the Lower Yuba River with the River Management Team's Planning Group, and will provide the results of these studies (including all raw data) to all of the other Parties, NOAA Fisheries and USFWS. In the spirit of collaboration, as non-parties to this Agreement but participants in the River Management Team, NOAA Fisheries and USFWS agree to disclose and coordinate the development and scoping of any studies regarding or related to fish or fish habitat in the

Lower Yuba River with the RMT's Planning Group, and to provide the results of these studies (including all raw data) to all of the Parties to this Agreement.

5.4.7. Redd Dewatering and Fry Stranding Study. YCWA will disclose and coordinate its present redd dewatering and fry stranding studies (which are required by paragraph 7 on page 180 of RD-1644) with the River Management Team's Planning Group, and will provide the results of these studies (including all raw data) to DFG, the NGO's, NOAA Fisheries and USFWS. After YCWA provides these results to these parties, a Technical Working Group of the RMT will develop any appropriate additional data collection procedures, work for additional studies, analysis, conclusions and recommendations.

5.4.8. Temperature Device Operations. The Planning Group of the River Management Team will determine the planned operations of the existing upper and lower outlets from New Bullards Bar Dam into the New Colgate Penstock, and of any new temperature adjustment device that is constructed at the Narrows II Powerhouse. The Operations Group of the River Management Team will provide specific guidance to YCWA for YCWA's implementation of the Planning Group's final decisions regarding the operations of the existing upper and lower outlets from New Bullards Bar Dam into the New Colgate Penstock and any new temperature adjustment device that is constructed at the Narrows II Powerhouse.

5.4.9. This Section left blank.

5.4.10. Annual Report On Implementation Of YFA. YCWA will include reports on implementation of this Agreement in its annual reports to the SWRCB.

5.4.11. Plans For Narrows I and II Powerhouse Maintenance Outages. YCWA will advise the River Management Team regarding any planned maintenance outages of the Narrows I and II Powerhouses and consider any RMT comments regarding these planned outages.

5.4.12 This Section left blank.

6. TERMINATION AND WITHDRAWAL, FORCE MAJEURE EVENTS AND REGULATORY CHANGES AND DISPUTE RESOLUTION

6.1 Termination and Withdrawal

6.1.1. Material Violation Of Agreement Flow Schedules. A "Material Violation of Agreement Flow Schedules" is defined as any failure of YCWA to meet any applicable instream-flow requirements described in sections 5.1.1 and 5.1.3 between April 1, 2006 and February 27, 2007 for a period of 10 consecutive calendar days, except for any of the following:

- a. a failure to meet these requirements because of a Force Majeure Event or a Regulatory Change Event;
- b. a failure to meet these requirements because of an action taken by, or implemented at the request of, the RMT Planning Group or Operations Group;
- c. a failure to meet these requirements because of a gauge re-rating or other action taken by the U.S. Geological Survey after the time at which the failure to meet these requirements occurred;
- d. before the Narrows II Powerhouse Full Flow Bypass is completed, a failure to meet these requirements because of the limits of the Narrows I Powerhouse flow capacity when the Narrows II Powerhouse is shut down for maintenance or repairs;
- e. a failure to meet these requirements because of planned maintenance or construction activities, when the deviation from these requirements has been approved in advance in writing by the Chief of the Division of Water Rights of the SWRCB;
- f. a failure to meet these requirements because of an action that was, or actions that were, beyond YCWA's control; and
- g. a failure to meet these requirements on any day on which there is a Technical Variation of Agreement Flow Schedules.

(Paragraph f. above does not include actions taken by PG&E to operate the Yuba Project during times when YCWA has authorized PG&E to operate the Yuba Project.)

6.1.2. Notice Of Material Violation Of Agreement Flow Schedules. If any Party to this Agreement besides YCWA believes that there has been a Material Violation of Agreement Flow Schedules, then that Party will so notify all other Parties to this Agreement in writing. Such notice will include all of the Party's reasons for believing that there has been a Material Violation Of Agreement Flow Schedules. YCWA then will have 15 days to respond to the notice. If YCWA disagrees with the notifying Party, then YCWA's response will state all of the reasons for YCWA's disagreement. Within 20 days after such response, the disputing Parties and any other interested Parties will meet at least once to use their best efforts to try to resolve the dispute. If, after such notice and response and any subsequent meetings or discussions among the Parties to this Agreement, the dispute remains unresolved, then any Party to this Agreement may exercise any remedies that it has under section 6.1.3.

6.1.3. Determinations Of A Material Violation Of Agreement Flow Schedules. If the procedures described in section 6.1.2 have been followed for an alleged Material Violation of Agreement Flow Schedules and a dispute remains regarding whether or not such a Material Violation of Agreement Flow Schedules occurred, then any Party to this Agreement may notify the Chief of the Division of Water Rights of the SWRCB that such Party believes that a Material Violation of Agreement Flow Schedules has occurred and ask the Chief of the Division of Water Rights to determine whether a Material Violation of Agreement Flow Schedules actually has occurred. The Party or Parties submitting such a request will include with the request copies of all of the notices and responses that were prepared under section 6.1.2 and any other relevant material.

6.1.4. Remedy For Material Violation of Agreement Flow Schedules. If the Parties to this Agreement agree, or the Chief of the Division of Water Rights of the SWRCB determines, that a Material Violation of Agreement Flow Schedules has occurred, then YCWA will make a one-time payment of \$100,000 to the RMF, General Account, in addition to the payments to the RMF that YCWA is required to make under section 5.3.2, and in addition to the payments required by section 6.2.4. YCWA's obligation to make payments under this section will be reduced by the amount of any payment that YCWA must make under Water Code section 1052 for the same day. (If YCWA already has made a payment to the RMF under this section when it makes a payment under Water Code section 1052 for the same day, then YCWA's obligation to make future payments to the RMF will be reduced by the amount of such payment under section 1052.)

For any Material Violation of Agreement Flow Schedules that occurs any time during the May through October control period, in addition to making the payment described in this section, YCWA also will provide an amount of water for supplemental instream flows in the Lower Yuba River equal to the difference in volume between the amount of water required to flow in the Lower Yuba River under any applicable instream-flow requirements described in sections 5.1.1, 5.1.3 and 5.1.5 and the amount of water that actually flowed in the Lower Yuba River on the days on which the Material Violation of Agreement Flow Schedules occurred. The RMT Participants In RMF Issues will determine the schedule for such supplemental instream flows.

6.1.5. Withdrawal or Termination Because Of CDFG Obligations. When required to fulfill a statutory or regulatory responsibility, CDFG may suspend participation or, if necessary, withdraw from this Agreement, without first using the ADR procedures of this Agreement. However, before suspending participation or withdrawing, CDFG will provide timely notice to all Parties of the need for such suspension or withdrawal, and will make good-faith efforts to work with the other Parties to reach agreement on modifications to this Agreement that would allow the Agreement to remain in effect. If CDFG withdraws from this Agreement under this section, then YCWA may, but is not required to, terminate this Agreement among the remaining Parties. YCWA may make such termination by notifying the other Parties in writing that YCWA has taken such action. However, YCWA may take such action only after first providing the other Parties to this Agreement with notice of its intent to terminate this Agreement and allowing a 30-day period to meet and confer. If this Agreement terminates, then each Party to this Agreement will have full and adequate opportunity to challenge or defend in court any change that the SWRCB makes to YCWA's permits after or as a result of such termination, and no Party will assert that any such challenge or defense is barred or limited by any statute of limitation (including, but not limited to Water Code section 1126), laches, res judicata or collateral estoppel.

6.1.6. No Other Early Terminations. In no circumstance other than under section 6.1.5 or section 6.1.7 will this Agreement terminate early.

6.1.7 Option Of Withdrawal. Any Party to this Agreement may exercise an option to withdraw at its discretion from this Agreement if a second Material Violation of Agreement Flow Schedules has occurred. However, if such withdrawal occurs, then this Agreement will remain in effect among the remaining Parties. If all Parties to this Agreement besides YCWA and CDFG withdraw under this section, and if CDFG withdraws under this section or section 6.1.5, then this Agreement will terminate. If such termination occurs, then the last sentence of section 6.1.5 will apply.

6.1.8. Option Of Withdrawal Relating To Resolution of South Screen Issue. Any signatory to this Agreement may exercise an option to withdraw from this Agreement because resolution of the South Screen issue has not occurred, has been substantially delayed, or is reasonably expected to not occur or be substantially delayed. However, if such withdrawal occurs, then this Agreement will remain in effect among the remaining Parties.

6.2 Remedies For Material and Non-Material Violations and Technical Variations Of Agreement Flow Schedules

6.2.1. Non-Material Violation Of Agreement Flow Schedules. A “Non-Material Violation of Agreement Flow Schedules” is defined as any failure of YCWA to meet any applicable instream-flow requirements described in sections 5.1.1 and 5.1.3 between April 1, 2006 and February 28, 2007 for any period less than 10 consecutive calendar days, except for any of the following:

- a. a failure to meet these requirements because of a Force Majeure Event or a Regulatory Change Event;
- b. a failure to meet these requirements because of an action taken by the RMT Planning Group or Operations Group;
- c. a failure to meet these requirements because of a gauge re-rating or other action taken by the U.S. Geological Survey after the time at which the failure to meet these requirements occurred;
- d. before the Narrows II Powerhouse Full Flow Bypass is completed, a failure to meet these requirements because of the limits of the Narrows I Powerhouse flow capacity when the Narrows II Powerhouse is shut down for maintenance or repairs;
- e. a failure to meet these requirements because of planned maintenance or construction activities, when the deviation from these requirements has been approved in advance in writing by the Chief of the Division of Water Rights of the SWRCB;
- f. a failure to meet these requirements because of an action that was, or actions that were, beyond YCWA’s control; and
- g. a failure to meet these requirements on any day on which there is a Technical Variation of Agreement Flow Schedules.

(Paragraph f. above does not include actions taken by PG&E to operate the Yuba Project during times when YCWA has authorized PG&E to operate the Yuba Project.)

6.2.2. Remedies For Material and Non-Material Violations Of Agreement Flow Schedules. In the event of a Material or Non-Material Violation of Agreement Flow Schedules, YCWA will make a monetary payment to the River Management Fund, General Account (in addition to all payments required by section 5.3.2), in an amount agreed to by the Parties to this Agreement or determined using the process described in section 6.2.3. If YCWA does not make any payment into the River Management Fund that is required by this section 6.2.2 and the following section 6.2.3 within 30 days after the amount of such payment is agreed to or determined, then interest on that amount will begin to accrue at the rate of interest that YCWA receives on funds in the Local Agency Investment Fund plus the rate of 2 percent per annum (but no higher than any maximum interest rate that YCWA by law may pay) until the payment is made.

6.2.3. Determination Of Non-Material Violation of Agreement Flow Schedules. If any Party believes that there has been a Non-Material Violation of Agreement Flow Schedules, then that Party will notify all of the other Parties to this Agreement in writing. Such notice will include all of the Party's reasons for believing that a violation has occurred. YCWA will have 15 calendar days to respond to the notice. If YCWA disagrees with the notifying Party, then YCWA's response will state all of the reasons for YCWA's disagreement. If, after such notice and response and any subsequent discussions and meetings among the Parties to this Agreement, a dispute remains as to whether or not there has been a Non-Material Violation of Agreement Flow Schedules, then the Parties will randomly select one individual from a previously and mutually agreed upon list of five mediators (described in section 5.2.1). The selected mediator will hold at least one meeting with the disputing Parties (any other interested Party to this Agreement may attend) and attempt to resolve the dispute. If the dispute is not resolved by the end of the meeting or meetings, then the selected mediator will issue a binding opinion resolving the dispute within 15 days after the last meeting.

6.2.4. Payments For Material or Non-Material Violation of Agreement Flow Schedules. For any Material or Non-Material Violation of Agreement Flow Schedules of Agreement Flow Schedules, YCWA will make a payment into the River Management Fund, General Account, in addition to the payments described in section 5.3.2. For each day during which such a violation occurs, the amount of the payment will be \$100 times the number of percentage points by which the actual flow was less than the required flow, up to a maximum of \$1,000. For example, if the applicable five-day running average requirement on a particular day was 1,000 cfs and the actual five-day running average on that particular day was 970 cfs, then the payment for that day would be \$300. (970 cfs is 30 cfs, or 3 percentage points of 1,000, less than 1,000.) As a second example, if the applicable requirement on a particular day was 400 cfs and the actual lowest instantaneous flow on that day was 336 cfs, then the payment for that day would be \$600. (90% of 400 = 360; 336 is 24 cfs, or 6 percentage points of 400, less than 360.) In no case will the payment for any one day exceed \$1,000. For any Material Violation of Agreement Flow Schedules, YCWA will make both the payment required by this section and the payment required by section 6.1.4. YCWA's obligation to make payments under this section will be reduced by the amount of any payment that YCWA must make under

Water Code section 1052 for the same day. (If YCWA already has made a payment to the RMF under this section when it makes a payment under Water Code section 1052 for the same day, then YCWA's obligation to make future payments to the RMF will be reduced by the amount of such payment under section 1052.)

6.2.5. Technical Variations of Agreement Flow Schedules. A "Technical Variation of Agreement Flow Schedules" is defined as any failure of YCWA to meet any applicable instream-flow requirements described in sections 5.1.1 and 5.1.3 between April 1, 2006 and February 28, 2007 during the part of September of any Schedule 1, 2 or 3 Water Year before the Narrows II Powerhouse Full Flow Bypass is in operation when the Narrows II Powerhouse is shut down for normal maintenance, except for any of the following:

- a. a failure to meet these requirements because of a Force Majeure Event or a Regulatory Change Event;
- b. a failure to meet these requirements because of an action taken by the RMT Planning Group or Operations Group;
- c. a failure to meet these requirements because of a gauge re-rating or other action taken by the U.S. Geological Survey after the time at which the failure to meet these requirements occurred;
- d. a failure to meet these requirements because of planned maintenance or construction activities; and
- e. a failure to meet these requirements because of an action that was, or actions that were, beyond YCWA's control.

(Paragraph e. above does not include actions taken by PG&E to operate the Yuba Project during times when YCWA has authorized PG&E to operate the Yuba Project.)

"Technical Variation of Agreement Flow Schedules" does not include any day where the difference between the applicable Marysville Gage requirement and the actual flow at the Marysville Gage is greater than 50 cfs.

6.2.6. Remedies For Technical Variations Of Agreement Flow Schedules. In the event of a Technical Variation of Agreement Flow Schedules, YCWA will make a monetary payment to the River Management Fund, General Account (in addition to all payments required by section 5.3.2), in an amount agreed to by the Parties to this Agreement or determined using the process described in section 6.2.8. If YCWA does not make any payment into the River Management Fund that is required by this section 6.2.6 and the following section 6.2.7 within 30 days after the amount of such payment is agreed to or determined, then interest on that amount will begin to accrue at the rate of interest that YCWA receives on funds in the Local Agency Investment Fund plus the rate of 2 percent per annum (but no higher than any maximum interest rate that YCWA by law may pay) until the payment is made.

6.2.7. Determination Of Technical Variation of Agreement Flow Schedules. If any Party believes that there has been a Technical Variation of Agreement Flow Schedules, then that Party will notify all of the other Parties to this Agreement in writing. Such notice will include all of the Party's reasons for believing that a violation has occurred. YCWA

will have 15 calendar days to respond to the notice. If YCWA disagrees with the notifying Party, then YCWA's response will state all of the reasons for YCWA's disagreement. If, after such notice and response and any subsequent discussions and meetings among the Parties to this Agreement, a dispute remains as to whether or not there has been a Technical Variation of Agreement Flow Schedules, then the Parties will randomly select one individual from a previously and mutually agreed upon list of five mediators (described in section 5.2.1). The selected mediator will hold at least one meeting with the disputing Parties (any other interested Party to this Agreement may attend) and attempt to resolve the dispute. If the dispute is not resolved by the end of the meeting or meetings, then the selected mediator will issue a binding opinion resolving the dispute within 15 days after the last meeting.

6.2.8. Payments For Technical Variation of Agreement Flow Schedules. For any Technical Variation of Agreement Flow Schedules of Agreement Flow Schedules, YCWA will make a payment into the River Management Fund, General Account, in addition to the payments described in section 5.3.2. For each day during which such a violation occurs, the amount of the payment will be \$100 times the number of percentage points by which the actual flow was less than the required flow, up to a maximum of \$1,000. For example, if the applicable five-day running average requirement on a particular day was 500 cfs and the actual five-day running average on that particular day was 460 cfs, then the payment for that day would be \$800. (460 cfs is 40 cfs, or 8 percentage points of 500, less than 500.) As a second example, if the applicable requirement on a particular day was 500 cfs and the actual lowest instantaneous flow on that day was 430 cfs, then the payment for that day would be \$400. (90% of 500 = 450; 430 is 20 cfs, or 4 percentage points of 500, less than 450.) In no case will the payment for any one day under the preceding sentences of this section exceed \$1,000. However, if Technical Variations of Agreement Flow Schedules occur for 10 consecutive days, then, in addition to making the payments described in the preceding sentences of this section, YCWA also will make a one-time payment of \$20,000. YCWA's obligation to make payments under this section will be reduced by the amount of any payment that YCWA must make under Water Code section 1052 for the same day. (If YCWA already has made a payment to the RMF under this section when it makes a payment under Water Code section 1052 for the same day, then YCWA's obligation to make future payments to the RMF will be reduced by the amount of such payment under section 1052.)

6.2.9 Provision Of Make-up Water For Non-Material Violation or Technical Variation of Agreement Flow Schedules. For any Non-Material Violation of Agreement Flow Schedules that occurs any time during the May through October control period, in addition to making the payments described in section 6.2.4, and for any Technical Variation of Agreement Flow Schedules, in addition to making the payments described in section 6.2.8, YCWA also will provide an amount of water for supplemental instream flows in the Lower Yuba River equal to the difference in volume between the amount of water required to flow in the Lower Yuba River under any applicable instream-flow requirements described in sections 5.1.1, 5.1.3 and 5.1.5 and the amount of water that actually flowed in the Lower Yuba River on the days on which Non-Material Violations of Agreement Flow Schedules or Technical Variations of Agreement Flow Schedules

occurred. The RMT Participants In RMF Issues will determine the schedule for such supplemental instream flows.

6.2.10. No Effect On CDFG's Remedies Under California Endangered Species Act.

Nothing in this Agreement will affect CDFG's remedies under the California Endangered Species Act (California Fish and Game Code §§ 2050-2115.5).

6.3 *Non-payment by Water Purchase Agreement Transferees*

In the event of non-payment by the Water Purchase Agreement transferees to YCWA of any amount of money due to YCWA under the Water Purchase Agreement, the Parties to this Agreement may use the process described in section 6.5 to consider modifications to YFA flow schedules. However, the SWRCB must approve any proposed modifications to YFA flow schedules before they will go into effect and YCWA may not unilaterally request relief from, amend or terminate this Agreement because of such non-payment.

6.4 *Force Majeure or Regulatory Change Events*

6.4.1. Force Majeure Event. A Force Majeure Event is defined as an event, including but not limited to, a natural event, a labor or civil disruption, or a breakdown or failure of a Yuba Project, PG&E, Corps of Engineers or U.S. Geological Survey component or facility, where the event: (a) is in the Yuba River watershed or directly affects a component of PG&E's electricity transmission system, (b) is reasonably beyond YCWA's control, and (c) significantly affects YCWA's ability to comply with any provision of this Agreement. No party will be liable to any other Party for breach of this Agreement due to such a Force Majeure Event. For the purposes of this Agreement, Force Majeure Events do not include events that just affect the operations of SWP or CVP facilities and do not also directly affect Yuba Project operations.

6.4.2. Regulatory Change Event. A Regulatory Change Event is defined as a new court order or regulatory action (including, but not limited to, a regulatory action under the federal Endangered Species Act or the California Endangered Species Act) that requires YCWA to make a Significant Change in YCWA's operations of the Yuba Project. A regulatory change in or regarding the Delta that is not specifically directed to YCWA, or that does not specifically require YCWA to make any Significant Change in YCWA's operations of the Yuba Project, is not a Regulatory Change Event for the purposes of this Agreement.

6.4.3. Force Majeure Event or Regulatory Change Event. In the event of a Force Majeure Event or a Regulatory Change Event that affects YCWA's operations of the Yuba Project or YCWA's ability to comply with section 5.1.1 or 5.1.3, the RMT will work to try to reach consensus, as needed, on an alternative flow schedule for the relevant time period. If the RMT cannot reach a consensus solution, then it will adhere to the ADR procedure in Section 6.4.5 to attempt to resolve the dispute and find a consensus solution.

If the Parties still have not reached consensus after using the ADR procedures in section 6.4.5, then any Party to this Agreement may ask a court of competent jurisdiction (subject to the rules in the second paragraph of section 5.1.2) to determine whether the underlying event is a Force Majeure Event or Regulatory Change Event that triggers the need for an alternative flow schedule. If the court determines the underlying event is not such a triggering event, then the relevant instream-flow requirements specified in section 5.1.1 or 5.1.3 will continue to be implemented. If the court determines that the underlying event is such a triggering event, then it will determine the appropriate relief. In this case, this Agreement will remain in effect, but subject to the court's order.

6.4.4. This Section left blank

6.4.5. Dispute Resolution—ADR For Sections 6.4.3. If YCWA's performance under this Agreement is affected by a Force Majeure Event or Regulatory Change Event, then YCWA will notify the other Parties to this Agreement in writing within 5 days after becoming aware of any such event. Such notice will: (a) identify the event; (b) estimate the anticipated period that the event will affect YCWA's performance under this Agreement; (c) state the measures that YCWA has taken or proposes to take to address the event; and (d) state the estimated timetable for implementation of such measures. The Parties to this Agreement then will meet and confer within 5 days of receipt of such notice. If any Party makes a request for mediation under this section 6.4.5 to assist in resolving the problem presented because of the change in condition, parameter, assumption, knowledge, or circumstance, then the Parties will use their best efforts to negotiate a temporary or permanent change to this Agreement as needed, undertake these ADR provisions, and try to resolve the problem presented without electing to invoke section 6.4.3.

The costs to engage a mediator or fishery expert under these disputes, who will be randomly selected from the previously mutually agreed upon list or lists, will be divided on a pro rata sharing of costs. Each Party will bear their own costs to participate in this ADR procedure for these disputes. If mediation is not successful and the Parties cannot agree on how to resolve the problem within 10 days of the notice, then the relevant provisions of section 6.4.3 will apply.

6.5 *Dispute Resolution—General ADR for River Management Team*

For all disputes involving the RMT, regardless of category, Parties and members of the River Management Team (Planning and Operations Groups) will adhere to the following process. Each Party or member with authority to participate in making the applicable decision will make reasonable efforts to reach consensus on every matter relevant to the decision. Consensus is defined as unanimous consent of all such Parties and members. If such a Party or member does not agree with a decision proposed by another such Party or member, then the disagreeing Party or member will propose an alternative to resolve the matter. If such Parties or members still are unable to agree on one or more matters, then any non-agreeing Party or member will provide notice to the entire group (Planning Group and/or Operations Group, as relevant) as soon as possible, and not later than 5

days after attempting to resolve the matter, that a dispute exists and specifying in reasonable detail the nature of such dispute and steps taken to date to resolve the dispute.

Within 20 days after the notice of a dispute, the disputing Parties and members (and any other interested Parties) will meet at least once to use their best efforts to try to resolve the dispute. At the end of the meeting or meetings, if the dispute remains unresolved, the Parties and members will submit the dispute to non-binding mediation. However, this provision does not apply to Operations Group disputes (see section 6.7) and River Management Team disputes solely regarding study protocol or data collection (see section 6.8), as discussed below. All Parties and members will make all reasonable good faith and best efforts to promptly schedule and attend such meetings and devote the needed time and resources to resolve any dispute in lieu of mediation.

6.6 *Dispute Resolution—Planning Group*

6.6.1. Disputes Regarding Planning Group Action 4. For disputes regarding Planning Group action 4, if the RMT Participants In RMF Issues cannot resolve the dispute, then they will ask the SWRCB to resolve the dispute.

6.6.2. Disputes Regarding Planning Group Actions 5-7. If after 20 days to meet and confer, the RMT Participants In RMF Issues have not reached consensus on a disputed matter related to a decision on any action described in Planning Group actions 5-7, then the parties will submit the dispute to non-binding mediation, within 25 days after the initial notice of dispute.

Within 30 days after the initial notice of dispute, the RMT Participants In RMF Issues will randomly select one individual from the previously and mutually agreed upon list of five fishery biology experts. The selected expert will hold at least one meeting with the disputing parties (other interested parties may attend) and attempt to resolve the dispute. If the dispute is not resolved at the end of the meeting or meetings, then the selected expert will issue a non-binding opinion to try to resolve the dispute, within 60 days of the initial notice of dispute, unless additional time is requested by the expert and the RMT Participants In RMF Issues unanimously agree to the additional time. Unless otherwise agreed, the RMT Participants In RMF Issues will implement promptly any final agreement reached after consideration of the opinion issued, subject to applicable law. If 90 days after the initial dispute is noticed (plus any additional time requested and approved) the RMT Participants In RMF Issues have not resolved the dispute, then the dispute will be resolved as follows.

- (1) For disputes regarding Planning Group actions 5 and 6, the expert opinion that sought to resolve the dispute and any minority opinion that captures the disagreement with the expert opinion and a narrative explaining the two opinions and the process used to reach them will be submitted to the SWRCB along with a request that the Chief of the Division of Water Rights resolve the matter by selecting between the expert and minority opinion.

- (2) For disputes regarding Planning Group action 7, the expert opinion will be implemented

In no circumstance will a dispute under this section result in termination of, or any Party's withdrawal from, this Agreement. Fees and costs of such fishery expert or mediator under this section will be paid from the River Management Fund. Each RMT Participant In RMF Issues will bear its own costs for participation in these ADR procedures.

6.6.3. Disputes Regarding Planning Group Actions 1-3. If after 20 days to meet and confer the RMT Participants In RMF Issues have not reached consensus on a disputed matter related to a decision on any action described in Planning Group actions 1-3, then the RMT Participants In RMF Issues will submit the dispute to non-binding mediation, within 25 days after the initial notice of dispute.

Within 30 days after the initial notice of dispute, the RMT Participants In RMF Issues will randomly select one individual from the previously and mutually agreed upon list of five mediators. The selected mediator will hold at least one meeting with the disputing parties (other interested parties may attend) and attempt to resolve the dispute. If the dispute is not resolved at the end of the meeting or meetings, then the selected mediator will issue a non-binding opinion to try to resolve the dispute, within 60 days of the initial notice of dispute. For such disputes, no extensions for the opinion will be allowed. Unless otherwise agreed, the RMT Participants In RMF Issues will implement promptly any final agreement reached after consideration of the opinion issued, subject to applicable law.

If 65 days after the initial dispute is noticed the RMT Participants In RMF Issues have failed to resolve the dispute, then the matter will be resolved as follows.

- (1) For Planning Group action 1: the 30,000 acre-feet of Groundwater Substitution Program water will be allocated to flow during the portions of June through August in which such water is transferable, with the allocation of the 30,000 acre-feet being made in proportion to the applicable Schedule 6 flows;
- (2) For Planning Group action 2 or 3: the action will not occur.

In no circumstance will a dispute under this section 6.6.3 result in termination of, or any Party's withdrawal from, this Agreement. Fees and costs of such mediation in this category will be paid from the River Management Fund. Each Party will bear its own costs for participation in the ADR procedures. For any matter in Section 6.6 for which the parties are to randomly select a fisheries expert, the relevant parties instead may unanimously agree to randomly select a mediator, and for any matter for which the parties are to randomly select a mediator, they instead may unanimously agree to randomly select a fisheries expert.

6.7 *Dispute Resolution—Operations Group*

The Operations Group will not have the authority to refuse to recommend implementation of Planning Group directions, unless implementation will occur during the “delivery season” from June 1 to November 1. The Operations Group will strive for consensus during the winter season. During the “delivery season,” the Operations Groups will determine how to recommend implementation of Planning Group directions based on consensus.

However, Parties to this Agreement and other River Management Team members acknowledge that the Operations Group has discretion to determine how to recommend implementation of Planning Group directions. Parties and RMT members further acknowledge that the Operations Group will be exercising this discretion often on a real-time or close to real-time basis. Moreover, because of YCWA’s ultimate responsibility for Yuba Project operations, the ultimate decision for implementation of Operation Group actions rests with YCWA’s discretion. In the absence of consensus among participants, YCWA will take the appropriate actions to implement the applicable Planning Group decision to the fullest extent possible. Whenever possible (and the Parties expect that it will be possible most of the time), YCWA will provide notice of the proposed appropriate action and allow a 24-hour window for other members to reply or object before it acts. In the event that consensus does not exist on a given matter and YCWA unilaterally takes action as a last resort, the Operations Group will subsequently prepare an annual report for the Planning Group summarizing: (a) the dispute, (b) the final action taken, (c) any minority opinions, and (d) proposals for avoiding the dispute in the next planning and operations decision-making cycle. Best efforts will be made to implement a proposal to avoid future disputes.

In no circumstance will a dispute under this section result in termination of, or any Party’s withdrawal from, this Agreement, unless section 6.1.5 or section 6.1.7 applies.

6.8 *Dispute Resolution—River Management Team Study Protocols or Data Protocols*

The Parties to this Agreement intend that their monitoring and data-collection actions will produce a useful database for the FERC relicensing and to evaluate the biological provisions of this Agreement. If the dispute-resolution provisions in sections 6.5 and 6.6.2 do not resolve disputes regarding study protocols or data-collection protocols or data collection, then any RMT participant may request that its disagreement with, or dispute regarding, a study or data-collection protocol or data collection for a study or data collection that is being funded or is going to be funded by the RMT be recorded.

During the future FERC relicensing, a RMT participant’s disagreement with or dispute regarding the study protocol or data-collection protocol or a particular study or monitoring effort conducted under the RMT’s responsibility during the term of this Agreement will be limited to the disagreements or disputes that the member previously raised, unless a participant makes a reasonable showing that the accepted scientific

approach regarding the relevant protocol has materially changed in the time between when the original disagreement or dispute was raised and the FERC relicensing. This paragraph applies only to study protocols and data collection protocols, and not to issues regarding the interpretation or significance of data collected under those protocols, or to data collection, or to any other issue a RMT participant may wish to comment on in the FERC relicensing.

7. GENERAL PROVISIONS

7.1. Representation By Counsel. This Agreement is entered into freely and voluntarily. The Parties acknowledge that they have been represented by counsel of their own choice, or that they have had the opportunity to consult with counsel of their own choosing, in the negotiations that preceded the execution of this Agreement and in connection with its preparation and execution. Each of the Parties executes this Agreement with full knowledge of its significance and with the express intent of effecting its legal consequences.

7.2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the settlement of disputes and obligations between them. This Agreement supersedes all prior and contemporaneous agreements, representations and/or obligations concerning those obligations, which are merged into this Agreement. This Agreement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire agreement.

7.3. Applicable Law. This Agreement will be construed under and will be deemed to be governed by the laws of the State of California and of the United States, without giving effect to any principles of conflicts of law if such principles would operate to construe this Agreement under the laws of any other jurisdiction.

7.4. Construction of Agreement. This Agreement is the product of negotiation and preparation by and among the Parties and their attorneys. Therefore, the Parties acknowledge and agree that this Agreement will not be deemed to have been prepared or drafted by any one Party or another. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.

7.5. Modification of Agreement. No supplement, modification, waiver, or amendment of this Agreement will be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, waiver or amendment is sought.

7.6. Counterparts of Agreement. This Agreement may be signed in any number of counterparts by the Parties hereto, each of which will be deemed to be an original, and all of which together will be deemed one and the same instrument. This Agreement, if executed in counterparts, will be valid and binding on a party as if fully executed all on one copy. Counterpart executions may be made by facsimile.

7.7. Signatories' Authority. The signatories to this Agreement on behalf of all of the Parties hereto warrant and represent that they have authority to execute this Agreement and to bind the Parties on whose behalf they execute this Agreement.

7.8. Effective Date and Location of Execution of Agreement. The Parties hereto deem this Agreement to be signed and of binding legal effect as of the date on which the conditions precedent requirements in Section 4 have been satisfied and last signatory hereto has signed this Agreement. CDFG and the NGOs will execute and enter into this Agreement by signing it in Sacramento County, and this Agreement will be deemed to have been executed in Sacramento County.

7.9. Notices to Parties. Except as otherwise provided, all notices required under or regarding this Agreement will be made in writing addressed as provided in the Party address list attached hereto as Exhibit 11. Such notices will be sent to all Parties still in existence by first-class mail or comparable method of distribution. For purposes of this Agreement, a notice will be effective 7 days after the date on which it is mailed or otherwise distributed. When this Agreement requires notice in less than 7 days, notice will be provided by personal service, telephone, facsimile or electronic mail and will be effective when provided. The Parties will provide notice of any change in the authorized representatives designated in Exhibit 11, and YCWA will maintain the current distribution list of such representations, including addresses, telephone numbers, facsimile numbers and email addresses.

7.10. Federal and State Agency Obligations. Nothing in this Agreement is intended to limit the authority of the federal participants in any provision of this Agreement or the California Resource Agency Parties to fulfill their responsibilities under federal or state law. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the federal participants or the California Resource Agency Parties in any provision of this Agreement. Nothing in this Agreement is intended or will be construed to require the obligation, appropriation or expenditure of any money from the Treasury of the State of California. The Parties acknowledge that CDFG is a state agency and will not be required under this Agreement to expend any appropriated funds unless and until an authorized officer of CDFG affirmatively acts to commit such expenditures as evidenced in writing.

7.11. Successors and Assigns. This Agreement will apply to, and be binding on, the Parties and their successors and assigns. Upon completion of a succession or assignment, the initial Party no longer will be a party to this Agreement. A transferring or assigning Party will provide notice to the other Parties at least 30 days prior to completing such transfer or assignment.

7.12. No Partnership. Except as otherwise expressly set forth herein, this Agreement does not and will not be deemed to make any Party the agent for or partner of any other Party.

7.13. No Precedent. This Agreement is made upon the express understanding that it constitutes a negotiated resolution of the resolved issues stated in Section 1.2. Nothing in this Agreement is intended or will be construed as a precedent with regard to any other proceeding.

7.14. No Effect on YCWA's Water Rights. The only rights granted to the Parties to this Agreement by this Agreement are those expressly set forth in this Agreement. YCWA's maintenance of the instream flows under this Agreement will not confer any appropriative, public trust or other right on any person or entity. Nothing in this Agreement is intended or will be construed to act as a forfeiture, diminution or impairment of any water right of YCWA. The use of water to maintain instream flows under this Agreement will not be evidence of, or be used to try to demonstrate, either the existence of surplus water or the lack of beneficial use of water during the term of this Agreement.

7.15. No Admission. No Party will be deemed to have approved, admitted, accepted, or otherwise consented to any operation, management, valuation, or other principle underlying or supposed to underlie any of this Agreement's resolved issues, except as expressly provided herein. Nothing in this Agreement will be construed as an admission by any Party that such Party has obligations relative to the protection of fishery or other resources or the maintenance of water quality standards. Similarly, nothing in this Agreement will be construed to, or used in an effort to attempt to, demonstrate that any of the Parties has surplus water or water which is not being beneficially used by such Party.

7.16. No Waiver. Except as to the matters addressed in this Agreement, no Party will be deemed to have waived or compromised any of its rights that may be available under state or federal law, and no Party will be deemed to have waived or compromised any legal arguments regarding the SWRCB's authority over YCWA's water rights permits. The waiver at any time by any Party of any of its rights under this Agreement with respect to any default or breach will not be deemed to be a waiver with respect to any other default or breach.

Date: _____

YUBA COUNTY WATER AGENCY

By: _____

Date: _____

CALIFORNIA DEPARTMENT OF FISH
AND GAME

By: _____

Date: _____

SOUTH YUBA RIVER CITIZENS
LEAGUE

By: _____

Date: _____

FRIENDS OF THE RIVER

By: _____

Date: _____

TROUT UNLIMITED

By: _____

Date: _____

THE BAY INSTITUTE

By: _____

Appendix A

Actions That May Be Funded From River Management Fund

Exhibits

1. Instream Flow Requirements
2. Flow Schedule Year Types
3. Dry Year Storage Adjustment To Instream-Flow Requirements
4. Definition of the North Yuba Index
5. Procedure for Calculating the Forecasted Total Annual Inflow Into New Bullards Bar Reservoir To Calculate North Yuba Index
6. Exhibit not used
7. Exhibit not used
8. Exhibit not used
9. Exhibit not used
10. Yuba River Development Project, Operating Assumptions for Yuba River Fisheries Agreement
11. Addresses of Representatives of Lower Yuba River Fisheries Agreement Parties
12. Exhibit not used

Appendix A

ACTIONS THAT MAY BE FUNDED FROM RIVER MANAGEMENT FUND

The RMF will be used to fund actions in two broad categories: (1) monitoring and evaluation actions; and (2) habitat improvement actions and activities. Monitoring and evaluation may be categorized as either core monitoring or focused studies. The Technical Working Group of the RMT has developed a document titled “*Lower Yuba River Accords, River Management Fund, Monitoring and Evaluation Guidelines*” that outlines the framework for the Yuba Accord monitoring and evaluation program. Habitat improvement may be further segregated into non-flow and flow augmentation actions or activities. The River Management Fund also may be used to: (1) retain expert advice for specific technical questions; and (2) retain an expert or experts for dispute resolution process.

MONITORING AND EVALUATION ACTIONS

Core Monitoring

Core monitoring should achieve at least one of the following objectives: (1) evaluate the effectiveness of implementation of the Yuba Accord, including the Fisheries Agreement flow schedules and the Water Purchase Agreement; (2) obtain data required to evaluate the condition of lower Yuba River fish resources; and (3) evaluate the viability of Lower Yuba River fall-run Chinook salmon and any subpopulations of the Central Valley steelhead and spring-run Chinook salmon ESUs that may exist in the Lower Yuba River.

Core monitoring activities could include, but are not necessarily limited to, estimation of: anadromous salmonid annual escapement (e.g., VAKI, carcass surveys); spawning distribution (redd surveys); abundance and timing of juvenile downstream movement (rotary screw trapping); or juvenile salmonid growth (individual tagging).

The core monitoring program will be developed to assess the condition of individual fish, fish populations and the fish community and the viability of anadromous salmonid populations, and to evaluate the effectiveness of implementation of the Yuba Accord in benefiting the fish resources of the Lower Yuba River. The Technical Team is currently developing draft guidelines to provide a framework for identifying and prioritizing monitoring and evaluation actions to be funded by the RMF. The guidelines being developed are intended to encompass the suite of potential attributes identified for assessing the condition and viability of Lower Yuba River fish resources, and evaluating the effectiveness of implementation of the Yuba Accord in benefiting these resources. The monitoring and evaluation program is anticipated to assess and evaluate a subset of the attributes under development, reflecting a selection process that eliminates those components that are not appropriate or cannot be readily measured through monitoring and evaluation. The attributes presented in the monitoring and evaluation program are

intended to provide an initial framework and guidelines for developing the Yuba Accord monitoring and evaluation program.

Core monitoring studies and evaluation activities also will be designed to be relevant to future regulatory processes, including FERC relicensing. The specific core monitoring objectives and studies initially will be identified and developed by the Technical Working Group of the RMT.

Focused Studies

Focused studies may be conducted to provide additional insights into specific issues or areas of concern, to provide guidance or feedback for specific habitat improvement actions, or to provide guidance or feedback for specific adaptive management actions.

Examples of focused studies include, but are not necessarily limited to, juvenile salmonid habitat use, age-specific survival rates, in-river harvest or salmonid genetic analyses.

Focused studies also may be designed to provide baseline information or additional insights for future regulatory processes, including FERC relicensing. Specific objectives for focused studies initially will be identified and developed by the Technical Working Group, and ultimately by the RMT Planning Group.

HABITAT IMPROVEMENT ACTIONS

Habitat improvement actions potentially include a multitude of activities that address ecosystem functions needed to support healthy habitats which, in turn, support Lower Yuba River fish resources. Water quality, water quantity, channel/instream complexity, presence of off-channel habitat and riparian vegetation all contribute to fish resource health. Specific habitat improvement actions will be directed towards improving one, or several, of these or other features in the Lower Yuba River.

Habitat improvement actions will be prioritized based on factors such as their anticipated benefits to instream fisheries production (i.e., their effect on ameliorating previously identified and prioritized anadromous salmonid stressors) and permanence of the improvement action. Each habitat improvement action will have well-defined goals and objectives and will incorporate a monitoring and evaluation plan, as appropriate, developed to determine the effectiveness of the habitat improvement action in attaining specified goals and objectives. Specific habitat improvement actions, and their goals and objectives, initially will be identified and developed by the Technical Working Group, and ultimately by the RMT Planning Group. Habitat improvement actions will be categorized in two areas: (1) non-flow actions; and (2) flow augmentation.

Non-Flow Actions

The non-flow actions category is intended to encompass habitat improvement activities that physically alter Lower Yuba River in-channel or riparian habitats without augmenting streamflows. Non-flow actions may include, but are not necessarily limited to, instream habitat improvements (e.g., spawning gravel augmentation, large woody debris placement), riparian vegetation restoration, and off-channel (e.g., floodplain and side-channel) habitat creation.

Flow Augmentation

Flow augmentation includes purchases of water for flow augmentation in the Lower Yuba River. The total volume of any water that is purchased and the allocation of such water will be specified by the RMT, and will have pre-specified goals and objectives (e.g., increase juvenile transport flows, increase spring-run Chinook salmon spawning flows).