

SACRAMENTO RIVER JOINT INTAKE AND DIVERSION AGREEMENT

This Agreement, dated for reference purposes as of December 21, 2010, is made by and between the Woodland-Davis Clean Water Agency, a joint powers authority, and Reclamation District 2035, a reclamation district, who agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the words and phrases below shall have the following meanings:

1.1. “Agreement” means this Sacramento River Joint Intake and Diversion Agreement and includes all exhibits.

1.2. “Agency” means the Woodland-Davis Clean Water Agency.

1.3. “Approvals” mean the permits, licenses, entitlements and approvals that are required under federal, state and/or local laws and regulations to construct and Operate the Project, including, but not limited to, conducting required studies, compliance with the federal and state Endangered Species Acts, preparation and processing of environmental documentation under the National Environmental Policy Act and California Environmental Quality Act, compliance with water quality laws, preparation and processing of permit and license applications, and related consultation and negotiations with involved regulatory agencies and their staffs. Approval does not include any permit, license, entitlement or approval of a Party’s water rights, water right permit(s) and license(s), or water supply contract(s).

1.4. “Bureau” means the U.S. Bureau of Reclamation.

1.5. “Capital Costs” mean the costs of Final Engineering, Construction Work, financing, land and rights-of-way acquisition, Permitting (including costs of environmental compliance, mitigation costs or filing fees related to Permitting), and the funding of a reasonable construction reserve. Capital Costs include both the Initial Capital Costs and the subsequent Capital Costs of the repair, replacement, modification and improvement of the Project facilities.

1.6. “cfs” means cubic feet per second.

1.7. “Common Facilities” means the common Project facilities as described in section 3.2.1 and described and shown in the attached Exhibit A.

1.8. “Construction Work” means the procurement of material, parts and equipment, conducting construction, construction management and related field services including project management activities, contractor management, design assistance during construction, as-built-drawings, and startup testing.

1.9. “Dedicated Capacity” means the capacity of the Project facilities dedicated to each Party as set forth in section 3.3.

1.10. “DFG” means the California Department of Fish and Game.

1.11. “DFG Screen Requirements” mean the Project fish screen design, construction and Operation related requirements, conditions and criteria set forth in the Protest Dismissal Agreement between DFG, City of Davis, City of Woodland and University of California, Davis dated November 4, 2009.

1.12. “Final Engineering” means engineering, design and related services and activities that are necessary or appropriate to develop and prepare final design plans, specifications, drawings, and bidding and construction documents for the construction and installation of the Project.

1.13. “Fixed Operating Costs” means those Project-related Operation costs (excluding the Minor Operating Costs) that are incurred irrespective of the amount of Project Water conveyed through the Project, including, but not limited to, employee salaries and expenses, consultant and service provider costs, administration, overhead, insurance, Capital Costs (excluding Initial Capital Costs), and debt service costs. Costs to Operate the Project fish screen shall be considered Fixed Operating Costs.

1.14. “Force Majeure” means a strike, lockout, failure or refusal of any person or entity (other than a Party) to comply with an agreement to obtain or ship material or equipment, industrial disturbance, act of a public enemy, war, blockade, insurrection, riot, epidemic, civil disturbance, explosion, sabotage, threat of physical harm or damage resulting in the evacuation or shutdown of Project facilities, landslide, lightning, earthquake, volcanic eruption, fire, flood, washout, other natural disaster, restraint by court order or government agency (other than a Party) having jurisdiction over the Project, and any other cause not within the control of the Party claiming Force Majeure and which, by the exercise of due diligence, the Party is unable to prevent or overcome.

1.15. “Initial Capital Costs” mean the Capital Costs of the initial Permitting, Final Engineering and Construction Work of and for the Project facilities described and shown on Exhibit A.

1.16. “Management Committee” means the committee established by section 4.2.

1.17. “Minor Operating Costs” mean Common Facilities-related Operation costs for security, parking, fencing and landscape maintenance.

1.18. “Operate” means operate, maintain, manage, monitor, upgrade, repair, replace, modify and improve and “Operation” means operation, maintenance, management of, monitoring of, upgrade, repair, replacement, modification and improvement.

1.19. “Operations and Maintenance Manual” means the manual to be adopted by the Management Committee pursuant to section 4.2.1.

1.20. “Operator” means the Party, company or entity designated as such pursuant to section 9.1.1.

1.21. “Parties” mean the Agency and RD 2035. “Party” means either one of the Parties.

1.22. “Permitting” means all reasonable, necessary and appropriate activities and documents to apply for, process and acquire the Approvals.

1.23. “Points of Delivery” means the points of delivery of Project Water to a Party as described in section 3.2.3.

1.24. “Policy Committee” means the committee established by section 4.3.

1.25. “Project” means a facility for the joint diversion and intake of water from the Sacramento River as shown and described on Exhibit A, and any changes and refinements to the Project that may be approved by the Parties pursuant to this Agreement.

1.26. “Project Engineer” means the firm or person appointed as such pursuant to section 7.3.

1.27. “Project Land” means the land area described in section 3.2.2 and shown in Exhibit A.

1.28. “Project Lease Area” means the lease area described in section 3.2.2 and shown in Exhibit A.

1.29. “Project Manager” means the person appointed as such pursuant to section 7.2.

1.30. “Project Schedule” means the schedule described in section 3.4 and Exhibit B.

1.31. “Project Water” means water that is diverted and pumped through the Project facilities.

1.32. “RD 2035” means Reclamation District 2035.

1.33. “Real Property Agreement” means the Real Property Agreement described in section 2.4.

1.34. “Separate Facilities” means the separate Project facilities as described and shown in section 3.2.1 and Exhibit A.

1.35. “Variable Operating Costs” mean those Project-related Operation costs that vary based on the volume of Project Water actually conveyed through the Project (e.g., power costs).

1.36. “Water Agreement” means the Water Agreement described in section 2.4.

2. RECITALS. This Agreement is made with reference to the following background recitals and conditions.

2.1. RD 2035 diverts water from the Sacramento River and delivers it to landowners within its service area for irrigation and other purposes. RD 2035 owns and operates an intake facility on the river. The intake does not have a fish screen. RD 2035 desires to construct a new screened intake facility.

2.2. The Agency was created in 2009 to undertake and implement a project to divert water from the Sacramento River, transmit the water for treatment to a new water treatment facility, and deliver treated surface water to the Cities of Davis and Woodland and University of California, Davis for use in their respective service areas. Agency needs a river intake facility for its water supply project.

2.3. The Parties each have the authority to develop, construct, operate and maintain a water supply intake facility. The Parties desire to jointly pursue development and implementation of a project that would provide, if finally approved, funded, implemented and constructed, a new screened water supply intake on the river that complies with the DFG Screen Requirements and other applicable federal, state and local laws and regulations.

2.4. This Agreement shall take effect when approved and executed by both Parties. After approval and execution by Agency, RD 2035 shall have until March 31, 2011 to approve and execute the Agreement, during which time Agency shall not rescind its approval of the Agreement. If RD 2035 has not approved and executed the Agreement by March 31, 2011, then this Agreement shall become null and void. Concurrent with the approval of this Agreement, Agency, and Tri-City Water and Farm, LLC (“Tri-City”) have entered into the Agreement for Conveyance of Real Property and Easements dated December 21, 2010 for reference purposes to provide for the conveyance of the Project Land and certain easements from Conaway Preservation Group, LLC (“CPG”) to Agency and RD 2035, as described more fully in section 5.2, and Agency and Tri-City have entered the Water Agreement dated December 21, 2010 for reference purposes to provide for the purchase of water rights by Agency. Although those agreements and this Agreement are all effective

immediately upon their execution by those parties to the subject agreement, the satisfaction (or written waiver by both parties hereto) of each of the following on or before March 31, 2011 constitutes a condition precedent to the parties' rights and obligations under this Agreement:

2.4.1. CPG shall have executed and delivered the Water Agreement;

2.4.2. RD 2035 and CPG shall have executed and delivered the Agreement for Conveyance of Real Property and Easements;

2.4.3. Agency and the Cities of Davis and Woodland shall have entered into the Installment Purchase Agreements; and,

2.4.4. Agency shall have executed the Davis Assignment Agreement and Woodland Assignment Agreement and delivered the Assignment Agreements to the escrow officer pursuant to the terms of the Water Agreement.

3. JOINT PROJECT DEVELOPMENT

3.1. General. The Parties agree to jointly develop, implement, cooperate on, and share in the costs of Permitting, Final Engineering, financing, land and rights-of-way acquisition, Construction Work and Operation of and for the Project, on and subject to the terms of this Agreement.

3.2. Project Facilities.

3.2.1. The Project facilities are shown and described in Exhibits A-1 and A-2. The Final Engineering of the Project shall be based on and consistent with Exhibits A-1 and A-2, unless otherwise modified pursuant to section 4. The Project shall be designed to have a total diversion capacity of 400 cfs. The Project fish screen shall be designed and constructed in accordance with the DFG Screen Requirements and other applicable federal and state laws and regulations. As shown and described on Exhibits A-1 and A-2, the Project facilities are split into the (a) two sets of Separate Facilities, which are the separate pumps, pump inlet pipes, pump rooms, pipelines, water meter, electrical facilities and meter, and other facilities and equipment to provide Project Water to each Party, and (b) Common Facilities, which are the water intake and fish screen, intake and pump station structure, parking, landscape, fencing and gates, security and other facilities and equipment essential to provide Project Water to both Parties. A Party's Separate Facilities shall begin with the inlet pipes on the low-pressure side of its pumps. There shall be a meter as part of each Party's Separate Facilities that will measure the amount of Project Water pumped and diverted by each Party.

3.2.2. Some Project facilities will be located on private land to be acquired for the Project in fee simple ownership (the "Project Land"). Some Project facilities will be located in the bed and banks of the Sacramento River on land owned by the State Lands Commission. For the State Lands Commission owned lands (the "Project Lease Area"), the Parties shall acquire a lease or other entitlement pursuant to section 5.3. The Project Land and Project Lease Area are shown on Exhibit A-2.

3.2.3. There shall be fixed Points of Delivery of Project Water from the Common Facilities to a Party's Separate Facilities. The Points of Delivery shall be the beginning of each inlet pipe on the low-pressure side of a Party's pumps. The Final Engineering plans shall show each Point of Delivery. There shall be one Point of Delivery for each pump.

3.3. Dedicated Capacity. Each Party shall have a Dedicated Capacity in a share of the Project diversion capacity as follows:

RD 2035	320 cfs	80%
Agency	80 cfs	20%

Upon completion of construction of the Project facilities (as evidenced by Management Committee approval pursuant to section 8.4), each Party shall be entitled to exclusive use of its Dedicated Capacity in the Project on and subject to the terms of this Agreement.

3.4. Project Schedule. The Parties agree to pursue, develop and implement the Final Engineering, Permitting, financing and Construction Work of and for the Project pursuant to the Project Schedule attached as Exhibit B. The Management Committee may modify the Project Schedule from time to time.

3.5. Phases. The development and implementation of the Project shall be in the following phases, as described in more detail below: Permitting/Design Phase; Construction Work Phase; and, Operation Phase.

3.6. Water Supply and Rights. This Agreement does not provide for the water supply, water rights, water right permit(s) or license(s), and/or contract water supplies that may be necessary or appropriate for a Party to utilize its Dedicated Capacity in the Project, and the respective obligations of the Parties hereunder are not contingent or conditioned upon the Parties maintaining such rights, permits, and/or licenses. Rather, each Party shall be responsible for its raw water supply through the acquisition, maintenance, defense and protection of its own water rights, water right permit(s) and license(s), and water supply contract(s).

4. PROJECT MANAGEMENT AND DISPUTE RESOLUTION

4.1. Project Coordination. It is the intention of the Parties to work collaboratively and strive to reach consensus on the Permitting, Final Engineering, financing, Construction Work and Operation of and for the Project during all phases of this Agreement. To facilitate collaboration and consensus, the Parties establish the following governance structure for Project coordination and management and dispute resolution.

4.2. Management Committee. There is established a two-person Management Committee consisting of one person to be appointed by each Party. A Party's representative on the Management Committee shall serve at the pleasure of that Party and a Party may change its representative at any time. During the Permitting/Design Phase, Construction Work Phase and first year of the Operation Phase, the Management Committee shall meet at least monthly. After the first year of the Operation Phase, the Management Committee shall determine an appropriate meeting frequency, but it shall meet at least twice per year.

4.2.1. Prior to commencement of the Operation Phase, the Management Committee shall prepare and adopt an Operations and Maintenance Manual. The Operations and Maintenance Manual shall include standard operating procedures, standards, specifications and practices to govern (a) Operator's Operation of the Common Facilities, (b) each Party's Operation of its Separate Facilities, (c) coordination between the Operation of the Common Facilities and Separate Facilities, (d) scheduling of the pumping and diversion of water by the Parties, (e) allocation and sharing of Dedicated Capacity, (f) water shortage-situation operations, and (g) such other matters determined appropriate by the Management Committee. The Management Committee periodically shall review and reevaluate the Operations and Maintenance Manual and, when appropriate, amend it from time to time.

4.2.2. The Management Committee shall have the following other duties and responsibilities:

4.2.2.1. Consider and approve changes in Project design.

4.2.2.2. Review and approve the Final Engineering documents and related consultation and coordination with the Project Engineer.

4.2.2.3. Review and approve Approvals and participate in key Permitting-related meetings with federal and state regulatory agencies.

4.2.2.4. Consider and approve changes of the Project Engineer.

4.2.2.5. Consider and approve construction change orders.

4.2.2.6. Review and approve the annual budgets for the Common Facilities Operation during the Operation Phase.

4.2.2.7. Review and approve unbudgeted expenditures during the Operation Phase.

4.2.2.8. Consider and decide or otherwise act on such other matters, questions, duties and responsibilities as may be provided by this Agreement or referred to the Management Committee by a Party, the Project Manager or Operations Manager.

4.2.3. The Management Committee shall work collaboratively to resolve questions, problems and disagreements. If the Management Committee is unable to resolve any matter, the Management Committee or a Party may refer the matter to the Policy Committee.

4.3. Policy Committee. There is established a four-person Policy Committee consisting of two persons appointed by RD 2035 and two persons to be appointed by Agency. A Party's representatives on the Policy Committee shall serve at the pleasure of that Party and a Party may change its representative or representatives at any time. The Policy Committee shall meet as soon as practicable after a matter has been referred to it by the Management Committee or a Party. The Policy Committee shall strive to resolve the question, problem, disagreement or other matter that has been referred to it. For purposes of transacting the business of the Policy Committee, a quorum shall consist of three committee members. A majority vote of the entire Policy Committee (i.e., at least three votes) shall be required for the committee to take action. The Policy Committee shall work collaboratively and in good faith in an effort to resolve the matter. If the Policy Committee is unable to resolve any matter, the Policy Committee or a Party may refer the matter to dispute resolution pursuant to section 4.4.

4.4. Dispute Resolution.

4.4.1. This section 4.4.1 applies to the following types of disputes unresolved by the Policy Committee: a dispute concerning billing, payment or collection; a dispute concerning how to allocate Capital Costs, Fixed Operating Costs, Minor Operating Costs and/or Variable Operating Costs between the Parties; a dispute concerning characterization of a cost item as a Capital Cost, Fixed Operating Cost, Minor Operating Cost or Variable Operating Cost; a dispute concerning approval of an annual budget for Common Facilities Operation; a dispute concerning approval of an unbudgeted expenditure during the Operation Phase; or, a dispute concerning the implementation and/or interpretation of section 11. For a dispute subject to this section 4.4.1, either Party may demand that the dispute be resolved by arbitration by filing a written demand for arbitration with the other Party. Upon such a demand, the dispute shall be submitted to and decided by final and binding arbitration pursuant to the California Arbitration Act (Code of Civil Procedure sections 1280-1294.2). There shall be a single neutral arbitrator. The Parties shall strive in good faith to agree upon and appoint an arbitrator. If the Parties fail to agree upon an arbitrator, then either Party may petition the Yolo County Superior Court to appoint an arbitrator pursuant to Code of Civil Procedure section 1281.6. The costs

of the arbitrator will be shared equally by the Parties. The scope of an arbitrator's authority shall be limited to deciding disputes of the type described in this section, and nothing in this section shall be construed to give the arbitrator jurisdiction to decide any other type of dispute.

4.4.2. This section 4.4.2 applies to any dispute unresolved by the Policy Committee other than those described in section 4.4.1. For disputes subject to this section 4.4.2, a Party may pursue any appropriate breach of contract action or any other remedy provided by law.

5. LANDS AND RIGHTS-OF-WAY

5.1. Ownership of Project Facilities. The Project Land shall be jointly owned by RD 2035 and Agency as tenants in common, with RD 2035 having an 80% interest and Agency having a 20% interest. For the Project Lease Area, RD 2035 and Agency shall be tenants in common (first preference) or joint tenants under the State Lands Commission lease or such other permit or entitlement as may be required for the Project. Upon completion of construction, each Party shall separately own its Separate Facilities.

5.2. Project Land. Conaway Preservation Group, pursuant to the terms of the Real Property Agreement, has agreed to convey the Project Land to RD 2035 and Agency as tenants in common. If Conaway Preservation Group has not conveyed the Project Land to RD 2035 and Agency by April 1, 2011 in accordance with the Real Property Agreement (or such later date as may be approved pursuant to the Real Property Agreement), then Agency may terminate this Agreement by providing written notice of termination to RD 2035.

5.3. Project Lease Area. During Permitting, RD 2035 shall apply to the State Lands Commission for and diligently pursue a lease for the Project Lease Area with RD 2035 and Agency as tenants in common (first preference) or joint tenant lessees or such other permit or entitlement as may be required from the State Lands Commission for the Project.

5.4. Transmission and Delivery Rights-of-Way. Each Party shall be responsible for acquiring and holding the land, easements and rights-of-way that may be necessary or appropriate for the transmission, delivery and use of Project Water by the Party beyond the boundary of the Project Land. However, Conaway Preservation Group, pursuant to the terms of the Real Property Agreement, has agreed to convey to Agency certain rights-of-way for the transmission and delivery of Project Water. If Conaway Preservation Group has not conveyed the transmission and delivery rights-of-way easements to Agency by April 1, 2011 in accordance with the Real Property Agreement (or such later date as may be approved pursuant to the Real Property Agreement), then Agency may terminate this Agreement by providing written notice of termination to RD 2035.

5.5. Separate and Common Facilities. Upon completion of construction of the Project (as evidenced by Management Committee approval pursuant to section 8.4): (a) each Party shall convey to the other Party by quitclaim deed all of the grantor's right, title and interest in the grantee's Separate Facilities; and (b) RD 2035 shall convey to Agency by quitclaim deed an undivided 20% interest, as a tenant in common, in the completed Common Facilities.

6. PROJECT MILESTONES

6.1. Milestones. Agency shall have the authority to approve or disapprove each of the following major Project milestones:

6.1.1. Prior to commencing Final Engineering, the Management Committee shall review the preliminary design plans and Project Engineer's preliminary cost estimate. RD 2035 shall not commence Final Engineering until Agency has provided its written authorization to proceed.

6.1.2. Prior to approving the final Project design plans and specifications and construction-ready bid and contract documents, the Management Committee shall review the final plans and specifications, bid and contract documents, and Project Engineer's final cost estimate. RD 2035 shall not approve the final plans and specifications and bid and contract documents or solicit construction bids until Agency has provided its written authorization to proceed.

6.1.3. After receiving construction bids but prior to awarding a contract to a contractor for the construction of the Project, the Management Committee shall review the submitted bid documents. RD 2035 shall not award a construction contract until Agency has provided its written authorization to proceed.

6.2. Processing. Agency shall act promptly in giving or refusing to give any of the written authorizations to proceed set forth above. A written authorization to proceed shall not be unreasonably withheld. If Agency declines to provide its written authorization for any Project milestone, approval of the milestone shall be referred to the Policy Committee to strive to resolve the matter. If the Policy Committee cannot resolve the matter and Agency remains unwilling to authorize the Project milestone, then Agency may terminate this Agreement by providing written notice of termination to RD 2035. Upon a termination under this section, Agency shall have no further responsibility or liability for expenses incurred by RD 2035 in connection with the Project or any other project involving a new or renovated intake structure.

7. DESIGN/PERMITTING PHASE

7.1. RD 2035 Authorization. The Permitting/Design Phase shall commence upon satisfaction of the conditions in Section 2.4. Subject to the conditions and restrictions in this Agreement, RD 2035 shall diligently implement and undertake the Permitting (except as provided in section 7.4) and land and rights-of-way acquisition of and for the Project.

7.1.1. Upon authorization pursuant to section 6.1, approval of an engineering services agreement pursuant to section 7.3, and securing funding pursuant to section 11.1, RD 2035 and the Project Engineer shall proceed with Final Engineering. Final Engineering by RD 2035 shall include the Project design plans, specifications and drawings for the Common Facilities and RD 2035 Separate Facilities. Agency and its engineers, in coordination with the Project Engineer, shall prepare the engineering and design plans, specifications and drawings for its Separate Facilities and, upon completion of the plans, specifications and drawings, Agency shall provide them to the Project Engineer to be incorporated into the final Project bid and construction contract documents.

7.1.2. RD 2035 and Agency shall implement and perform these tasks in accordance with the Project Schedule.

7.2. Project Manager. Within 30 days after the date of this Agreement, RD 2035 shall appoint an individual as Project Manager. The Project Manager may be an employee of RD 2035 or retained under contract with RD 2035. The Project Manager shall be responsible for the proper and efficient management and administration of the Final Engineering, Permitting, financing, land and rights-of-way acquisition and Construction Work. The Project Manager shall meet regularly with the Management Committee and keep the committee informed about the status of the Project. The Project Manager shall serve at the pleasure of RD 2035; however, prior to changing the Project Manager, RD 2035 shall consult with the Management

Committee. If Agency objects to a particular Project Manager, it may present its objection to the Management Committee.

7.3. Project Engineer. The Parties select MWH Global, Inc. to act as Project Engineer. The Project Engineer will be retained pursuant to an engineering services agreement among MWH Global, RD 2035 and Agency. The engineering services agreement will include the following provisions: preparation of Final Engineering documents (except those to be prepared by Agency) by a deadline that is consistent with the Project Schedule; preparation of these documents under the direction of, and subject to the approval by, the Management Committee, and subject to review and comment by Agency's engineer and staff; copies of the Final Engineering documents will be provided to RD 2035 and Agency; consent that Agency may use and adapt these documents for the preparation of engineering documents for a separate Agency-only intake facility at a different location on the Sacramento River at no additional cost to Agency; and, Agency release of liability of Project Engineer if these documents are used by Agency for a separate Agency-only intake facility. Upon authorization and approval pursuant to section 7.1.1, the Project Engineer shall undertake the Final Engineering and assist RD 2035 with Permitting. The Project Engineer shall not be changed without prior approval by the Management Committee. The Final Engineering plans and specifications shall include the design of Agency's Separate Facilities. The Project Engineer shall consult with Agency's engineer concerning the Agency Separate Facilities to be constructed by Agency (e.g., pumps, motors, instrumentation and controls) and shall show those Separate Facilities on the plans as work to be done by others.

7.4. Permitting.

7.4.1. RD 2035 will be the lead agency for purposes of California Environment Quality Act (CEQA) compliance for the Project and Agency will be a CEQA responsible agency. RD 2035 and Agency also will work with the Bureau to prepare appropriate environmental documentation under the National Environmental Policy Act for the proposed RD 2035 agricultural water supply intake, with the provision that facilities for Agency's Project facility components will be added to the Bureau-approved project.

7.4.2. Agency shall be responsible for the Permitting in connection with the Approvals listed on the attached Exhibit C. Agency shall apply for and exercise due diligence to obtain such Approvals in accordance with the Project Schedule and in coordination with the Management Committee.

7.4.3. RD 2035 shall be responsible for the Permitting in connection with all other Approvals (i.e., those listed not on Exhibit C) for construction and Operation of the Project. RD 2035 shall apply for and exercise due diligence to obtain such Approvals in accordance with the Project Schedule and in coordination with the Management Committee.

8. CONSTRUCTION WORK PHASE

8.1. Bid and Construction Documents. Upon completion of Final Engineering, RD 2035 shall prepare Project construction-ready bid and contract documents and a final Project Engineer cost estimate. The bid and construction contract documents shall provide a bid schedule that requires bidders to segregate bid prices for the Common Facilities and two sets of Separate Facilities and that requires bidding based on unit prices to the greatest extent practicable. The RD 2035 bid and construction contract documents shall not include the portion of Agency Separate Facilities to be constructed by Agency as determined pursuant to section 7.3. Upon completion of those documents and authorization pursuant to section 6.1, RD 2035 shall solicit construction bids pursuant to applicable law and the Project Schedule.

8.2. Bid Award and Construction. After receiving construction bids, RD 2035 and the Management Committee shall review the bid and final contract documents. Upon authorization pursuant to section 6.1 and

securing funding pursuant to section 11.1, RD 2035 shall award a construction contract for the Project. RD 2035 through its contractor and staff shall cause the construction of the Project and undertake other Construction Work. Construction contract change orders and any change to the final Project plans and specifications shall require approval by the Management Committee.

8.3. Construction by Agency. Agency and its contractor shall construct and install the portion of Agency Separate Facilities to be constructed by Agency as determined pursuant to section 7.3. Agency's contractor shall either perform its work after completion of the RD 2035 contractor's work or in coordination with the RD 2035 contractor's work.

8.4. Construction Completion and Startup Testing. Upon the Project Engineer's determination that the Project facilities have been completed in accordance with the final Project plans, specifications and contract documents, and Agency engineer's determination that construction of Agency's Separate Facilities pursuant to section 8.3 has been completed in accordance with the final Project plans, specifications and contract documents, RD 2035 and Agency shall test the facilities as to their ability to divert and pump Project Water in the diversion amounts specified in section 3.3. The testing shall be continued until such time when the Project facilities have in fact demonstrated their ability to divert and pump Project Water in such quantities. RD 2035 shall prepare and compile the Project startup testing results and present the results to the Management Committee. The startup testing period shall conclude and the Operation Phase shall commence when the Management Committee has determined that the Project facilities have been completed in accordance with the final Project plans, specifications and contract documents and that the Project facilities are able to divert and pump Project Water in the diversion amounts specified in section 3.3.

9. OPERATION PHASE

9.1. Common Facilities.

9.1.1. Prior to commencement of the Operation Phase, the Management Committee shall determine how to Operate the Common Facilities (i.e., whether by Agency, by RD 2035 or by or pursuant to some other entity or method) and designate a Party, company or other entity to Operate the Common Facilities (the "Operator"). The Operator shall be responsible for the proper and efficient Operation of the Common Facilities in accordance and compliance with this Agreement, the Operations and Maintenance Manual (as the same may be amended from time to time by the Management Committee), and the DFG Screen Requirements. The Operator's senior operations staff shall meet regularly with the Management Committee and keep the committee informed about the status of the Operation of the Common Facilities. The Operator shall serve at the pleasure of Agency (subject to conditions and limitations of any contract with the Operator).

9.1.2. The Operator shall Operate the Common Facilities on a July 1 to June 30 fiscal year. Prior to commencement of the Operation Phase, and thereafter prior to the commencement of each fiscal year, the Management Committee, in coordination with the Operator, shall adopt a budget with a projection of Capital Costs, Fixed Operating Costs, Minor Operating Costs and Variable Operating Costs (if any) for the Operation of the Common Facilities for the ensuing fiscal year (or, in the case of the first budget, for the balance of that fiscal year). The budget also shall include funding for a reserve and contingency fund.

9.1.3. The Operator shall strive to Operate the Common Facilities consistent with and within the limits of the approved budget. Prior to incurring any unbudgeted expenditure, the Operator shall obtain the consent of the Management Committee; except, however, that prior Management Committee consent shall not be required in the event of an Operator response to an emergency involving the Common

Facilities. In the event of such an emergency, the Operator shall report to the Management Committee at its earliest practicable opportunity with an explanation about the nature of the emergency and related unbudgeted expenditures.

9.1.4. The Operator shall keep, maintain, apply for, renew and comply with all permits, licenses and entitlements that apply to or may be necessary or appropriate for the Operation of the Common Facilities (including, but not limited to, State Lands Commission lease, applicable mitigation monitoring and reporting plans, Endangered Species Act compliance-related terms and conditions, and DFG Screen Requirements).

9.1.5. The Operator may temporarily discontinue intake operation or reduce the amount or rate of flow of Project Water furnished to the Parties for the purposes of inspection, maintenance, repair, or replacement of any Project facilities as may be necessary or appropriate, subject to approval of the Management Committee, except such approval will not be required for an emergency. The Operator will give the Parties notice in advance of any temporary discontinuance or reduction, except in case of emergency.

9.2. Separate Facilities.

9.2.1. Upon commencement of the Operation Phase, each Party shall Operate its Separate Facilities at its sole cost and expense. The Parties shall cooperate and coordinate with each other on their respective Operation of the Separate Facilities. Each Party shall Operate its Separate Facilities in such a manner so as to not unreasonably impact the other Party's Operation of its Separate Facilities or the Operation of the Common Facilities. Each Party shall Operate its Separate Facilities in accordance and compliance with this Agreement and the Operations and Maintenance Manual, as the same may be amended from time to time by the Management Committee.

9.2.2. Because a Party's pumps will be part of its Separate Facilities, each Party will control the amount, timing and rate of diversion of water through the Operation of its Separate Facilities. Each Party agrees that it will divert water (a) in an amount up to its respective Dedicated Capacity shares, subject to the terms and conditions of this Agreement and the availability of water, and (b) in compliance with the conditions and limitations of its applicable water rights, water right permit(s) and license(s), and water supply contract(s). Each Party agrees to consult with the other Party and the Management Committee on a regular basis to coordinate and cooperate on specific schedules of diversion. Each Party shall keep and maintain a monthly schedule of the actual quantities and timing of water pumped and diverted from the river, which shall be made available to the other Party.

9.2.3. Each Party shall keep, maintain, apply for, renew and comply with all permits, licenses and entitlements that apply to or may be necessary or appropriate for the Operation of its Separate Facilities (including, but not limited to, State Lands Commission lease, applicable mitigation monitoring and reporting plans, Endangered Species Act compliance-related terms and conditions, and DFG Screen Requirements).

9.3. Water Quality. Project Water diverted under this Agreement is raw, untreated and nonpotable river water. Each Party accepts the risks associated with the quality of the river water diverted and furnished pursuant to this Agreement and accepts full responsibility for any use that it may make of Project Water.

10. WATER SUPPLY CURTAILMENT AND SHORTAGE

10.1. Water Supply Curtailment. The Parties acknowledge that in Operation of the Common Facilities, from time to time there will be curtailments on the capacity of the Project to divert water from the river and that the Parties may not be able to divert the full Dedicated Capacity. In those situations, the Parties agree that the diversion capacity curtailment will be allocated or assigned in accordance with the principles set forth below. Additionally, the Parties agree that water supply curtailment situations will be managed in accordance and compliance with the Operations and Maintenance Manual, as the same may be amended from time to time by the Management Committee.

10.1.1. During any period when the Project intake capacity is reduced because of low Sacramento River flows and when Agency is authorized to divert water from the river under the water rights assigned to Agency pursuant to the Water Agreement, Agency's right to divert 80 cfs from the Project intake will have priority over RD 2035's right to divert water from the Project intake.

10.1.2. If a diversion capacity curtailment occurs and the amount of the curtailment varies based on the type or priority of a Party's water right (including contract based rights), then each Party will bear the reduction applicable to its water right.

10.1.3. Subject to section 10.1.1, if a diversion capacity curtailment occurs and the amount or basis of the curtailment does not vary based on the type or priority of a Party's water right (e.g., an environmental regulation that applies equally to all Sacramento River main stem diverters), then the available capacity shall be allocated among the Parties based on their percentage shares of Dedicated Capacity.

10.1.4. Subject to section 10.1.1, if a diversion capacity curtailment occurs due to an order or regulation of a court or government agency having jurisdiction over the Project that is directed specifically to the Project intake, then the available capacity shall be allocated among the Parties based on their percentage shares of Dedicated Capacity.

10.2. Sharing of Capacity. A Party temporarily may exceed its Dedicated Capacity when the other Party is not diverting its full allocation (i.e., RD 2035 may divert water up to the capacity of the RD 2035 Separate Facilities (planned at 400 cfs) and Agency may divert water up to the capacity of the Agency Separate Facilities (planned at 100 cfs)), so long as (a) such exceedance is consistent with the Operations and Maintenance Manual, (b) advance notice is provided to the other Party, (c) the other Party is not adversely affected, and (d) the sharing ceases when the other Party is ready to divert its full Dedicated Capacity. In order to facilitate decisions regarding temporary exceedance of a Party's Dedicated Capacity, each Party shall keep the other Party regularly apprised of the Party's current diversion rates.

11. ALLOCATION OF COSTS AND FUNDING

11.1. Initial Capital Costs.

11.1.1. It is the objective of the Parties to fund the Initial Capital Costs of the Common Facilities and RD 2035 Separate Facilities through federal and state grant funding administered by the Bureau and DFG. RD 2035 will be the applicant for grant funding. RD 2035 shall work diligently to apply for, pursue and obtain full grant funding. Agency shall cooperate with and support RD 2035's grant funding requests and applications.

11.1.2. Because the Initial Capital Costs will be allocated between RD 2035 grant funding and Agency funding, the Parties, in consultation with the Bureau and DFG, agree to fairly and equitably segregate the costs of Agency Separate Facilities from the costs of the Common Facilities and RD 2035 Separate Facilities.

11.1.3. RD 2035 has applied to the Bureau for federal grant funding for the costs of Final Engineering and Permitting and it agrees to work diligently to secure the grant. Agency may, but is not required to, fund the Final Engineering costs to accelerate the schedule for completion of Final Engineering and Permitting, if the Bureau and DFG confirm that this funding will be credited toward the required local cost share (see section 11.1.6). If RD 2035 has not finally secured this federal grant funding by June 1, 2011 and if Agency elects not to fund the costs, then either Party may terminate this Agreement by providing written notice of termination to the other Party. The Parties may extend this deadline by mutual written agreement.

11.1.4. As soon as practicable after the commencement of Final Engineering, and consistent with the federal and state grant agency practices, RD 2035, working with Agency, will begin work on cooperative funding agreements with the Bureau and DFG to fund the remaining Initial Capital Costs (excluding the costs of Agency's Separate Facilities and other Agency costs provided below). RD 2035 shall diligently pursue the completion and approval of the cooperative funding agreements. Agency will support and cooperate with RD 2035 in this effort. If the Bureau and DFG cooperative funding agreements in an amount and form consistent with this section 11.1 are not approved and signed by May 15, 2012, then either Party may terminate this Agreement by providing written notice of termination to the other Party. The Parties may extend this deadline by mutual written agreement.

11.1.5. Agency shall pay the Initial Capital Costs for the design and construction of its Separate Facilities and the costs of the Permitting for the Approvals listed on Exhibit C. If required by the federal and state cooperative funding agreements, Agency also will pay for up to 20% of the Initial Capital Costs of the Common Facilities.

11.1.6. Agency shall pay a 5% local share of the portion of the Initial Capital Costs of the Common Facilities and RD 2035 Separate Facilities that will be funded through the federal and state cooperative funding agreements. Any amount funded by Agency for the Final Engineering costs under section 11.1.3 will be applied toward this 5% local share obligation. For example, if Agency pays \$1,100,000 for Final Engineering costs and if the total cost (including these costs) of the portion of the Common Facilities and RD 2035 Separate Facilities that will be funded through the cooperative funding agreements is \$40,000,000, then the additional payment by Agency under this section would be \$900,000 (i.e., $\$1,100,000 + \$900,000 = \$2,000,000$, which is 5% of \$40,000,000.)

11.1.7. Agency shall fund its share of the Construction Work costs (as described in sections 11.1.5 and 11.1.6) in installment payments. RD 2035 shall prepare a schedule for the expenditure of the Construction Work costs over the Construction Work Phase and showing the amount and timing of Agency installment payments of its share of such costs (consistent with sections 11.1.5 and 11.1.6). The schedule shall be subject to the review and approval of the Management Committee. Agency shall deposit its installment payments in accordance with the approved installment payment schedule into a special RD 2035 fund or bank account to be identified by RD 2035. RD 2035 shall use the funds provided by Agency for the purpose of paying and reimbursing RD 2035's Construction Work Phase costs. RD 2035 shall not use the funds received from Agency for any other purpose.

11.1.8. If sufficient grant funds from the cooperative funding agreements are not committed to RD 2035 by January 15, 2013 to begin and complete construction of the Project pursuant to the Project Schedule, then Agency in its sole discretion may: (a) decide, with the concurrence of the Bureau and DFG, to pay Agency's share of the Initial Capital Costs first to allow for a January 15, 2013 construction start with later grant funds to pay the balance of the Initial Capital Costs, or (b) terminate this Agreement by providing written notice of termination to RD 2035. The Parties may extend this deadline by mutual written agreement.

11.1.9. If sufficient grant funds from the cooperative funding agreements are not committed to RD 2035 by January 15, 2013 to begin and complete construction of the Project pursuant to the Project Schedule, then, RD 2035 may, in its sole and absolute discretion terminate this Agreement by giving written notice to Agency.

The Parties may extend the deadlines in this section 11.1.9 by mutual written agreement.

11.1.10. Agency's obligation to share in the Initial Capital Costs will begin on the date the conditions in Section 2.4 have been satisfied. Agency shall have no obligation to pay or reimburse any of RD 2035's Initial Capital Costs incurred prior to that date.

11.1.11. If sufficient grant funds from the cooperative funding agreements are timely committed to RD 2035 and the Parties proceed with Project construction and thereafter the Parties determine that the grant funding will be insufficient to cover RD 2035's costs of Construction Work (e.g., due to construction cost overruns), then the Management Committee shall meet to determine how to fund the shortfall.

11.2. Common Facilities Operation Phase Costs.

11.2.1. Operator's costs of Operation of the Common Facilities shall be allocated among the Parties in accordance with the following cost allocation principles: for Fixed Operating Costs, Agency will pay 20% and RD 2035 will pay 80% of the costs; for Minor Operating Costs, Agency will pay 50% and RD 2035 will pay 50% of the costs; and, for Variable Operating Costs (if any), each Party will pay a share of the monthly costs based on the Party's proportionate share of the actual volume of water pumped through the Project facilities during the month.

11.2.2. Operator shall keep and maintain an accounting of the actual costs (including labor, materials, contractors, consultants, vehicle and equipment usage, administrative support, energy and insurance) to Operate the Common Facilities. Operator shall segregate its actual costs into Fixed Operating Costs, Minor Operating Costs and Variable Operating Costs (if any).

11.2.3. Each Party agrees to be responsible for paying its respective share of the Fixed Operating Costs, Minor Operating Costs and Variable Operating Costs in accordance with the budget, cost allocation principles and other provisions of this section 11.2.

11.2.4. Unless otherwise determined by the Management Committee, billing to and payments by the Parties shall be governed by this section 11.2.4.

11.2.4.1. On an annual basis, from the budget approved pursuant to section 9.1.2 and the cost allocation principles in section 11.2.1, Operator shall determine each Party's annual and monthly share of the costs. On a monthly basis, Operator shall prepare and shall submit to the Parties a statement of each Party's share of the budgeted costs for the month. Each Party shall pay the statement within 30 days of its receipt. If a statement becomes delinquent (meaning the Party has not paid the statement within the same 30 day period), the amount unpaid by the Party shall bear interest at eight percent (8%) per annum from such 30th day to the date payment of the statement in full is made. Operator shall deposit the payments into a special fund for the purpose of paying and reimbursing the Operator's costs to Operate the Common Facilities.

11.2.4.2. As soon as practicable following the commencement of a fiscal year, Operator shall determine the actual Fixed Operating Costs, Minor Operating Costs and Variable Operating Costs for the previous fiscal year and reconcile those costs for the prior year against the budget for that year. The amount so reconciled (whether costs exceeded budget or were less than budget) shall be credited or

debited into the calculation of projected Fixed, Minor and Variable Operating Costs for the next fiscal year budget.

11.2.4.3. If, because of unanticipated costs or circumstances or other reasons, insufficient revenue is collected by Operator to cover its Fixed, Minor and/or Variable Operating Costs, then such deficiency may be assessed by the Operator against the Parties based on the cost allocation principles set forth in section 11.2.1.

11.2.5. Each Party's obligation to pay its share of the Fixed and Minor Operating Costs shall be a take or pay obligation. Each Party shall pay its share of the Fixed and Minor Operating Costs whether or not the Project is operating, operable, damaged or destroyed, whether or not its Dedicated Capacity is actually available or utilized, whether or not water is available for diversion by the Project, and regardless of the occurrence of any Force Majeure event. The payments of Fixed and Minor Operating Costs shall not be subject to reduction whether by setoff, counterclaim, recoupment, or otherwise and shall not be conditioned upon the performance or nonperformance of any agreement or for any other cause or reason whatsoever.

11.2.6. If the Project fish screen is damaged or destroyed and Operator undertakes an expedited repair or replacement project to accommodate Agency's or RD 2035's demand for prompt repair or replacement of the fish screen, and if, as determined by an engineer selected by the Management Committee, the costs of such an expeditious repair or replacement project exceed the costs that would have been incurred by Operator in undertaking a non-expedited repair or replacement project, then the excess costs (i.e., those solely attributed to expediting the work as determined by the engineer) shall be paid by the Party demanding the prompt repair or replacement.

11.3. Separate Facilities Operation Phase Costs. Each Party shall be responsible for the Fixed Operating Costs and Variable Operating Costs to Operate the Party's Separate Facilities.

11.4. Accounting Records. Each Party shall keep and maintain strict accountability of all Project-related funds, receipts and expenses, and shall keep and maintain appropriate records and accounts of all funds, receipts and expenses under this Agreement in accordance with accounting and bookkeeping practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. Each Party shall allow the other Party and its employees, accountants, attorneys or agents to review, inspect, copy and audit any such records and accounts, including source documents. In accordance with Government Code section 8546.7, the Parties acknowledge that this Agreement and the Parties' expenditures under this Agreement are subject to examination and audit by the State Auditor.

12. REPRESENTATIONS AND WARRANTIES

12.1. By RD 2035. RD 2035 represents and warrants to Agency as of the date of this Agreement as follows:

12.1.1. Due Organization. RD 2035 is a public agency duly organized under the Reclamation District Law (Water Code sections 50000 et seq.), validly existing and in good standing under the laws of the State of California.

12.1.2. Authority. RD 2035 has the power and authority and has taken all actions necessary to enter into this Agreement, to authorize the execution and delivery of this Agreement, and to carry out and perform the transactions set forth in this Agreement. This Agreement has been duly and validly executed and delivered by RD 2035 and, when executed and delivered by Agency, will constitute a legal, valid and binding obligation of RD 2035 enforceable against it in accordance with its terms except as limited by: (a) applicable

bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally; and (b) laws relating to the availability of specific performance, injunctive relief or other equitable remedies. Upon execution of this Agreement and as a condition precedent to the effectiveness of this Agreement, RD 2035 shall provide to Agency (a) a copy of the resolution of the RD 2035 Board of Directors authorizing the approval, execution and delivery of this Agreement, certified by the secretary of RD 2035, and (b) an opinion of RD 2035's counsel, dated as of the date of the Agreement, in the form of the attached Exhibit D.

12.1.3. Noncontravention. The execution and delivery by RD 2035 of this Agreement, the performance by it of its obligations under this Agreement and the consummation of the transactions contemplated hereby do not and shall not conflict with or result in a violation of the provisions of the Reclamation District Law, conflict with or result in a violation of any provision of any law applicable to RD 2035, or conflict with or result in a breach of or default under any contract to which RD 2035 is a party.

12.1.4. No Consents. No consent or approval of, filing with or notice to any federal, state or local government agency is required to be obtained or made by RD 2035 in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby, which, if not obtained or made, will prevent RD 2035 from performing its obligations hereunder.

12.1.5. Litigation. There is no claim, lawsuit or administrative proceeding pending or, to RD 2035's knowledge, threatened against or affecting RD 2035 in connection with this Agreement or relating to the transactions contemplated in this Agreement.

12.2. By Agency. Agency represents and warrants to RD 2035 as of the date of this Agreement as follows:

12.2.1. Due Organization. Agency is a public agency duly organized under the Davis-Woodland Water Supply Authority Joint Powers Agreement and Joint Exercise of Powers Law (Government Code sections 6500 et seq.), validly existing and in good standing under the laws of the State of California.

12.2.2. Authority. Agency has the power and authority and has taken all actions necessary to enter into this Agreement, to authorize the execution and delivery of this Agreement, and to carry out and perform the transactions set forth in this Agreement. This Agreement has been duly and validly executed and delivered by Agency and, when executed and delivered by RD 2035, will constitute a legal, valid and binding obligation of Agency enforceable against it in accordance with its terms except as limited by: (a) applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally; and (b) laws relating to the availability of specific performance, injunctive relief or other equitable remedies. Upon execution of this Agreement and as a condition precedent to the effectiveness of this Agreement, Agency shall provide to RD 2035 (a) a copy of the resolution of Agency Board of Directors authorizing the approval, execution and delivery of this Agreement, certified by the secretary of Agency, and (b) an opinion of Agency's counsel, dated as of the date of the Agreement, in the form of the attached Exhibit E.

12.2.3. Noncontravention. The execution and delivery by Agency of this Agreement, the performance by it of its obligations under this Agreement and the consummation of the transactions contemplated hereby do not and shall not conflict with or result in a violation of the provisions of the Joint Powers Agreement, conflict with or result in a violation of any provision of any law applicable to Agency, or conflict with or result in a breach of or default under any contract to which Agency is a party.

12.2.4. No Consents. No consent or approval of, filing with or notice to any federal, state or local government agency is required to be obtained or made by Agency in connection with its execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby, which, if not obtained or made, will prevent Agency from performing its obligations hereunder.

12.2.5. Litigation. There is no claim, lawsuit or administrative proceeding pending or, to Agency’s knowledge, threatened against or affecting Agency in connection with this Agreement or relating to the transactions contemplated in this Agreement.

13. INDEMNIFICATION AND INSURANCE

13.1. Mutual Indemnity. Each Party shall indemnify, defend, protect, and hold harmless the other Party, and their respective directors, officers, employees and agents, from and against any and all liability, losses, claims, damages, expenses, and costs (including attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of or in connection with the indemnifying Party’s performance under this Agreement or failure to perform under this Agreement. This indemnification obligation shall survive and continue in full force and effect after termination of this Agreement for any reason with respect to any actions or omissions that occurred before the date of termination. The indemnification and hold harmless provisions of this section shall apply in lieu of the right of contribution provisions at Government Code sections 895 to 895.8.

13.2. Not Liable Beyond Points of Delivery. Neither Party shall be responsible or liable for the control, carriage, handling, use, disposal, delivery or distribution of Project Water supplied to the other Party after such water has passed the Points of Delivery to that other Party, nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of such water beyond the Points of Delivery; and each Party shall indemnify and hold the other Party harmless pursuant to section 13.1 from any such damages, claims or liability. A Party shall not have any right, title or interest in Project Water after the water has passed a Point of Delivery to the other Party.

13.3. Insurance.

13.3.1. Each Party at its sole cost and expense shall procure and maintain for the duration of this Agreement the following types and limits of insurance or self-insurance:

<i>Type</i>	<i>Limits</i>	<i>Scope</i>
Commercial general liability	\$1,000,000 per occurrence & \$2,000,000 aggregate	at least as broad as ISO CG 0001
Automobile liability	\$1,000,000 per accident	at least as broad as ISO CA 0001, code 1 (any auto)
Workers’ compensation	statutory limits	
Employers’ liability	\$1,000,000 per accident	

Insurance is to be placed with insurers with a current A.M. Best’s rating of A-:VII or better unless otherwise acceptable to the other Party. Workers’ compensation insurance issued by the State Compensation Insurance Fund is acceptable. Workers’ compensation and employers’ liability insurance shall not be required if a Party does not employ any employees. Upon request by a Party, the other Party shall provide to the requesting Party a certificate or certificates of insurance evidencing insurance coverage in accordance with this section.

14. GENERAL PROVISIONS

14.1. Term. This Agreement shall be ongoing and perpetual unless (a) terminated as provided above, or (b) terminated by mutual written consent approved by the governing board of each Party and executed by both Parties.

14.2. Force Majeure. A Party shall be excused from its obligations under this Agreement in the event that the Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement. Upon the occurrence of an event of Force Majeure, the Party claiming Force Majeure shall give notice and full particulars of the Force Majeure in writing to the other Party. A Party's performance shall be suspended only during the continuance of the Force Majeure condition. Upon the occurrence of any event of Force Majeure that may render a Party unable to carry out its obligations under the Agreement, to the extent reasonably practical, the Party shall use its best efforts to promptly implement a plan to ensure the continued ability to perform its obligations and promptly bring to an end the Force Majeure condition.

14.3. Integration. This Agreement constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms of this contract among the Parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, either oral or written, that may be related to the subject matter of this Agreement, except those other documents that are expressly referenced in this Agreement.

14.4. Construction and Interpretation. The Parties agree and acknowledge that this Agreement has been arrived at through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

14.5. Waiver. The waiver at any time by any Party of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

14.6. Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

14.7. Successors and Assigns. Except as otherwise provided by law or legally ordered by the Yolo County Local Agency Formation Commission as part of a local government organization or reorganization proceeding, the rights and duties of the Parties under this Agreement shall not be sold, transferred, assigned or delegated without the prior written consent of both Parties. Any attempt to sell, transfer, assign or delegate such rights or duties in contravention of this Agreement shall be null and void. Any approved sale, transfer, assignment or delegation shall be consistent with applicable law and may be approved subject to such additional reasonable conditions of approval imposed by the Parties.

14.8. No Third Party Beneficiaries. This Agreement shall not be construed to create any third party beneficiaries. This Agreement is for the sole benefit of the Parties, and their permitted successors, transferees and assignees, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any of its terms.

14.9. Amendment. This Agreement may be modified or amended only by a subsequent written agreement approved by the governing board of each Party and executed by both Parties.

14.10. Governing Law. Except as otherwise required by law, this Agreement shall be interpreted, governed by, and construed under the laws of the State of California. The County of Yolo shall be venue for any state court litigation and the Eastern District of California shall be venue for any federal court litigation

concerning the enforcement or construction of this Agreement; provided, however, that, for state litigation, each Party retains its rights under Code of Civil Procedure section 394 to change venue or to assign an out-of-county judge.

14.11. Notice. Any notice, demand, invoice or other communication required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail and addressed as follows:

Agency: General Manager Woodland-Davis Clean Water Agency 23 Russell Blvd. Davis, CA 95616	RD 2035: Board of Directors Reclamation District 2035 45332 County Road 25 Woodland, CA 95776
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Any Party may change its address by notifying the other Party in writing of the change of address.

**WOODLAND-DAVIS CLEAN
WATER AGENCY**

RECLAMATION DISTRICT 2035

Dated: _____

Dated: _____

General Manager

Chair

Attest: _____

Attest: _____

Secretary

Secretary

Approved as to form: _____

Approved as to form: _____

General Counsel

General Counsel

LIST OF EXHIBITS

Exhibit A-1 & A-2	Preliminary Project Description and Drawing
Exhibit B	Project Schedule
Exhibit C	List of Agency-Responsible Approvals
Exhibit D	Form of Opinion of RD 2035's Counsel
Exhibit E	Form of Opinion of Agency's Counsel

Exhibit A-1
RD2035/CPG Joint Intake Agreement
Preliminary Project Description and Drawing

Introduction

This Project includes design and construction of a new, jointly owned raw water intake (Intake) on the Sacramento River. The Intake will divert Sacramento River water for use by RD 2035 and the Woodland-Davis Clean Water Agency (Agency). The Intake is illustrated in Exhibit A-2.

The Intake will be designed to divert a maximum flow rate of 400 cubic feet per second (cfs) while meeting current DFG and National Marine Fisheries Service (NMFS) requirements to prevent the entrainment of migrating anadromous fish. The fish screening system will be designed to satisfy these requirements at a flow rate of 400 cfs when river levels are above the 90 percent exceedance elevation. The flow rate through the screens will be reduced to meet fish screening requirements when river elevations are below this elevation.

The following sections provide further detail on various aspects of the Project.

Site Description

- Design flood elevation: The 100-year flood elevation at the Intake site is 35.8 feet (NGVD29 datum), per Central Valley Flood Protection Board correspondence with MWH. The FEMA 100-year flood elevation for the landside portion of the Intake site is 36.4 feet.
- Levee/Road elevation: The levee and County Road 117 are contiguous at the Intake site. The levee/road elevation due west of the Intake site is 39.9 feet (NGVD29 datum).
- Railroad tracks: Sierra Northern Railroad (SNR) tracks are located near the Intake site; south of County Road 117, the tracks are parallel to the river, turning due west after crossing County Road 117.
- Parcel area and configuration: Exhibit A-2 delineates the parcel on which the Intake will be located. The parcel is approximately 800 feet long by 300 feet wide, and abuts the Sacramento River and RD 2035's main canal.

- Existing structures and utilities: The Intake site features several existing structures and overhead utilities. The existing RD 2035 intake structure, electrical substation, caretaker's house and appurtenant structures are all located just north of the Intake site. Overhead power lines converge at the existing electrical substation from several directions, and overhead telephone lines are also present.
- Existing habitat: The Intake site is characterized by valley oak woodland, valley foothill riparian woodland, riverine, disturbed, and urban area and has the potential to support federally and state listed fish and wildlife species including anadromous fish species, giant garter snake, valley elderberry longhorn beetle, and swainsons hawk.
- Dewatering during construction: Portions of the Intake site will require dewatering during construction. Based on the proximity of the Intake site to RD 2035's main canal, it is proposed that water will be disposed of in the main canal. RD 2035 may use this water for irrigation.

Intake Design Criteria

The Intake will be designed to protect juvenile anadromous fish species. A flat plate screen system will be constructed of stainless steel wedge wire panels and situated below the 90 percent exceedance water level in the river. The Intake structure and screens will be placed parallel to the main river flow. The governing design criteria for the screens are listed in Table A-1.

Table A-1. Intake Screen Design Criteria	
Category	Criterion
Capacity	400 cfs
Maximum approach velocity	0.33 fps
Sweeping velocity	greater than approach velocity
Opening size (slot dimension)	1.75 mm
Material of Construction	stainless steel wedge-wire

Intake Cleaning

During the normal operation of the Intake, debris will accumulate along the face of the flat plate wedge-wire fish screen. A positive cleaning mechanism will be installed to periodically remove this debris to ensure that adequate open area is available, thereby ensuring that the allowable approach velocity is not exceeded.

Cleaning of the Intake screens will be accomplished by a traveling brush mechanism. The mechanism will traverse horizontally along the face of the screens with a cable and pulley system, bringing a nylon brush into contact with the exterior screen face. The abrasive action of the brush bristles will physically remove accumulated debris from the screen face. The frequency with which the screens are cleaned will be either automatically or manually controlled.

Sediment Control Features

Sediment will tend to accumulate in the Intake structure. Settleable solids which pass through the fish screens, such as silt and sand, will accumulate on the floor of the Intake structure and necessitate periodic removal. Removal will be facilitated by forcing pressurized water (raw river water boosted to adequate pressure with a submersible pump) through a network of pipes near the floor of the intake structure and out of nozzles or holes pointed toward the intake floor. The resulting agitation and re-suspension of the sediment will allow it to be removed from the intake structure by pumping through the RD 2035 and/or Agency pumps.

Pumps

The Intake will include two sizes of raw water intake pumps. Five large constant speed vertical turbine pumps, each with a capacity of 80 cfs, will be provided to handle RD 2035 diversion requirements (400 cfs). Four smaller variable frequency drive (VFD-driven) vertical turbine pumps, each with a capacity of 26.7 cfs, will be provided for the Agency's diversion requirements (80 cfs). The Agency pumps will be operated as duty/standby, with a firm capacity of 80 cfs with three pumps in operation, and a nominal capacity of 100 cfs with all four pumps in operation.

Discharge Pipes and Valves

Separate networks of discharge piping and valving will be constructed for each Party.

RD 2035 Pipelines

Each RD 2035 pump will discharge to a 42-inch steel pipe. The five discharge pipes will leave the pump station, travel southwest under the road surface at the top of the levee, and then turn northwest before discharging to a new RD 2035 outlet structure. The 42-inch pipes will neck down to 36 inches just before reaching the outlet structure. Each 42-inch discharge pipe will be fitted with a siphon relief valve.

Agency Pipelines

Each Agency pump will discharge to a 36-inch steel pipe. The four discharge pipes will leave the pump station and manifold into two 42-inch pipelines before traveling under the road surface at the top of the levee. A valved intertie will be provided between the 42-inch pipelines. Each 36-inch discharge pipe will be fitted with an air/vacuum valve, swing check valve and a butterfly valve. For pipeline cleaning purposes, two pig insertion/launching stations will be included, one on each of the 42-inch pipelines. Supply lines to provide backpressure against the pig will be provided for each pigging station to assist in the pig launching.

The two 42-inch Agency pipelines will travel southwest under the road surface at the top of the levee, and then turn south before being terminated and capped near the property line. The remainder of the pipelines, between the termination point and the Agency's surface water treatment plant, will be constructed separately.

Surge Control

Surge control facilities will be provided to protect the Agency pipelines from pressure surges that could result from sudden valve closure or pump shut-down caused by a power failure. Surge control will be accomplished by a combination of: 1) vacuum breaker valves located along the pipeline, and 2) one-way surge tanks near the intake. It is assumed that two 10,000-gallon surge tanks will be located adjacent to the intake.

Power Supply

Two new transformers will be required to meet the low and medium voltage requirements for RD 2035 and Agency equipment. RD 2035 will be served by the Western Area Power Administration (WAPA), which provides power at federally-subsidized rates to qualifying water transmission facilities. The Agency is not eligible to receive WAPA rates, and will require a separate feed from Pacific Gas and Electric (PG&E). An extension of PG&E transmission lines to the site may be required.

It is assumed that a single 1,000-kW standby generator will provide an emergency power supply for Agency facilities. A 2,000-gallon diesel fuel tank will provide approximately 24 hours of emergency power.

Access and Security

Fencing and automatic gates will be provided to limit access to above-ground facilities to authorized personnel. Remotely monitored surveillance cameras located onsite will provide additional security.

Separate and Common Facilities

Table A-2 presents the Separate and Common Facilities for the Intake. Certain types of facilities may have both Common and Separate portions (e.g., paving).

Table A-2. Intake Separate and Common Facilities				
Facility Description	Sub-Facility Description	Common Facility	Separate RD 2035 Facility	Separate Agency Facility
Intake	Structure	X		
	Protection piling	X		
	Fish screens	X		
	Screen cleaning mechanism	X		
	Sediment management system	X		
Pump Station	Structure	X		
	RD 2035 pumps		X	
	Agency pumps			X
	RD 2035 HVAC equipment		X	
	Agency HVAC equipment			X
	RD 2035 discharge piping and valving		X	
	Agency discharge piping and valving			X
Outlet Structure	RD 2035 main canal outlet structure		X	
Electrical Facilities	RD 2035 transformer		X	
	Agency transformer			X
	RD 2035 electrical equipment		X	
	Agency electrical equipment			X
	Standby generator			X
Other Appurtenances	Surge tanks			X
Sitework ^(a)	Grading	X		X
	Paving	X		X
	Fencing and gates	X		X
	Retaining walls	X		X
	Erosion control	X		

Notes:

- (a) Certain sitework facilities will have both common and separate Agency components. Refer to Exhibit A-2 (Preliminary Project Drawing) for illustration of Common and Separate sitework facilities.

EXHIBIT A-2
Preliminary Project Drawing

[On file with Agency]

EXHIBIT B
Project Schedule

EXHIBIT C
List of Agency-Responsible Approvals

1. California Department of Public Health, Design Approval and Permit to Operate
2. Yolo-Solano Air Quality Management District Permits, Construction and Operation Permits for Standby Generator
3. Yolo Natural Heritage Program - CEQA Approval
4. NEPA/CEQA Document-Provide assistance as an CEQA responsible agency

EXHIBIT D

Form of Opinion of RD 2035's Counsel

_____, 2010

Woodland-Davis Clean Water Agency
23 Russell Blvd.
Davis, CA 95616

Re: Sacramento River Joint Intake and Diversion Agreement

Ladies and Gentlemen:

We have represented Reclamation District 2035 ("RD 2035") in connection with the drafting and approval of the Sacramento River Joint Intake and Diversion Agreement dated _____, 2010 (the "Agreement"). Based on our review of such information, documents and matters of law as we consider appropriate, it is our opinion that:

1. RD 2035 is duly organized and validly existing under the laws of the State of California as a political subdivision of the State of California.
2. RD 2035 has full legal right, power and authority to approve, execute and deliver the Agreement.
3. The Agreement has been duly approved, executed and delivered by RD 2035.

We are delivering this letter to Woodland-Davis Clean Water Agency for its exclusive use in connection with the transaction under the Agreement. This letter may not be relied on by any other entity or person or for any purpose without our prior written consent.

The information set forth in this letter is effective as of the date set forth above and is based on the law and our actual knowledge of the facts at that time. We disclaim any duty to advise you of legal or factual changes which thereafter may be brought to our attention.

Sincerely,

By: _____

EXHIBIT E

Form of Opinion of Agency's Counsel

_____, 2010

Reclamation District 2035
45332 County Road 25
Woodland, CA 95776

Re: Sacramento River Joint Intake and Diversion Agreement

Ladies and Gentlemen:

We have represented Woodland-Davis Clean Water Agency ("Agency") in connection with the drafting and approval of the Sacramento River Joint Intake and Diversion Agreement dated _____, 2010 (the "Agreement"). Based on our review of such information, documents and matters of law as we consider appropriate, it is our opinion that:

1. The Agency is duly organized and validly existing under the laws of the State of California as a political subdivision of the State of California.
2. The Agency has full legal right, power and authority to approve, execute and deliver the Agreement.
3. The Agreement has been duly approved, executed and delivered by the Agency.

We are delivering this letter to Reclamation District 2035 for its exclusive use in connection with the transaction under the Agreement. This letter may not be relied on by any other entity or person or for any purpose without our prior written consent.

The information set forth in this letter is effective as of the date set forth above and is based on the law and our actual knowledge of the facts at that time. We disclaim any duty to advise you of legal or factual changes which thereafter may be brought to our attention.

Sincerely,

By: _____