

**AMENDMENT NO. 15 OF
NAPA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT AGREEMENT NO. 1573
(CITY OF NAPA AGREEMENT NO. 1482)**

(WATER SUPPLY CONTRACT WITH THE CITY OF NAPA)

THIS AMENDMENT NO. 15 OF NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AGREEMENT NO. 1573 (CITY OF NAPA AGREEMENT NO. 1482), hereinafter referred to as “Amendment No. 15”, is made as of this _____ day of _____, 2013, by and between the NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, hereinafter referred to as “Agency”, and the CITY OF NAPA, hereinafter referred to as “City”;

RECITALS

WHEREAS, Agency is party to a water supply agreement (“State Water Supply Agreement”) with the State of California, initially approved on December 19, 1963, and subsequently amended by the parties thereto, that specifies the amount of water available to Agency in any given year, and a number of component charges for water allocated and delivered to the Agency through the North Bay Aqueduct, and the terms by which the Agency may sell or deliver that water to other parties; and

WHEREAS, City and Agency entered into the “Contract for Water Supply from North Bay Aqueduct Between Napa County Flood Control and Water Conservation District and City of Napa (Agency Agreement No. 1573, and City Agreement No. 1482, hereinafter “Contract”) as of April 5, 1966, subsequently modified by Amendment No. 1 as of December 21, 1982, and by Amendment No. 2A as of April 6, 1993, and by Amendment No. 2B as of December 15, 1998, and by Amendment No. 3 as of September 19, 2000, and by Amendment No. 4 as of November 16, 2004, and by Amendment No. 5 as of December 7, 2004, and by Amendment No. 6 as of November 7, 2006, and by Amendment No. 7 as of November 7, 2006, and by Amendment No. 8 as of March 4, 2008, and by Amendment No. 9 as of April 15, 2008 under which City authorized Agency to determine its rights under Article 18 of the State Water Supply Agreement, and by Amendment No. 10 as of April 7, 2009, and by Amendment No. 11 and 12 as of August 4, 2009, and by Amendment No. 13 as of October 6, 2009, and by Amendment 14 as of June 18, 2013, and

WHEREAS, the Contract specifies the terms by which the Agency will deliver water (that is available to the Agency through the State Water Supply Agreement) to the City (as a “Member Unit,” as defined by Contract Section 1(f)); and

WHEREAS, on July 27, 2008 Agency and other Plaintiffs filed a civil action against the Department of Water Resources of the State of California, hereinafter referred

to as “DWR” in the Superior Court of California for the County of Sacramento (Case No. 34-2008-00016388 CU-BC-GDS) regarding Agency and Plaintiffs’ area of origin water rights under the State Water Supply Agreement, and on March 2, 2009 the Court granted an Intervenor’s Motion to Intervene in said action, hereinafter referred to as “Intervenors”; and

WHEREAS, on August 31, 2012 Agency and other Plaintiffs, Intervenor and DWR completed approval of a set of Agreements in Principle subject to drafting a final settlement agreement; and

WHEREAS, the parties believe it is in the best interest of the Agency and City to approve and authorize the Agency to sign the “Settlement Agreement and Release Regarding Napa County Flood Control and Water Conservation District” referred to herein as the Settlement Agreement, and attached hereto as Exhibit 1; and

WHEREAS, the Settlement Agreement includes as attachments Exhibit A “Amendment 24 to the Water Supply Contract Between the State of California Department of Water Resources and the Napa County Flood Control and Water Conservation District” and Exhibit C “Addendum to the Settlement Agreement and Release”. Exhibit C is to be signed by each Member Unit;

TERMS

NOW, THEREFORE, IT IS MUTUALLY AGREED by Agency and City that the Contract shall be modified, pursuant to this Amendment No. 15, as follows:

1. Paragraph 19 is amended to add a new section 19(f) to the Contract between Agency and City as follows:

19(f) City approves and authorizes Agency to approve “Settlement Agreement and Release Regarding Napa County Flood Control and Water District” and all attachments thereto referred to herein as the “Settlement Agreement”, attached hereto as Exhibit 1 to this Amendment. City further agrees to sign the Addendum to the Settlement Agreement and Release. City and Agency mutually agree that the terms of the Settlement Agreement are intended to benefit City. Agency will act as an agent for City regarding the acquisition of additional water as authorized by the Settlement Agreement (and the corresponding terms of Amendment No. 24 to the Water Supply Agreement), and the parties agree to coordinate in obtaining such water.

2. Regarding Paragraph 1 above, Agency and City acknowledge that it is the intent of the parties that the other member units (defined by Contract Paragraph 1(f)) within the service area of Agency under the State Water Supply Agreement will also be amending their respective agreements with Agency in substantially the

same manner as set forth above.

3. Except as provided in (1) and (2) above, all of the terms and provisions of the Contract shall remain, after the effective date set forth above, in full force and effect as previously approved and last amended.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 15 of Napa County Flood Control and Water Conservation District Agreement No. 1573 (FC) (City of Napa Agreement No. 1482) as of the date first above written.

CITY OF NAPA

**NAPA COUNTY FLOOD CONTROL
AND WATER CONSERVATION
DISTRICT**

By _____
JILL TECHEL
Mayor

By _____
JILL TECHEL
Chair of the Board

ATTEST:

ATTEST:

By _____
DOROTHY ROBERTS
City Clerk

By _____
GLADYS I. COIL
District Secretary

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____
MICHAEL BARRETT
City Attorney

By _____
MINH C. TRAN
District Legal Counsel

COUNTERSIGNED:

By _____
DESIREE BRUN
City Auditor

**EXHIBIT 1 – SETTLEMENT AGREEMENT AND RELEASE REGARDING NAPA
COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

**SETTLEMENT AGREEMENT AND RELEASE
REGARDING NAPA COUNTY FLOOD CONTROL AND WATER
CONSERVATION DISTRICT**

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is entered into by and between Napa County Flood Control and Water Conservation District ("Plaintiff" or "Napa"); the California Department of Water Resources ("DWR"); and Alameda County Flood Control and Water Conservation District, Zone 7, Alameda County Water District, Antelope Valley-East Kern Water Agency, Castaic Lake Water Agency, Central Coast Water Authority, Coachella Valley Water District, Kern County Water Agency, Metropolitan Water District of Southern California, Mojave Water Agency, Palmdale Water District, San Geronio Pass Water Agency, Santa Clara Valley Water District, and Tulare Basin Water Storage District (the "Intervenors") as of the last date executed below, referred to herein collectively as the "Parties" and each individually as a "Party."

RECITALS

A. WHEREAS, on or about July 17, 2008, Plaintiff filed a civil action against DWR in the Superior Court of California for the County of Sacramento (the "Court"), Case No. 34-2008-00016338 CU-BC-GDS, and on or about March 2, 2009 the Court granted Intervenors' Motion to Intervene in the action (the complaint and the complaint in intervention are collectively referred to as the "Action");

B. WHEREAS, Plaintiff and each of the Intervenors has a contract with DWR for a supply of water from the State Water Project ("SWP") which existing contracts are referred to as the "SWP Contracts" or "Water Supply Contracts".

C. WHEREAS, the Parties' claims in the Action relate to disputes over the meaning of the Water Supply Contracts regarding Plaintiffs' claimed rights to water under their Contracts pursuant to Water Code section 11460, *et seq.*, and section 10505, commonly referred to as the "area of origin statutes";

D. WHEREAS, each Party disputes the interpretation of the SWP Contracts advanced by the other Parties, and DWR and Intervenors dispute whether any of the Plaintiffs have established area of origin rights and each Party denies that any other Party is entitled to any relief based on the claims alleged in the Action;

E. WHEREAS, the Parties wish to compromise, resolve, settle, and terminate any and all of the disputes or claims in the Action on terms and conditions set forth herein (the "Settled Disputes and Claims"). The Settled Disputes and Claims include any and all disputes or claims related to whether any Plaintiff is entitled to a preference in water deliveries from the SWP under the terms of the existing SWP Contracts;

F. WHEREAS, the Parties represent that they understand they are waiving significant legal rights by signing this Agreement, and each Party in no way admits responsibility for debts, liability, and/or obligations owed to any other Party or third

parties, and this Agreement is made in a spirit of compromise for the sole purpose of avoiding the uncertainties and expenses of litigation with respect to the Settled Disputes and Claims.

G. NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the Parties agree as follows:

AGREEMENT

1. Recitals Incorporated. The recitals set forth above, including all definitions therein, are expressly incorporated as terms of this Agreement.
2. Terms of Settlement.
 - 2.1 Contract Amendment. Subject to the Conditions Precedent set forth in Section 3 of this Agreement, Napa and DWR shall enter into an amendment to Napa's SWP Contract, in the form attached hereto as Exhibit A, that incorporates provisions of this Settlement Agreement.
 - 2.1.1 North of Delta Allocation:
 - a. **General:** DWR determines State Water Project ("SWP" or "Project") Table A Allocations using existing SWP facility availability and capacities, storage conditions, contractor requests, other demands for Project water, operational and regulatory restrictions, available hydrologic forecast data, as well as other factors that may affect the available supply and the ability to deliver Project water. Each year that this Agreement is in effect, DWR shall calculate a separate SWP Table A Allocation for Napa, Solano County Water Agency ("SCWA"), and the City of Yuba City ("Yuba City") (collectively, "the North of Delta (NOD) Contractors"), defined as the NOD Allocation.
 - b. **Method:** In determining the NOD Allocation for any year, DWR shall determine which Project operational or regulatory conditions, if any, impact only the availability of Project water to contractors with service areas that receive water from the Delta Project export facilities South of Delta ("SOD") and which Project operational or regulatory restrictions have a system-wide impact on water availability to the Project in general. The NOD Allocation shall not be subject to the operational or regulatory restrictions that only affect the south Delta export facilities. The NOD Allocation shall be subject to the operational or regulatory restrictions that impact water availability to the Project on a system-wide basis and in general shall affect the NOD Allocation based on an allocation of responsibility for each such restriction among all contractors.

- c. **Current Allocations:** Until the State Water Resources Control Board (“SWRCB”) changes its Water Rights Decision D-1641 or Endangered Species Act (“ESA”) or other environmental or regulatory requirements affecting SWP operations change, the Parties agree that DWR’s current operations pursuant to SWRCB D-1641 impact system wide SWP Table A Allocations .

The parties also agree that while current operational requirements pursuant to the ESA impact mostly the SOD Table A Allocation, these ESA requirements also impact the NOD Table A Allocation to the extent that they impact Delta water quality or increase Delta outflow requirements of the SWP. DWR produces an “Allocation Analysis” that is derived from model runs that are used to identify possible Table A Allocations. An example of this Analysis is attached hereto as Exhibit B.

The Allocation Analysis is updated as new information becomes available during the water year, usually monthly during the winter/spring season. One study in the current Allocation Analysis is a simulation of the SWP operating under D-1641 at a 90% exceedence hydrology. For the current NOD Allocation referenced in this subsection, that study is expected to be used as the foundation in the determination of the NOD Allocation.

- d. **Future Changes:** DWR will evaluate the extent to which new or different operational or regulatory restrictions affect the NOD Allocation and will consult with the SWP Contractors regarding the impact, if any, of the changed circumstances on the NOD Allocation method prior to implementation of any change to the NOD Allocation.

- e. **Other Conditions:**

- i. Each NOD Contractor’s SWP Table A Allocation shall not exceed that NOD Contractor’s annual Table A amount contained in its SWP Contract.
- ii. The NOD Allocation shall not affect the ability of any NOD Contractor to participate in and benefit from future SWP facilities.
- iii. The increase in allocated Table A due to the NOD Allocation shall not be transferred to or from, or exchanged with, a SOD contractor. The Parties agree that any transfers or exchanges are subject to the uniform provisions of the SWP contract, including, but not limited to, Articles 12, 15, 41, 55, and 56(d), and agree that Napa does not have a preferential right under the

SWP contract to enter into transfer, exchange or other similar agreements.

That portion of Napa's SWP Table A Water exported south of the Delta for any purpose shall be calculated as provided below:

Water Exported = (Napa's NOD Allocation AF - Napa service area use AF) x SOD Allocation /NOD Allocation

- iv. The increase in allocated Table A due to the NOD Allocation shall not be sold through the turnback pool or any multi-year water purchase program that may be developed in the future, or stored outside the service area pursuant to Article 56(c).

- 2.1.2 Advanced Table A Program: Napa shall furnish DWR with a proposed delivery schedule for all requests for Advanced Table A as part of the preliminary water delivery schedule submitted pursuant to Article 12(a). DWR will deliver to Napa additional Project Water (referred to as "Advanced Table A"), over and above Napa's NOD Allocation, and any other water supplies approved for transport through the North Bay Aqueduct, including, but not limited to Article 21 water, subject to the following limitations:
- a. Advanced Table A must be used in the Napa service area (Napa County), and may not be transferred or exchanged.
 - b. Advanced Table A will be accounted for cumulatively from year to year to form a "Cumulative Advanced Table A Balance." Napa's Cumulative Advanced Table A Balance shall not exceed 29,600 acre-feet except as provided below in sub-section 2.1.2.f below. Advanced Table A will be available after DWR makes the final allocation, subject to the limitations in sub-sections 2.1.2.e and 2.1.2.f below.
 - c. The Cumulative Advanced Table A Balance shall reset to zero each time that Oroville Reservoir begins flood control operations, or exceeds its allowed flood control capacity, or reaches its storage capacity (3.5 million acre-feet) as determined by DWR.
 - d. Napa may elect to return all or part of its Cumulative Advanced Table A Balance within five years of its delivery by DWR by providing an equivalent amount of replacement water through a reduction of deliveries under its NOD Allocation. Article 21 water shall not be eligible as replacement water. In any year in which

Napa elects to repay its Cumulative Advanced Table A Balance, Napa shall furnish DWR with a proposed delivery schedule pursuant to Article 12(a) showing the reduction in proposed deliveries equivalent to the returned Advanced Table A Amounts.

In any year in which Napa has not returned to the State any of the Advanced Table A Balance delivered by DWR five years before, and the NOD Allocation is greater than sixty percent, and the Cumulative Advanced Table A Balance has not been reset to zero in that year, DWR shall, after consulting with Napa, deduct from Napa's NOD Allocation an amount equal to the remaining Cumulative Advanced Table A Balance delivered five years before up to that portion of Napa's NOD Allocation that exceeds sixty percent. The deduction shall be reflected in the approved schedules. In years when the NOD Allocation is less than sixty percent, Napa may elect to return all or part of its Cumulative Advanced Table A Balance with any portion of Napa's NOD Allocation for that year. Any year in which Advanced Table A Amounts are returned to the State, the State shall deduct the amount of water returned from Napa's Cumulative Advanced Table A Balance.

- e. Advanced Table A will be available, up to the annual and cumulative amounts, in all years except those years in which the DWR Director is allocating water as required to meet minimum demands for domestic supply, fire protection or sanitation consistent with Article 18(a) of the SWP Contract. DWR must meet environmental requirements of the SWP mandated by law and subject to the discretion of the Director prior to allocation of Table A or Advanced Table A.
- f. Conference Years are years when the current SOD Allocation, as it may change during the year, is less than or equal to 20%. In Conference Years, Napa will not request more than 5,000 acre feet of Advanced Table A, subject to the restrictions described in subsection 2.1.2.e, above.
- g. Napa may only request and receive a maximum of 7,500 acre-feet of Advanced Table A in any year. Napa may utilize additional Advanced Table A if SCWA and Yuba City do not utilize their maximum annual Advanced Table A, up to a combined annual (SCWA, Napa and Yuba City) total of 27,500 acre feet and with the written permission of the party not utilizing their Advanced Table A. Notice shall be provided to DWR in advance of Napa's delivery request for the additional Advanced Table A.

- h. Advanced Table A shall only be made available after full delivery of Napa's annual allocated Table A and any other Table A deferred or carried over from a previous year pursuant to Article 12(e). Advanced Table A will not be made available if Napa elects to carryover water pursuant to Article 12(e), or to exchange or store any portion of its allocated Table A amount outside its service area pursuant to Article 56, in that year.
- i. Annual diversions of Napa's combined NOD Allocation and Advanced Table A, including Advanced Table A not used by SCWA and Yuba City, shall not exceed 29,025 acre-feet in any year.
- j. Napa shall furnish DWR with a proposed delivery schedule for all requests for Advanced Table A as part of the preliminary water delivery schedule submitted pursuant to Article 12(a). DWR shall maintain a record showing the running balance of available Advanced Table A, the annual balance, the cumulative balance, past deliveries, returns, resets, etc. DWR shall coordinate with Napa in the maintenance of these records.
- k. Napa shall pay to DWR all related charges associated with the delivery of Advanced Table A water.

2.2 Limitations on Additional Water Supplies: Except as expressly provided for herein, in consideration of the mutual agreements contained in this settlement agreement, and for the term of the existing SWP Contract and any renewal thereof (including during or as a result of any contract extension negotiations), Napa agrees to the following limitations:

- 2.2.1 Napa shall not claim any preference or priority under Article 18(a) of the existing SWP Contract.
- 2.2.2 Napa shall not request or be entitled to receive a new or separate SWP Contract that will increase Napa's existing total maximum Table A amount, whether pursuant to Article 18(c) of its existing SWP Contract or any other legal authority, except as provided in sub-section 2.2.5 below.
- 2.2.3 Except as to any SWRCB applications for waters originating within the Napa River and Lake Berryessa watersheds, Napa agrees to the following limitations on water right applications filed with the SWRCB:
 - a. Prior to January 1, 2032, Napa shall not file a water right application with the SWRCB to meet existing or future demands within Napa's service area.

- b. If Napa files a water rights application with the SWRCB, to meet existing or future demands within Napa's service area after January 1, 2032, Napa stipulates that any water right issued on such application will contain the following language:

"No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The SWRCB shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators."

- c. These limitations on water rights applications do not apply to any water transfers or petitions for changes of already existing water rights that Napa and its participating agencies pursue and undertake. DWR and Intervenor reserve any and all rights they have to protest or challenge any such water transfers or petitions for change.

- 2.2.4 Napa agrees that any request to use SWP storage facilities shall be governed by Article 56 of the SWP Contract. Napa agrees that it will not claim a preferential right to request or receive water stored in SWP facilities and will not claim a preferential right to request

to contract for or utilize SWP storage facilities based on the Area of Origin or County of Origin laws or any other legal authority.

2.2.5 The prohibition in sub-section 2.2.2 and the time limit in sub-section 2.2.3(a) shall not apply if a catastrophic event or Act of God causes a substantial failure in one or more of Napa's existing or future water supplies intended to serve existing or future water demands within Napa's service area.

2.2.6 In the event that Napa files a water right application as provided for in sub-sections 2.2.3 or 2.2.5, or requests a new or separate SWP contract to increase Napa's existing total maximum Table A amount as provided for in sub-section 2.2.5, or Napa's SWP Contract is no longer in effect, then:

- (a) Napa has not waived any claim of right associated with the Area of Origin or County of Origin laws, and
- (b) DWR and Intervenors have not waived any right to challenge or protest any such claims of right.

2.2.7 The following participating agencies of Napa have also agreed to the limitations and waivers set forth in sub-section 2.2, and acknowledge the default and remedies provisions set forth in Section 5, as evidenced by a separate addendum attached hereto as Exhibit C to be executed by each of them: City of Napa, City of Calistoga and City of American Canyon.

2.2.8 Nothing herein shall limit or prohibit Napa from acquiring or purchasing SWP Table A amounts from another SWP Contractor. Any SWP Table A amounts acquired from a SOD contractor shall not be entitled to the NOD Allocation.

2.3 Director Discretion. If compliance with a legal mandate or the provisions of this Agreement requires exercise of the Director's discretion, such discretion is expressly reserved.

2.4 Opinions and Determinations. Consistent with Article 38 of the SWP Contracts, where the terms of this Agreement provide for action to be based upon the opinion, approval, review, or determination of any party, such terms are not intended to be and shall never be construed as permitting such opinion, approval, review, or determination to be arbitrary, capricious, or unreasonable.

3. Conditions Precedent

This Agreement is not effective until all of the following have occurred:

- 3.1 Other Agreements. Settlement Agreements for each of the three other Plaintiffs in the Action shall have been fully executed.
 - 3.2 Court Approval. The Sacramento County Superior Court shall have issued an order approving this Agreement and the three other Settlement Agreements.
 - 3.3 Legal Compliance. Implementation of this Settlement Agreement is subject to compliance with all environmental or other legal requirements mandated by law. DWR shall comply with the California Environmental Quality Act.
 - 3.4 Dismissal. Napa will dismiss with prejudice the First Amended Complaint filed on February 27, 2009. All parties agree that the only claims raised in the First Amended Complaint are claims relating to the applicability of SWP Contract Article 18(a) shortages to Plaintiffs. While not addressed in the First Amended Complaint, the Parties' agreements regarding Plaintiffs' claims of rights pursuant to Water Code Sections 11460 et seq. or Water Code Section 10505 that may exist independent of the SWP Contract, and claims of rights pursuant to Article 18(c) of the SWP Contract, are addressed in Section 2.2 of this Settlement Agreement.
 - 3.5 Notice to Contractors. The Deputy Director for DWR will execute and distribute the Notice to State Water Project Contractors providing an Informational Bulletin on Various Contracts for Project Water, attached hereto as Exhibit D.
4. No Precedent. Nothing in this Settlement Agreement or Water Supply Contract Amendment is precedent for any future action by DWR or any of the parties.
5. Default and Remedies.
- 5.1 If Napa or any of its participating agencies files an application with the SWRCB prior to 2032 or requests a new or larger SWP Contract, except as allowed by sub-section 2.2.5, this is deemed a breach. DWR will hold all benefits for Napa under this Settlement Agreement in abeyance until the breaching party cures the breach by withdrawing the application or contract request.
 - 5.2 If any Party to this Settlement Agreement, or participating agency that has adopted provisions of this Settlement through addendum, breaches, the Parties agree that monetary damages alone would be insufficient. Any non-breaching party can request specific performance, including but not limited to injunctive relief, fourteen (14) days after providing notice of the alleged breach to other Parties as provided in Section 5.3 below.
 - 5.3 In the event of an alleged breach, the non-breaching Party agrees to give notice of the alleged breach to all other parties to the Agreement and to

consult with the Parties for the purpose of attempting in good faith to resolve any disputes prior to the initiation of litigation or court proceedings.

- 5.4 The use by the party or the State of any remedy specified herein for the enforcement of the Settlement Agreement is not exclusive and shall not deprive either from using any other remedy provided by law.
- 5.5 In any action by any of the Parties to enforce or interpret the Settlement Agreement, the prevailing party is entitled to attorney fees and costs, including expert costs.
- 5.6 If Napa breaches the Settlement Agreement, the limitation provisions in subsection 2.2 will survive as against Napa.

6. Attorneys Fees and Costs. All parties agree to bear their own fees and costs associated with the Action or any challenges by any non-party to the Settlement Agreement and related implementing documents.

7. Superior Court to Enforce Agreement. The Parties agree and acknowledge that this Agreement shall be deemed to have been entered into by and between the Parties in the County of Sacramento, State of California. The Parties agree that the Superior Court of California for the County of Sacramento, in which forum the Action was filed, shall be the judicial forum for purposes of jurisdiction should any Party seek to enforce the terms of this Agreement.

8. No Admission. This Agreement and its provisions and any proceedings taken hereunder are for settlement purposes only and are not intended to be, and shall not in any event be construed or deemed to be, a concession on the part of the Parties, or any of them, of any liability or wrongdoing whatsoever or of any conceded interpretation of the Area of Origin Statutes. This Agreement is predicated upon unique facts which exist between the Parties and none of the Parties intend this Agreement to be a waiver of any right or position in regards to any third party. Neither this Agreement nor any negotiations or proceedings in pursuance of this Agreement shall be offered or received in any action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of the Parties, or any of them, or anyone acting on their respective behalves,

9. Successors. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective representatives, successors and assigns. No Party may assign its rights under this Settlement Agreement without the prior written consent of the other Parties.

10. Notice. Unless and until the Parties otherwise agree in writing, all communications and notice between the Parties regarding this Agreement shall be through the following addresses:

PLAINTIFFS:

Napa County Flood Control and Water Conservation District

Deputy Director of Public Works
Flood Control and Water Resources
County of Napa
804 First Street
Napa, CA 94559-2623
(707) 259-8620

Robert Martin
Deputy County Counsel
Office of Napa County Counsel
1195 Third Street, Suite 301
Napa, CA 94559
707-259-8443

INTERVENORS:

Alameda County Flood Control & Water Conservation District, Zone 7

Attention: General Manager
100 North Canyons Parkway
Livermore, CA 94551
(925) 454-5000
(925) 454-5729 [fax]

Alameda County Water District

Walt Wadlow, General Manager
43885 South Grimmer Boulevard
Fremont, CA 94538
(510) 668-4200

Antelope Valley-East Kern Water Agency

Dan Flory, General Manager
6500 West Avenue N
Palmdale, CA 93551
(661) 943-3201
(661) 943-3204 [fax]

Castaic Lake Water Agency

Dan Masnada, General Manager
27234 Bouquet Canyon Road
Santa Clarita, CA 93150
(661) 297-1600
dmasnada@clwa.org

Central Coast Water Authority

Bill Brennan, Executive Director
255 Industrial Way
Buellton, CA 93427
(805) 688-2292, ext. 215
(805) 686-4700 (fax)
wjb@ccwa.com

Coachella Valley Water District

Attention: General Manager
P.O. Box 1058
Coachella, CA 92236
Phone (760) 398-2651
Fax (760) 398-3711

Kern County Water Agency

Jim Beck, General Manager
Post Office Box 58
Bakersfield, CA 93302-0058
(661) 634-1400
(661) 634-1428 [fax]

Metropolitan Water District of Southern California

Jeff Kightlinger, General Manager
Post Office Box 54153
Los Angeles, CA 90054-0153
(213) 217-6308 - Legal Department, General

Mojave Water Agency

Kirby Brill, General Manager
13846 Conference Center Drive
Apple Valley, CA 92307
(760) 946-7000
(760) 946-7008 [direct]

Palmdale Water District

Dennis LaMoreaux, General Manager
2029 East Ave., Q
Palmdale CA, 93550
(661)947-1111
(661) 456-1017 [direct]

San Geronio Pass Water Agency

Jeff Davis, General Manager
1210 Beaumont Ave.
Beaumont, CA 92223
(951) 845-2577
(951) 845-0281 [fax]

Santa Clara Valley Water District

Beau Goldie, Chief Executive Officer
5750 Almaden Expressway
San Jose, CA 95118-3686
(408) 265-2600

Tulare Lake Basin Water Storage District

Mark Gilkey, General Manager
1001 Chase Ave
Corcoran, CA 93212
(559) 992-4127

Department of Water Resources

Robert Cooke, P.E
Chief, State Water Project Analysis Office
Department of Water Resources
1416 9th Street, 16th Floor
Sacramento, CA 95814

11. Further Cooperation. The Parties, and each of them, agree to do all things reasonably necessary to implement this Agreement, including, but not limited to, executing such additional writings as may be reasonably required to carry out the intent of this Agreement. The Parties will reasonably cooperate, each with the other, to effectuate the purpose of this Agreement, to protect and defend its integrity and do what may be necessary to verify its existence and operation in such matters as may be relevant.

12. Entire Agreement. This Agreement constitutes the entire agreement between the Parties. There are no further or other agreements or understandings, written or oral, in effect between the Parties relating to the subject matter of this Agreement.

13. Modification of Agreement. It is expressly understood and agreed that this Agreement may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of the Parties hereto. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this Agreement has been orally altered or modified or otherwise changed by oral communication of any kind or character.

14. Mutual Preparation. The Parties each cooperated in the drafting and preparation of this Agreement and thus it shall be deemed drafted by all Parties to the Agreement. The language of all parts of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against any Party as the drafter thereof.

15. Authority. Each Party respectively represents and warrants to each other Party that the undersigned representative for such Party has full and complete authority to execute and enter into this Agreement and bind said Party to the terms hereof.

16. Counterparts. This Agreement may be executed by facsimile and in counterparts, and each counterpart shall be considered an original, and all of which, taken together, shall constitute one and the same instrument; provided, however, that original signatures will also be provided to all counsel by mail.

17. Captions. The captions contained herein are intended solely for convenience and shall not be construed as full or accurate descriptions of the terms hereof.

18. Independent Investigation. Each Party has made such investigation of the facts pertaining to this Agreement and of all matters pertaining thereto as it deems necessary.

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19. Voluntary and Knowing Execution. Each Party respectively represents and warrants to each other Party that it has thoroughly read and considered all aspects of this Agreement, that it understands all provisions of this Agreement, that it has had the opportunity to consult with counsel, and that it is voluntarily and knowingly entering into this Agreement without duress or coercion of any kind.

SO AGREED:

Plaintiff:

Napa County Flood Control and Water
Conservation District

Defendant:

Mark W. Cowin, Director Date
California Department of Water
Resources

Approved as to Form and Legal Date
Sufficiency
Cathy Crothers, Chief Counsel
California Department of Water
Resources

Intervenors:

Metropolitan Water District of Date
Southern California

Alameda County Flood Control Date
& Water Conservation District, Zone 7

<u>Alameda County Water District</u>	<u>Date</u>	<u>Antelope Valley-East Kern</u>	<u>Date</u>
		Water Agency	
<u>Castaic Lake Water Agency</u>	<u>Date</u>	<u>Central Coast Water Authority</u>	<u>Date</u>
<u>Coachella Valley Water District</u>	<u>Date</u>	<u>Kern County Water Agency</u>	<u>Date</u>
<u>Mojave Water Agency</u>	<u>Date</u>	<u>Palmdale Water District</u>	<u>Date</u>
<u>San Geronio Pass Water</u>	<u>Date</u>	<u>Santa Clara Valley Water</u>	<u>Date</u>
Agency		District	
<u>Tulare Lake Basin Water</u>	<u>Date</u>		
Storage District			

EXHIBIT A - FORM OF SWP CONTRACT AMENDMENT

**Area of Origin Settlement
Napa County Flood Control and Water Conservation District Contract Amendment**

STATE OF CALIFORNIA
THE CALIFORNIA NATURAL RESOURCES AGENCY
THE DEPARTMENT OF WATER RESOURCES

AMENDMENT NO. 24 TO WATER SUPPLY CONTRACT
BETWEEN
THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION
DISTRICT

THIS AMENDMENT to the Water Supply Contract is entered into on _____, 2013 pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources (the State) and Napa County Flood Control and Water Conservation District (Agency).

RECITALS

A. WHEREAS, on or about July 17, 2008, Agency and other Plaintiffs filed a civil action against the State in the Superior Court of California for the County of Sacramento (the "Court"), Case No. 34-2008-00016338 CU-BC-GDS, and on or about March 2, 2009 the Court granted Intervenor's Motion to Intervene in the action (the complaint and the complaint in intervention are collectively referred to as the "Action", and the parties to the lawsuit are referred to individually as "Party", and collectively as "Parties");

B. WHEREAS, each of the Plaintiffs and Intervenor to said Action has a contract with the State for a supply of water from the State Water Project ("SWP") which existing contracts are referred to as the "SWP Contracts" or "Water Supply Contracts".

C. WHEREAS, the Parties' claims in the Action relate to disputes over the meaning of the Water Supply Contracts regarding Agency and the other Plaintiffs' claimed rights to water under their Contracts pursuant to Water Code section 11460, *et seq.*, and section 10505, commonly referred to as the "area of origin statutes";

D. WHEREAS, each Party disputes the interpretation of the SWP Contracts advanced by the other Parties, and the State and Intervenor dispute whether any of the

Plaintiffs have established area of origin rights, and each Party denies that any other Party is entitled to any relief based on the claims alleged in the Action;

E. WHEREAS, the Agency, the State and Intervenors have entered into a Settlement Agreement _____, 2013, to compromise, resolve, settle, and terminate any and all of the disputes or claims in the Action on terms and conditions set forth therein (the "Settled Disputes and Claims"). The Settled Disputes and Claims include any and all disputes or claims related to whether any Plaintiff is entitled to a preference in water deliveries from the SWP under the terms of the existing SWP Contracts; and

F. Pursuant to Section 2.1 of said Settlement Agreement, the Parties thereto agreed that Agency's Water Supply Contract should be amended to incorporate provisions of the Settlement Agreement, and the State and Agency desire to so amend the Agency's Water Supply Contract.

NOW, THEREFORE, in consideration of the above, it is mutually agreed as follows:

Article 45 (I) is added to the Agency's Water Supply Contract to read:

(I) Provisions Affecting Operations

Notwithstanding anything to the contrary in Article 18, the State shall deliver water to Agency as provided in the *SCWA v. DWR* Settlement Agreement, Sacramento County Superior Court Case No. 34-2008-00016338 CU-BC-GDS, dated _____, 2013, attached hereto as Exhibit "A", consistent with the following provisions affecting operations:

(1) North of Delta Allocation

- (a) General: The State determines State Water Project ("SWP" or "Project") Table A Allocations using existing SWP facility availability and capacities, storage conditions, contractor requests, other demands for Project water, operational and regulatory restrictions, available hydrologic forecast data, as well as other factors that may affect the available supply and the ability to deliver Project water. Each year that this Agreement is in effect, the State shall calculate a separate SWP Table A Allocation for Agency, Solano County Water Agency ("SCWA"), and the City of Yuba City ("Yuba City") (collectively, "the North of Delta (NOD) Contractors"), defined as the NOD Allocation.
- (b) Method: In determining the NOD Allocation for any year, the State shall determine which Project operational or regulatory conditions, if any, impact only the availability of Project water to contractors with service areas that receive water from the Delta Project export facilities South of Delta ("SOD") and which Project operational or regulatory restrictions

have a system-wide impact on water availability to the Project in general. The NOD Allocation shall not be subject to the operational or regulatory restrictions that only affect the south Delta export facilities. The NOD Allocation shall be subject to the operational or regulatory restrictions that impact water availability to the Project on a system-wide basis and in general shall affect the NOD Allocation based on an allocation of responsibility for each such restriction among all contractors.

- (c) Current Allocations: Until the State Water Resources Control Board ("SWRCB") changes its Water Rights Decision D-1641 or Endangered Species Act ("ESA") or other environmental or regulatory requirements affecting SWP operations change, the Parties agree that the State's current operations pursuant to SWRCB D-1641 impact system wide SWP Table A Allocations .

The parties also agree that while current operational requirements pursuant to the ESA impact mostly the SOD Table A Allocation, these ESA requirements also impact the NOD Table A Allocation to the extent that they impact Delta water quality or increase Delta outflow requirements of the SWP. The State produces an "Allocation Analysis" that is derived from model runs that are used to identify possible Table A Allocations. An example of this Analysis is attached hereto as Exhibit B.

The Allocation Analysis is updated as new information becomes available during the water year, usually monthly during the winter/spring season. One study in the current Allocation Analysis is a simulation of the SWP operating under D-1641 at a 90% exceedence hydrology. For the current NOD Allocation referenced in this subsection, that study is expected to be used as the foundation in the determination of the NOD Allocation.

- (d) Future Changes: The State will evaluate the extent to which new or different operational or regulatory restrictions affect the NOD Allocation and will consult with the SWP Contractors regarding the impact, if any, of the changed circumstances on the NOD Allocation method prior to implementation of any change to the NOD Allocation.
- (e) Other Conditions:
- (i) Each NOD Contractor's SWP Table A Allocation shall not exceed that NOD Contractor's annual Table A amount contained in its SWP Contract.
 - (ii) The NOD Allocation shall not affect the ability of any NOD Contractor to participate in and benefit from future SWP facilities.

- (iii) The increase in allocated Table A due to the NOD Allocation shall not be transferred to or from, or exchanged with, a SOD contractor. The Parties agree that any transfers or exchanges are subject to the uniform provisions of the SWP contract, including, but not limited to, Articles 12, 15, 41, 55, and 56(d), and agree that Agency does not have a preferential right under the SWP contract to enter into transfer, exchange or other similar agreements.

That portion of Agency's SWP Table A Water exported south of the Delta for any purpose shall be calculated as provided below:

Water Exported = (Agency's NOD Allocation AF - Agency
service area use AF) x SOD Allocation /NOD Allocation

- (iv) The increase in allocated Table A due to the NOD Allocation shall not be sold through the turnback pool or any multi-year water purchase program that may be developed in the future, or stored outside the service area pursuant to Article 56(c).

(2) Advanced Table A Program

Agency shall furnish the State with a proposed delivery schedule for all requests for Advanced Table A as part of the preliminary water delivery schedule submitted pursuant to Article 12(a). The State will deliver to Agency additional Project Water (referred to as "Advanced Table A"), over and above Agency's NOD Allocation, and any other water supplies approved for transport through the North Bay Aqueduct, including, but not limited to Article 21 water, subject to the following limitations:

- (a) Advanced Table A must be used in the Agency service area (Napa County), and may not be transferred or exchanged.
- (b) Advanced Table A will be accounted for cumulatively from year to year to form a "Cumulative Advanced Table A Balance." Agency's Cumulative Advanced Table A Balance shall not exceed 29,600 acre-feet except as provided below in sub-section (2)(f), below. Advanced Table A will be available after the State makes the final allocation, subject to the limitations in sub-sections (2)(e) and (2)(f), below.
- (c) The Cumulative Advanced Table A Balance shall reset to zero each time that Oroville Reservoir begins flood control operations, or exceeds its allowed flood control capacity, or reaches its storage capacity (3.5 million acre-feet) as determined by the State.
- (d) Agency may elect to return all or part of its Cumulative Advanced Table A Balance within five years of its delivery by the State by providing an equivalent amount of replacement water through a reduction of deliveries

under its NOD Allocation. Article 21 water shall not be eligible as replacement water. In any year in which Agency elects to repay its Cumulative Advanced Table A Balance, Agency shall furnish the State with a proposed delivery schedule pursuant to Article 12(a) showing the reduction in proposed deliveries equivalent to the returned Advanced Table A Amounts.

In any year in which Agency has not returned to the State any of the Advanced Table A Balance delivered by the State five years before, and the NOD Allocation is greater than sixty percent, and the Cumulative Advanced Table A Balance has not been reset to zero in that year, the State shall, after consulting with Agency, deduct from Agency's NOD Allocation an amount equal to the remaining Cumulative Advanced Table A Balance delivered five years before up to that portion of Agency's NOD Allocation that exceeds sixty percent. The deduction shall be reflected in the approved schedules. In years when the NOD Allocation is less than sixty percent, Agency may elect to return all or part of its Cumulative Advanced Table A Balance with any portion of Agency's NOD Allocation for that year. Any year in which Advanced Table A Amounts are returned to the State, the State shall deduct the amount of water returned from Agency's Cumulative Advanced Table A Balance.

- (e) Advanced Table A will be available, up to the annual and cumulative amounts, in all years except those years in which the State's Director is allocating water as required to meet minimum demands for domestic supply, fire protection or sanitation consistent with Article 18(a) of the SWP Contract. The State must meet environmental requirements of the SWP mandated by law and subject to the discretion of the Director prior to allocation of Table A or Advanced Table A.
- (f) Conference Years are years when the current SOD Allocation, as it may change during the year, is less than or equal to 20%. In Conference Years, Agency will not request more than 5,000 acre feet of Advanced Table A, subject to the restrictions described in subsection (2)(e), above.
- (g) Agency may only request and receive a maximum of 7,500 acre-feet of Advanced Table A in any year. Agency may utilize additional Advanced Table A if SCWA and Yuba City do not utilize their maximum annual Advanced Table A, up to a combined annual (SCWA, Agency and Yuba City) total of 27,500 acre feet and with the written permission of the party not utilizing their Advanced Table A. Notice shall be provided to the State in advance of Agency's delivery request for the additional Advanced Table A.
- (h) Advanced Table A shall only be made available after full delivery of Agency's annual allocated Table A and any other Table A deferred or

carried over from a previous year pursuant to Article 12(e). Advanced Table A will not be made available if Agency elects to carryover water pursuant to Article 12(e), or to exchange or store any portion of its allocated Table A amount outside its service area pursuant to Article 56, in that year.

- (i) Annual diversions of Agency's combined NOD Allocation and Advanced Table A, including Advanced Table A not used by SCWA and Yuba City, shall not exceed 29,025 acre-feet in any year.
- (j) Agency shall furnish the State with a proposed delivery schedule for all requests for Advanced Table A as part of the preliminary water delivery schedule submitted pursuant to Article 12(a). The State shall maintain a record showing the running balance of available Advanced Table A, the annual balance, the cumulative balance, past deliveries, returns, resets, etc. The State shall coordinate with Agency in the maintenance of these records.
- (k) Agency shall pay to the State all related charges associated with the delivery of Advanced Table A water.

(3) Limitations on Additional Water Supplies

Except as expressly provided for herein, in consideration of the mutual agreements contained herein and in the Settlement Agreement, and for the term of the existing SWP Contract and any renewal thereof (including during or as a result of any contract extension negotiations), Agency agrees to the following limitations:

- (a) Agency shall not claim any preference or priority under Article 18(a) of the existing SWP Contract.
- (b) Agency shall not request or be entitled to receive a new or separate SWP Contract that will increase Agency's existing total maximum Table A amount, whether pursuant to Article 18(c) of its existing SWP Contract or any other legal authority, except as provided in sub-section (3)(e), below.
- (c) Except as to any State Water Resources Control Board ("SWRCB") applications for waters originating within the Napa River and Lake Berryessa watersheds, Agency agrees to the following limitations on water right applications filed with the SWRCB:
 - (i) Prior to January 1, 2032, Agency shall not file a water right application with the SWRCB to meet existing or future demands within Agency's service area.
 - (ii) If Agency files a water rights application with the SWRCB, to meet existing or future demands within Agency's service area after

January 1, 2032, Agency stipulates that any water right issued on such application will contain the following language:

“No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The SWRCB shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.”

- (iii) These limitations on water rights applications do not apply to any water transfers or petitions for changes of already existing water rights that Agency and its participating agencies pursue and undertake. The State and Intervenors reserve any and all rights they have to protest or challenge any such water transfers or petitions for change.
- (d) Agency agrees that any request to use SWP storage facilities shall be governed by Article 56 of the SWP Contract. Agency agrees that it will not claim a preferential right to request or receive water stored in SWP facilities and will not claim a preferential right to request to contract for or utilize SWP storage facilities based on the Area of Origin or County of Origin laws or any other legal authority.
- (e) The prohibition in sub-section (3)(b) and the time limit in sub-section (3)(c)(i), above, shall not apply if a catastrophic event or Act of God causes a substantial failure in one or more of Agency’s existing or future water supplies intended to serve existing or future water demands within Agency’s service area.

- (f) In the event that Agency files a water right application as provided for in sub-sections (3)(c) and (3)(e), above, or requests a new or separate SWP contract to increase Agency's existing total maximum Table A amount as provided for in sub-section (3)(e), above, or Agency's SWP Contract is no longer in effect, then:
 - (i) Agency has not waived any claim of right associated with the Area of Origin or County of Origin laws, and
 - (ii) The State and Intervenor have not waived any right to challenge or protest any such claims of right.
- (g) The following participating agencies of Agency have also agreed to the limitations and waivers set forth in Section (3), above, and acknowledge the default and remedies provisions set forth in Section (6), below, as evidenced by a separate addendum attached to the Settlement Agreement and Release as Exhibit C to be executed by each of them: City of Napa, City of Calistoga and City of American Canyon.
- (h) Nothing herein shall limit or prohibit Agency from acquiring or purchasing SWP Table A amounts from another SWP Contractor. Any SWP Table A amounts acquired from a SOD contractor shall not be entitled to the NOD Allocation.

(4) Director Discretion

If compliance with a legal mandate or the provisions of this sub-article 45(l) requires exercise of the Director's discretion, such discretion is expressly reserved.

(5) Opinions and Determinations

Consistent with Article 38 of the SWP Contracts, where the terms of this sub-article 45(l) provide for action to be based upon the opinion, approval, review, or determination of any party, such terms are not intended to be and shall never be construed as permitting such opinion, approval, review, or determination to be arbitrary, capricious, or unreasonable.

(6) Default and Remedies

If Agency or any of its participating agencies files an application with the SWRCB prior to 2032 or requests a new or larger SWP Contract, except as allowed by sub-section 2.2.5 of the Settlement Agreement, this is deemed a breach. The State will hold all benefits for Agency under the Settlement Agreement in abeyance until the breaching party cures the breach by withdrawing the application or contract request.

(7) Modification of Sub-article 45(l)

It is expressly understood and agreed that this sub-article 45(l) may not be altered, amended, modified, or otherwise changed in any respect whatsoever except by a writing duly executed by authorized representatives of Agency, the State and Intervenor in the Action. The Parties hereby agree and acknowledge that they will make no claim at any time or place that this sub-article 45(l) has been orally altered or modified or otherwise changed by oral communication of any kind or character.

IN WITNESS WHEREOF, the Parties hereto have executed this amendment on the date first written above.

Approved as to legal form
and sufficiency:

STATE OF CALIFORNIA
DEPARTMENT OF WATER
RESOURCES

Chief Counsel
Department of Water Resources

Mark W. Cowin, Director

NAPA COUNTY FLOOD
CONTROL & WATER
CONSERVATION DISTRICT

Name

Title

EXHIBIT B - EXAMPLE ALLOCATION ANALYSIS

ATTACHMENT 1

EXHIBIT B TO EXHIBIT 1

Allocation Analysis for 2012 (TAF) WY 2012 based on April Water Supply Forecast

2011															2012										Total (MAF)	Possible Table A %
	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec													
50% Exceedence (90% Fall) D1641		D				SRI = 10.6		SVI = 6.4		Possible 2012 Table A Delivery =						3.091	74%									
Oroville EOM Storage	2545	2545	2533	2943	3221	3173	2921	2533	2056	1757	1579	1462	1445	-												
Feather R. release (avg. cfs)	4460	1760	2520	1810	1510	1460	3190	5510	7710	5780	4000	2490	1760	-												
SWP Banks PP exports	318	303	109	154	133	84	165	236	383	371	166	245	265	2.614												
Potential South of Delta Art. 21 Water Avail.	0	150	0	273	80	0	0	0	0	0	0	0	0	0.503												
SWP San Luis EOM Storage	964	1062	1054	1062	1062	881	647	444	396	374	235	235	317	-												
SWP Contractor Deliveries	274	181	127	40	119	224	386	428	422	390	316	258	192	3.084												
50% Exceedence (90% Fall) Most Restrictive OMR		D				SRI = 10.6		SVI = 6.4		Possible 2012 Table A Delivery =						2.639	63%									
Oroville EOM Storage	2545	2545	2533	2943	3221	3173	3021	2466	1999	1701	1523	1406	1389	-												
Feather R. release (avg. cfs)	4460	1760	2520	1810	1510	1460	1510	8230	7550	5760	4000	2490	1760	-												
SWP Banks PP exports	318	228	104	90	63	42	41	415	413	401	166	245	265	2.473												
Potential South of Delta Art. 21 Water Avail.	0	0	0	0	0	0	0	0	0	0	0	0	0	0.000												
SWP San Luis EOM Storage	964	997	974	1001	927	723	409	436	474	539	448	488	600	-												
SWP Contractor Deliveries	274	181	127	68	123	205	341	375	365	331	267	218	162	2.762												
50% Exceedence (90% Fall) Mod Restrictive OMR		D				SRI = 10.6		SVI = 6.4		Possible 2012 Table A Delivery =						2.706	65%									
Oroville EOM Storage	2545	2545	2533	2943	3221	3173	3021	2466	1970	1672	1494	1377	1360	-												
Feather R. release (avg. cfs)	4460	1760	2520	1810	1510	1460	1510	8230	8020	5760	4000	2490	1760	-												
SWP Banks PP exports	318	228	104	90	87	84	70	415	413	401	166	245	236	2.539												
Potential South of Delta Art. 21 Water Avail.	0	0	0	0	0	0	0	0	0	0	0	0	0	0.000												
SWP San Luis EOM Storage	964	997	974	1001	948	781	487	503	531	587	488	522	600	-												
SWP Contractor Deliveries	274	181	127	68	126	210	351	386	375	341	274	224	167	2.829												
50% Exceedence (90% Fall) Least Restrictive OMR		D				SRI = 10.6		SVI = 6.4		Possible 2012 Table A Delivery =						2.714	65%									
Oroville EOM Storage	2545	2545	2533	2943	3221	3173	2933	2440	1963	1665	1487	1370	1353	-												
Feather R. release (avg. cfs)	4460	1760	2520	1810	1510	1460	2990	7220	7710	5760	4000	2490	1760	-												
SWP Banks PP exports	318	228	104	90	87	84	151	349	413	401	166	245	228	2.546												
Potential South of Delta Art. 21 Water Avail.	0	0	0	0	0	0	0	0	0	0	0	0	0	0.000												
SWP San Luis EOM Storage	964	997	974	1001	948	780	566	515	542	597	497	530	600	-												
SWP Contractor Deliveries	274	181	127	68	126	211	352	387	376	342	275	225	168	2.837												
90% Exceedence (90% Fall) D1641		D				SRI = 9.5		SVI = 6.0		Possible 2012 Table A Delivery =						2.839	68%									
Oroville EOM Storage	2545	2545	2533	2943	3202	3106	2891	2440	1928	1695	1545	1429	1442	-												
Feather R. release (avg. cfs)	4460	1760	2430	1810	1510	2130	2390	5660	7350	4550	3550	2490	1250	-												
SWP Banks PP exports	318	303	109	154	124	65	60	266	392	256	164	244	230	2.367												
Potential South of Delta Art. 21 Water Avail.	0	150	0	273	50	0	0	0	0	0	0	0	0	0.473												
SWP San Luis EOM Storage	964	1062	1054	1062	1062	882	579	444	444	342	229	252	317	-												
SWP Contractor Deliveries	274	181	127	40	110	203	350	389	383	354	286	234	174	2.832												
90% Exceedence (90% Fall) Most Restrictive OMR		D				SRI = 9.5		SVI = 6.0		Possible 2012 Table A Delivery =						2.445	59%									
Oroville EOM Storage	2545	2545	2533	2943	3202	3129	2933	2358	1850	1598	1448	1332	1345	-												
Feather R. release (avg. cfs)	4460	1760	2430	1810	1510	1760	2070	7680	7290	4870	3550	2490	1250	-												
SWP Banks PP exports	318	228	104	90	63	42	41	398	396	283	164	244	230	2.283												
Potential South of Delta Art. 21 Water Avail.	0	0	0	0	0	0	0	0	0	0	0	0	0	0.000												
SWP San Luis EOM Storage	964	997	974	1001	934	745	458	498	548	523	452	509	600	-												
SWP Contractor Deliveries	274	181	127	68	117	189	313	345	335	304	244	199	148	2.568												
90% Exceedence (90% Fall) Mod Restrictive OMR		D				SRI = 9.5		SVI = 6.0		Possible 2012 Table A Delivery =						2.465	59%									
Oroville EOM Storage	2545	2545	2533	2943	3202	3106	2884	2352	1844	1604	1454	1338	1351	-												
Feather R. release (avg. cfs)	4460	1760	2430	1810	1510	2130	2500	6980	7290	4670	3550	2490	1250	-												
SWP Banks PP exports	318	228	104	90	87	65	67	356	396	271	164	244	230	2.302												
Potential South of Delta Art. 21 Water Avail.	0	0	0	0	0	0	0	0	0	0	0	0	0	0.000												
SWP San Luis EOM Storage	964	997	974	1001	957	790	526	521	569	529	456	511	600	-												
SWP Contractor Deliveries	274	181	127	68	117	190	316	348	338	306	246	201	150	2.588												
90% Exceedence (90% Fall) Least Restrictive OMR		D				SRI = 9.5		SVI = 6.0		Possible 2012 Table A Delivery =						2.465	59%									
Oroville EOM Storage	2545	2545	2533	2943	3202	3106	2802	2352	1844	1604	1454	1338	1351	-												
Feather R. release (avg. cfs)	4460	1760	2430	1810	1510	2130	3880	5640	7290	4670	3550	2490	1250	-												
SWP Banks PP exports	318	228	104	90	87	65	149	274	396	271	164	244	230	2.302												
Potential South of Delta Art. 21 Water Avail.	0	0	0	0	0	0	0	0	0	0	0	0	0	0.000												
SWP San Luis EOM Storage	964	997	974	1001	957	790	608	521	569	529	456	511	600	-												
SWP Contractor Deliveries	274	181	127	68	117	190	316	348	338	306	246	201	150	2.588												

ATTACHMENT 1

EXHIBIT B TO EXHIBIT 1

Assumptions for 2012 Allocation Analysis

Notes:

- Deliveries based on SWPAO's 2012 60% delivery file.
- 100% FRSA delivery assumed for all forecasts.
- Probability of exceedence is based on April Water Supply Forecast.
- Delivery of half of the Lower Yuba River Accord Component 1 water is assumed in all the OMR cases.
- Determination of Biological Opinions' (BiOp) impacts at the export facilities - SWP and CVP will share available water evenly under the BiOp restrictions.
- D1641 cases include the estimated costs associated with operating to the 2008 USFWS BiOp for Delta Smelt, 2009 NMFS BiOp for Salmonids and the 2010 DFG Longfin Incidental Take

Estimated Delivery in Details	(1) '12 Table A	(2) Txfr Adj	(3) '12-'13 ANTCO	(4) '11 CO & Others	(1+3-2) 2012 Allocation	(1+2+4) 2012 Delivery	(1+3+4) Total Water Available for '12
50% Exceedence (90% Fall) D1641	2.816 maf	0.000 maf	0.275 maf	0.268 maf	3.091 maf	3.084 maf	3.359 maf
50% Exceedence (90% Fall) Most Restrictive OMR	2.364 maf	0.000 maf	0.275 maf	0.398 maf	2.639 maf	2.762 maf	3.037 maf
50% Exceedence (90% Fall) Mod Restrictive OMR	2.431 maf	0.000 maf	0.275 maf	0.398 maf	2.706 maf	2.829 maf	3.104 maf
50% Exceedence (90% Fall) Least Restrictive OMR	2.439 maf	0.000 maf	0.275 maf	0.398 maf	2.714 maf	2.837 maf	3.112 maf
90% Exceedence (90% Fall) D1641	2.564 maf	0.000 maf	0.275 maf	0.268 maf	2.839 maf	2.832 maf	3.107 maf
90% Exceedence (90% Fall) Most Restrictive OMR	2.170 maf	0.000 maf	0.275 maf	0.398 maf	2.445 maf	2.568 maf	2.843 maf
90% Exceedence (90% Fall) Mod Restrictive OMR	2.190 maf	0.000 maf	0.275 maf	0.398 maf	2.465 maf	2.588 maf	2.863 maf
90% Exceedence (90% Fall) Least Restrictive OMR	2.190 maf	0.000 maf	0.275 maf	0.398 maf	2.465 maf	2.588 maf	2.863 maf

Reservoir Targets

- Lake Oroville storage target = 1.000 MAF + "F" x (3.045 MAF - 1.000 MAF) on September 30; where "F" = 1/2 x Possible Table A %.

Exceedence	Possible Table A	Storage Target
50% Exceedence (90% Fall) D1641	74%	1.76 MAF
50% Exceedence (90% Fall) Most Restrictive OMR	63%	1.65 MAF
50% Exceedence (90% Fall) Mod Restrictive OMR	65%	1.66 MAF
50% Exceedence (90% Fall) Least Restrictive OMR	65%	1.67 MAF
90% Exceedence (90% Fall) D1641	68%	1.70 MAF
90% Exceedence (90% Fall) Most Restrictive OMR	59%	1.60 MAF
90% Exceedence (90% Fall) Mod Restrictive OMR	59%	1.60 MAF
90% Exceedence (90% Fall) Least Restrictive OMR	59%	1.60 MAF

- SWP San Luis storage targets for 2012

Exceedence	Deadpool	Total
All	42 taf	42 taf

- Fall Storage Level (OMR cases only)

>>>> for the 50% and 90% Exceedences

	Deadpool	'12-'13 ANTCO =	Required Storage
Oct-12	42 taf	186 taf	228 >>> 1/3 of '12-'13 ANTCO is available in Oct. '12
Nov-12	42 taf	372 taf	414 >>> 2/3 of '12-'13 ANTCO is available in Nov. '12
Dec-12	42 taf	558 taf	600 >>> 100% of '12-'13 ANTCO is available in Dec. '12

- Fall Storage Level (D1641 cases only)

>>>> for the 50% and 90% Exceedences

	Deadpool	'12-'13 ANTCO =	Required Storage
Oct-12	42 taf	92 taf	134 >>> 1/3 of '12-'13 ANTCO is available in Oct. '12
Nov-12	42 taf	183 taf	225 >>> 2/3 of '12-'13 ANTCO is available in Nov. '12
Dec-12	42 taf	275 taf	317 >>> 100% of '12-'13 ANTCO is available in Dec. '12

OMR Assumptions

	Most Restrictive OMR	Moderate OMR	Least Restrictive OMR
January	-1250	-3500	-5000
February	-1250	-3500	-5000
March	-1250	-2000	-5000
April	-1250	-2000	-3500
May	-1250	-2000	-5000
June	-1250	-2500	-5000
December 1-17	-2000		
December 18-31	-1250	-2000	-5000

* Targets in accordance with the USFWS Delta Smelt BO, NMFS Salmon BO and the Longfin Incidental Take Permit.

EXHIBIT C - ADDENDUM FOR PARTICIPATING AGENCIES

**EXHIBIT C
THE CITY OF NAPA'S
ADDENDUM TO THE SETTLEMENT AGREEMENT AND RELEASE**

THIS ADDENDUM TO THE SETTLEMENT AGREEMENT AND RELEASE is approved and entered into by the City of Napa, a Participating Agency of the Napa County Flood Control and Water Conservation District ("Plaintiff" or "Napa").

RECITALS

A. WHEREAS, on or about July 17, 2008, Napa and other Plaintiffs filed a civil action against the Department of Water Resources ("DWR") in the Superior Court of California for the County of Sacramento (the "Court"), Case No. 34-2008-00016338 CU-BC-GDS, and on or about March 2, 2009 the Court granted Intervenor's¹ Motion to Intervene in the action (the complaint and the complaint in intervention are collectively referred to as the "Action");

B. WHEREAS, Napa and each of the other Plaintiffs and Intervenor has a contract with DWR for a supply of water from the State Water Project ("SWP") which existing contracts are referred to as the "SWP Contracts" or "Water Supply Contracts";

C. WHEREAS, the Plaintiffs, DWR, and Intervenor (collectively "Parties") claims in the Action relate to disputes over the meaning of the Water Supply Contracts regarding Plaintiffs' claimed rights to water under their Contracts pursuant to Water Code section 11460, *et seq.*, and section 10505, commonly referred to as the "area of origin statutes";

D. WHEREAS, each Party disputes the interpretation of the SWP Contracts advanced by the other Parties, and DWR and Intervenor dispute whether any of the Plaintiffs have established area of origin rights and each Party denies that any other Party is entitled to any relief based on the claims alleged in the Action;

E. WHEREAS, the Parties wish to compromise, resolve, settle, and terminate any and all of the disputes or claims in the Action on terms and conditions set forth herein (the "Settled Disputes and Claims"). The Settled Disputes and Claims include any and all disputes or claims related to whether any Plaintiff is entitled to a preference in water deliveries from the SWP under the terms of the existing SWP Contracts;

F. WHEREAS, the Parties and Participating Agency represent that they understand they are waiving significant legal rights by signing the Settlement Agreement and Release and this Addendum, and each Party in no way admits responsibility for debts, liability, and/or obligations owed to any other Party or third parties, and this Agreement is made in a spirit of compromise for the sole purpose of avoiding the uncertainties and expenses of litigation with respect to the Settled Disputes and Claims;

¹ The Intervenor includes the following State Water Project ("SWP") contractors: Alameda County Flood Control and Water Conservation District, Zone 7, Alameda County Water District, Antelope Valley-East Kern Water Agency, Castaic Lake Water Agency, Central Coast Water Authority, Coachella Valley Water District, Kern County Water Agency, Metropolitan Water District of Southern California, Mojave Water Agency, Palmdale Water District, San Geronimo Pass Water Agency, Santa Clara Valley Water District, and Tulare Basin Water Storage District.

G. WHEREAS, the Parties to the Action wish to compromise, resolve, settle, and terminate any and all of the disputes or claims in the Action on terms and conditions set forth in the attached Settlement Agreement and Release dated _____;

H. WHEREAS, the City of Napa is a Participating Agency of Napa and has an agreement with Napa for a supply of SWP water;

I. WHEREAS, the Settlement Agreement and Release may affect the amount of SWP water delivered to the City of Napa pursuant to its contract with Napa, and the Settlement Agreement and Release contains limitations on additional water supplies for Napa and the City of Napa; and

J. NOW, THEREFORE, in consideration of the mutual covenants contained herein, and intending to be legally bound hereby, the City of Napa acknowledges and agrees to the following:

AGREEMENT

1. Recitals Incorporated. The recitals set forth above, including all definitions therein, are expressly incorporated as terms of this Agreement.

2. Limitations on Additional Water Supplies and Remedies. The City of Napa agrees to abide by the limitations and waivers set forth in subsection 2.2 of the Settlement Agreement and Release as if it were a party thereto, and acknowledges the default and remedies provisions set forth in section 5 of the Settlement Agreement and Release. Subsection 2.2 and section 5 of the Settlement Agreement and Release provide as follows:

2.2 Limitations on Additional Water Supplies: Except as expressly provided for herein, in consideration of the mutual agreements contained in this settlement agreement, and for the term of the existing SWP Contract and any renewal thereof (including during or as a result of any contract extension negotiations), Napa agrees to the following limitations:

2.2.1 Napa shall not claim any preference or priority under Article 18(a) of the existing SWP Contract.

2.2.2 Napa shall not request or be entitled to receive a new or separate SWP Contract that will increase Napa's existing total maximum Table A amount, whether pursuant to Article 18(c) of its existing SWP Contract or any other legal authority, except as provided in subsection 2.2.5 below.

2.2.3 Napa agrees to the following limitations on water right applications filed with the SWRCB.

- a. Prior to January 1, 2032, Napa shall not file a water right application with the SWRCB to meet existing or future demands within Napa's service area.

- b. If Napa files a water rights application with the SWRCB, to meet existing or future demands within Napa's service area after January 1, 2032, Napa stipulates that any water right issued on such application will contain the following language:

“No diversion is authorized by this permit when satisfaction of inbasin entitlements requires release of supplemental Project water by the Central Valley Project or the State Water Project.

Inbasin entitlements are defined as all rights to divert water from streams tributary to the Sacramento-San Joaquin Delta or the Delta for use within the respective basins of origin or the Legal Delta, unavoidable natural requirements for riparian habitat and conveyance losses, and flows required by the State Water Resources Control Board for maintenance of water quality and fish and wildlife. Export diversions and Project carriage water are specifically excluded from the definition of inbasin entitlements.

Supplemental Project water is defined as that water imported to the basin by the projects plus water released from Project storage which is in excess of export diversions, Project carriage water, and Project inbasin deliveries.

The SWRCB shall notify permittee of curtailment of diversion under this term after it finds that supplemental Project water has been released or will be released. The Board will advise permittee of the probability of imminent curtailment of diversion as far in advance as practicable based on anticipated requirements for supplemental Project water provided by the Project operators.”

- 2.2.4 Napa agrees that any request to use SWP storage facilities shall be governed by Article 56 of the SWP Contract. Napa agrees that it will not claim a preferential right to request or receive water stored in SWP facilities and will not claim a preferential right to request to contract for or utilize SWP storage facilities based on the Area of Origin or County of Origin laws or any other legal authority.
- 2.2.5 The prohibition in subsection 2.2.2 and the time limit in subsection 2.2.3(a) shall not apply if a catastrophic event or Act of God causes a substantial failure in one or more of Napa's existing or future water supplies intended to serve existing or future water demands within Napa's service area.
- 2.2.6 In the event that Napa files a water right application as provided for in subsections 2.2.3 and 2.2.5, or requests a new or separate SWP contract to increase Napa's existing total maximum Table A amount as provided for in subsection 2.2.5, or Napa's SWP Contract is no longer in effect, then:

- (a) Napa has not waived any claim of right associated with the Area of Origin or County of Origin laws, and
- (b) DWR and Intervenors have not waived any right to challenge or protest any such claims of right.

2.2.7 The following participating agencies of Napa have also agreed to the limitations and waivers set forth in subsection 2.2, and acknowledge the default and remedies provisions set forth in section 5, as evidenced by a separate addendum to the Settlement Agreement (“**Exhibit C**”) to be executed by each of them: City of Napa, City of Calistoga, and City of American Canyon.

2.2.8 Nothing herein shall limit or prohibit Napa from acquiring or purchasing SWP Table A amounts from another SWP Contractor. Any SWP Table A amounts acquired from a SOD contractor shall not be entitled to the NOD Allocation.

2.2.9 These limitations on water rights applications do not apply to any water transfers or petitions for changes of already existing water rights that Napa and its participating agencies pursue and undertake. DWR and Intervenors reserve any and all rights they have to protest or challenge any such water transfers or petitions for change.

5. Default and Remedies

- 5.1 If Napa or any of its participating agencies files an application with the SWRCB prior to 2032 or requests a new or larger SWP Contract, except as allowed by subsection 2.2.5, this is deemed a breach. DWR will hold all benefits for Napa under the Settlement Agreement and Release in abeyance until the breaching party cures the breach by withdrawing the application or contract request.
- 5.2 If any Party to this Settlement Agreement, or Participating Agency that has adopted provisions of this Settlement through addendum, breaches, the Parties agree that monetary damages alone would be insufficient. Any non-breaching party can request specific performance, including but not limited to injunctive relief, fourteen (14) days after providing notice of the alleged breach to other Parties as provided in section 5.3 below.
- 5.3 In the event of an alleged breach, the non-breaching Party agrees to give notice of the alleged breach to all other parties to the Agreement and to consult with the Parties for the purpose of attempting in good faith to resolve any disputes prior to the initiation of litigation or court proceedings.
- 5.4 The use by the Party or the State of any remedy specified herein for the enforcement of the Settlement Agreement is not exclusive and shall not deprive either from using any other remedy provided by law.

5.5 In any action by any of the Parties to enforce or interpret the Settlement Agreement, the prevailing party is entitled to attorney fees and costs, including expert costs.

5.6 If Napa breaches the Settlement Agreement, the limitation provisions in subsection 2.2 will survive as against Napa.

3. Independent Investigation. The City of Napa has made such investigation of the facts pertaining to this Addendum and of all matters pertaining thereto as it deems necessary.

4. Voluntary and Knowing Execution. The City of Napa represents and warrants to each Party to the Action that it has thoroughly read and considered all aspects of this Addendum and the Settlement Agreement and Release, that it understands all provisions of this Addendum and the Settlement Agreement and Release, that it has had the opportunity to consult with counsel, and that it is voluntarily and knowingly entering into this Addendum to the Settlement Agreement and Release without duress or coercion of any kind.

SO AGREED:

CITY OF NAPA

APPROVED AS TO FORM:

By _____
JILL TECHEL
Mayor

By _____
MICHAEL BARRETT
City Attorney

ATTEST:

COUNTERSIGNED:

By _____
DOROTHY ROBERTS
City Clerk

By _____
DESIREE BRUN
City Auditor

EXHIBIT D – NOTICE TO CONTRACTORS

STATE OF CALIFORNIA
• DEPARTMENT OF WATER RESOURCES

• NATURAL RESOURCES AGENCY

DRAFT SAMPLE NOTICE TO
STATE WATER PROJECT CONTRACTORS

NUMBER:

DATE:

SUBJECT: Informational Bulletin on Various Contracts for Project Water

FROM: _____
DEPUTY DIRECTOR,
DEPARTMENT OF WATER RESOURCES

The Department of Water Resources may consider various contractual approaches to provide water to requesting entities. Possible approaches would include entering into a new or amended State Water Project Long-Term Water Supply Contract. In considering future requests for water supply and in developing any new agreements for water supply, DWR generally will apply the following principles:

- a. The quantity of water to be provided will be limited to that amount needed to meet the demonstrated needs within the entity's service area and also limited to that amount that the entity could reasonably be expected to be established by an application to appropriate water filed with the SWRCB under the provisions of Water Code sections 11460 through 11463.
- b. An entity with an existing SWP Contract will not receive a new or amended SWP Contract that would increase its existing total maximum Table A Amount unless and until it is fully utilizing its current SWP Contract Table A Amount within its service area.
- c. An entity will pay its proportionate share of all retroactive and prospective costs of conservation facilities and applicable transportation facilities, including the payment of interest thereon.
- d. The Contract will be subject to the uniformity requirements applicable to the existing SWP Contracts, such that the terms and conditions of the Contract will be substantially uniform with the basic terms and conditions of existing SWP Contracts, and specifically will be subject to the uniform shortage provisions contained in Article 18(a) of existing SWP Contracts.