



CENTRAL COAST WATER AUTHORITY

MEMORANDUM

May 23, 2022

TO: CCWA Board of Directors

FROM: Ray A. Stokes
Executive Director

SUBJECT: 2022 Supplemental Water Purchase Program: 2022 State Water Contractors' Dry Year Transfer Program

SUMMARY

Pursuant to CCWA's participation in the State Water Contractors' Dry Year Purchase Program (DYTP), Staff requests authorization to enter into transfer agreements with several sellers (DYTP Sellers). Three CCWA Participants (Carpinteria Valley Water District, Santa Ynez ID#1 for the City of Solvang, and La Cumbre Mutual Co.) have elected to participate in the DYTP this year.

This report summarizes the proposed transfer and requests the Board of Directors' approval of the transfer and further requests authorization to execute the agreements required to effectuate the proposed transfers, all part of the DYTP.

RECOMMENDATION

Staff recommends that the Board of Directors:

Authorize the Executive Director to enter into Purchase Agreements (in substantially the same form as the template authorized by the Board at its February, 2022 meeting) with each of the three CCWA Participants; and

Authorizes the Executive Director to enter into agreements with DYTP Sellers in a form substantially similar to the Purchase Agreement For Water Transfer Between Seller And Buyers – Plumas Mutual Water Company; and

Authorized the Executive Director to do and cause to be done any and all acts and things necessary or proper for carrying out each of the proposed DYTP transfers.

DISCUSSION

Due to prolonged drought conditions and low SWP "Table A Amount" for 2022, CCWA currently needs additional water supplies to supplement its 2022 supplies. At its February, 2022 meeting, the Board authorized the Executive Director to execute an agreement allowing for CCWA's participation in the program and payment of certain administrative fees.

Various DYTP Sellers have agreed to make water available for sale to numerous State Water Contractors participating in the program, including CCWA. The pricing terms and point of delivery for the individual transfers are established by contract with of the DYTP Seller. Generally, water will be made available for transfer by groundwater substitution or reservoir reoperation. A sample agreement for the transfer of water is attached.

The three participating CCWA Participants will execute a “Purchase Agreement re. DYTP,” with CCWA, in a form substantially the same as the template approved by the Board at its February 2022 meeting, whereby each CCWA Participant agrees to purchase a portion of the water made available by the proposed transfer, to pay its pro rata share of all costs associated with the proposed transfer, and to assume all obligations and liabilities associated with the proposed transfer. However, because the DYTP is not subject to the conditions set forth in Article 57(g) of the State Water Contract, as amended by the Water Management Amendment, CCWA is not required to make the findings required by that article.

CCWA Participants who are not parties to a Purchase Agreement re DYTP have no financial or legal responsibility for the proposed transfers.

ENVIRONMENTAL REVIEW

Pursuant to the terms and conditions of the proposed transfers, Sellers are responsible for compliance with the California Environmental Quality Act (CEQA) and all applicable laws.

CCWA’s decision to enter into an agreement with each Seller may also require compliance with CEQA. In the event I determine that CCWA’s participation in any proposed transfer pursuant to the DYTP is not exempt from CEQA (see Section 4 of CCWA’s Local Guidelines for Implementing CEQA, adopted January 22, 2015), I will return to the Board for further consideration of the application of CEQA to the proposed transfer.

Attachment:

Purchase Agreement For Water Transfer Between Seller And Buyers – Plumas Mutual Water Company

**PURCHASE AGREEMENT FOR WATER TRANSFER
BETWEEN SELLER AND BUYERS**

This Purchase AGREEMENT for Water Transfer (“AGREEMENT”) is effective when fully executed by and between Plumas Mutual Water Company (“SELLER”) and the public agencies listed in **Appendix A** that execute this AGREEMENT (“BUYERS”).

RECITALS

- A. SELLER is a mutual water company formed and operating in accordance with California law, and is empowered to sell water to BUYERS as provided for in this AGREEMENT.
- B. BUYERS are public agencies that execute this AGREEMENT and are formed and operating under the California Water Code and are empowered to purchase water from SELLER as provided for in this AGREEMENT for delivery to their customers.
- C. This AGREEMENT allows for BUYERS, willing purchasers, to acquire from SELLER, a willing seller, water supplies that BUYERS have determined are needed for use in BUYERS’ service areas. The water supplies to be transferred under this AGREEMENT will be a portion of the water available to SELLER under its DIVERSION AGREEMENT, dated May 28, 1971 with the State of California, acting by and through its Department of Water Resources (“DWR”).
- D. The water made available for transfer under this AGREEMENT will result from GROUNDWATER SUBSTITUTION or RESERVOIR REOPERATION.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, the PARTIES agree as follows:

- 1. ***Recitals Incorporated.***

The foregoing Recitals are incorporated herein by reference.

2. Definitions.

The following terms shall have the following meanings as used herein:

- a. “2022 IRRIGATION SEASON” means May 1, 2022 through September 30, 2022.
- b. “ASSUMED DEPLETION LOSS” means the total reduction in stream flow assumed by the California Department of Water Resources (“DWR”) to result from additional groundwater pumping that will occur as a result of the water transfer. For this AGREEMENT, ASSUMED DEPLETION LOSS will be 13%, or the amount of depletion losses established in DWR/United States Bureau of Reclamation’s (“USBR”) latest water transfer guidelines, or as accepted by DWR based on site-specific aquifer analysis of past transfers, or other amount that may be required by the permitting agencies.
- c. “BUYERS” are the public water agencies listed in **Appendix A** that execute this AGREEMENT.
- d. “CEQA” means the California Environmental Quality Act.
- e. “CONTRACT INTEREST RATE” is the interest rate paid monthly by the Local Agency Investment Fund, calculated from the date of the payment being refunded and compounded monthly.
- f. “CONTRACTORS” means the State Water Contractors.
- g. “DIVERSION AGREEMENT” is the Agreement on Diversion of Water from the Feather River dated May 28, 1971 by and between Plumas Mutual Water Company and the State of California acting by and through DWR.
- h. “GROUNDWATER SUBSTITUTION” is water made available by pumping groundwater from wells within SELLER’s boundary to irrigate crops, and

forbearing surface water diversions of an equal amount of water for delivery to the BUYERS.

- i. "PARTIES" are the BUYERS and SELLER. DWR, while not a PARTY, does have authority to consent to this AGREEMENT.
- j. "POINT OF DELIVERY" means SELLER's diversion point(s) on the Feather River or such other delivery point as agreed to by the PARTIES and DWR.
- k. "RESERVOIR REOPERATION" means the purposeful release of previously stored water from the SELLER's reservoir or reservoirs, which absent the water transfer, would remain in storage within the SELLER's reservoir or network of reservoirs.
- l. "SWC AGREEMENT" means the State Water Contractors 2022 Dry Year Water Transfer Agreement by and between the BUYERS and CONTRACTORS.

3. Term.

This AGREEMENT will be effective between the SELLER and any BUYERS listed in **Appendix A** once they have both executed this AGREEMENT. This AGREEMENT will be in effect until December 31, 2022, or such later date when all obligations under it are satisfied. No right of renewal or right to enter into extensions of this AGREEMENT or to enter into any new water transfer agreement is expressly granted hereunder, nor may such a right be implied from the execution of this AGREEMENT.

4. Agreement to Transfer Water.

- a. The BUYERS have entered into a SWC AGREEMENT. In the SWC AGREEMENT, the BUYERS authorized the CONTRACTORS to handle all payments and disbursements described in this AGREEMENT on the BUYERS' behalf. The SWC AGREEMENT requires BUYERS to deposit with the

CONTRACTORS funds necessary to make the payments for water and the BUYERS' share of regulatory costs and authorizes the CONTRACTORS to make all such payments to SELLER required by this AGREEMENT. SELLER shall send all notices or invoices required by this AGREEMENT to the CONTRACTORS with a copy to BUYERS, and the CONTRACTORS shall send all notices and payments to SELLER under this AGREEMENT on behalf of the BUYERS. The CONTRACTORS shall make all payments to SELLER required in accordance with this AGREEMENT on the BUYERS' behalf. Nothing in this Section 4(a) shall affect or limit the BUYERS' duties and obligations under this AGREEMENT, and they remain jointly and severally obligated to make the subject payments to SELLER, notwithstanding performance or non-performance on the part of the CONTRACTORS.

- b.* SELLER agrees to sell to BUYERS, at a price of \$800.00 for each acre-foot, the water supply derived from GROUNDWATER SUBSTITUTION and/or for RESERVOIR REOPERATION for delivery in 2022 for each-acre foot DWR and USBR (where applicable) determines is transferable and SELLER makes available to BUYERS at the POINT OF DELIVERY in accordance with DWR's "Draft Technical Information for Preparing Water Transfer Proposals" for Water Transfers in 2022, as revised in December 2019 ("Technical Information"). In light of emergency drought conditions, SELLER has expressed a preference in 2022 to provide its transfer water supplies, to the extent possible, to those BUYERS that have critical unmet municipal and industrial water demands. BUYERS agree to allocate and utilize SELLER's transfer supplies in a manner consistent with applicable law, including Water Code section 106, which prioritizes the domestic

use of water as the highest use and irrigation use as the next highest use, provided however that BUYERS' discretion to allocate transfer supplies shall not be constrained by this AGREEMENT nor shall the use of transfer supplies for irrigation be prohibited by this AGREEMENT. Neither this section, nor any other provision in this AGREEMENT, shall establish a precedent or be considered binding on the PARTIES regarding the terms and conditions of agreements governing possible future transfers.

- c.* For GROUNDWATER SUBSTITUTION transfers: DWR is imposing an ASSUMED DEPLETION LOSS on the water quantity developed through GROUNDWATER SUBSTITUTION. Accordingly, the water amount developed from GROUNDWATER SUBSTITUTION that the BUYERS will receive under this AGREEMENT will be the amount pursuant to Section 6 that is determined to be transferable by DWR at the POINT OF DELIVERY in accordance with the Technical Information, after deducting the ASSUMED DEPLETION LOSS. The PARTIES acknowledge and agree that, as of the effective date of this AGREEMENT, SELLER does not concede that there is adequate data or analyses supporting the ASSUMED DEPLETION LOSS. The ASSUMED DEPLETION LOSS for this water transfer shall in no manner whatsoever constitute a precedent for any determination or allocation of depletion loss in connection with any future water transfer involving SELLER. Nothing in this AGREEMENT constitutes an admission by SELLER for purposes of future transfers that the regulatory requirements imposed on this water transfer are required under applicable law.
- d.* In the event SELLER fails to make available the water quantity purchased at the POINT OF DELIVERY, SELLER will first provide appropriate adjustments to

the final invoice to reflect any differences in the volume of water requested by BUYERS and ultimately delivered by SELLER. If due to unforeseen circumstances the final invoice reflects an amount due to BUYERS, SELLER will promptly refund to BUYERS any payments made for purchased water not provided by SELLER. Any refunds shall accrue interest at the CONTRACT INTEREST RATE.

5. *Payments for GROUNDWATER SUBSTITUTION and RESERVOIR REOPERATION Transfer Water.*

- a.** SELLER may invoice BUYERS for 50% of the final quantities SELLER offers on or before May 30, 2022 provided DWR and/or the SWRCB have approved the transfer and BUYERS have called the water. If DWR and/or SWRCB approval occurs after May 30, 2022 SELLER may invoice BUYERS for 50% of the final quantities at that time, provided BUYERS have called the water. On or after July 29, 2022, SELLER may invoice BUYERS for an additional 40% of the final water quantity offered by SELLER under this AGREEMENT. After DWR has confirmed the final water quantity delivered by SELLER at the POINTS OF DELIVERY, SELLER may invoice BUYERS for the final balance owed. BUYERS shall pay all invoices under this section within thirty (30) days of receipt. Payments not made within thirty (30) days under this section shall accrue interest at the CONTRACT INTEREST RATE, compounded monthly. SELLER requests, and BUYERS agree, that payments made by BUYERS to SELLER under this Agreement shall be made payable to “Minasian et al. Trust Account” and delivered to 1681 Bird Street, Oroville, CA 95965. BUYERS’ compliance with the foregoing in the amounts set forth in this AGREEMENT shall relieve

BUYERS of duplicative payment requests or demands from SELLER.

Furthermore, SELLER agrees not to seek any legal remedy for payment against BUYERS if BUYERS deposit the required amounts once it is delivered to the Minasian et al. Trust Account.

6. *Water To Be Transferred; Delivery Conditions; POINT OF DELIVERY.*

- a.** SELLER is offering up to 2,000 acre-feet of water. On or before 5:00 p.m. on May 20, 2022, in their sole discretion, BUYERS shall notify SELLER whether they want to buy the total amount of water offered by SELLER. Failure by BUYERS to notify SELLER on or before 5:00 p.m. on May 20, 2022 shall be deemed an election by BUYERS to take all water offered by SELLER. Except as provided for in Sections 6(b) and 6(c), once BUYERS have notified SELLER of their intent to buy all water made available by SELLER (or that election has been otherwise deemed to occur), BUYERS will have a “take or pay” obligation for the total amount of water offered by SELLER and that is determined to be transferable by DWR and USBR (where applicable) at the POINT OF DELIVERY in accordance with the Technical Information.
- b.** For water made available by RESERVOIR REOPERATION:

 - i.** BUYERS agree to purchase the amount of RESERVOIR REOPERATION water specified by SELLER in Section 6(a) that DWR and USBR (where applicable) determine to be transferable at the POINT OF DELIVERY, and is made available by SELLER at the POINT OF DELIVERY.
 - ii.** Until SELLER provides the notification set forth in Section 6(a), SELLER may, in its sole discretion, reduce in whole or in part the amount of water being offered from RESERVOIR REOPERATION it wishes to make

available to BUYERS.

- iii.* If regulatory restrictions, including increased carriage losses, or State Water Project (“SWP”) infrastructure availability limit BUYERS’ ability to divert and use the RESERVOIR REOPERATION water under this AGREEMENT, or the BUYERS choose to terminate RESERVOIR REOPERATION transfers, BUYERS shall provide seventy-two (72) hour notice and suspend or terminate RESERVOIR REOPERATION transfers. Any water released prior to the effective date of the suspension or termination will be considered transferred to BUYERS.
 - iv.* In the event SELLER’s supply is reduced or curtailed, SELLER will meet and confer with BUYERS, but SELLER will reserve the right in its sole and absolute discretion to terminate this AGREEMENT. However, the obligations set forth in Section 7 will still apply.
- c.* For water made available by GROUNDWATER SUBSTITUTION:
- i.* BUYERS agree to purchase the amount of GROUNDWATER SUBSTITUTION water specified by SELLER in Section 6(a) that is determined to be transferable at the POINT OF DELIVERY by DWR, subject to Section 6(c)(iv), and is made available by SELLER at the POINT OF DELIVERY identified in Section 6(d).
 - ii.* Until SELLER provides the notification set forth in Section 6(a), SELLER may, in its sole discretion, reduce in whole or in part the water quantity being offered from GROUNDWATER SUBSTITUTION it wishes to make available to BUYERS. Subject to Section 6(c)(iv), SELLER will use reasonable efforts to provide the GROUNDWATER SUBSTITUTION

water during the transfer period, but cannot be the guarantor or otherwise warrant that it will be able to pump the full quantity of water offered by SELLER and accepted by BUYERS. GROUNDWATER SUBSTITUTION amounts are subject to change based on the final start date for the water transfer, regulatory approvals and requirements, and any monitoring and mitigation obligations which may suspend or reduce pumping.

- iii.* If SELLER elects to transfer water based on GROUNDWATER SUBSTITUTION, SELLER shall temporarily reduce the amount of surface water diverted and used for irrigation within SELLER's service area by an amount commensurate with the amount of groundwater pumped and make available that amount of water for transfer to BUYERS at the POINT OF DELIVERY described in Section 6(d).
- iv.* This AGREEMENT places no requirement or restriction on SELLER's diversions of surface water under its DIVERSION AGREEMENT or groundwater use by landowners within SELLER's boundary in the 2022 IRRIGATION SEASON. However, if regulatory restrictions, including increased carriage losses, or SWP infrastructure availability limit BUYERS' ability to divert and use the GROUNDWATER SUBSTITUTION water under this AGREEMENT, or the BUYERS choose to terminate GROUNDWATER SUBSTITUTION transfers, BUYERS shall provide seventy-two (72) hour notice of the need for SELLER to either suspend or terminate pumping. BUYERS may request SELLER to resume GROUNDWATER SUBSTITUTION water under this

AGREEMENT, and SELLER will resume pumping as soon as practicable, but no later than forty-eight (48) hours after BUYERS' notice. If pump or other mechanical failures, third party claims, or other unforeseen events limit SELLER's ability to make water available to BUYERS, SELLER shall notify BUYERS as soon as possible of the need to suspend, reduce, or terminate pumping. After such notification, SELLER and BUYERS shall promptly meet to determine whether to continue the GROUNDWATER SUBSTITUTION water transfer. During periods of reduced or suspended pumping, Seller may return to normal surface water diversions.

v. SELLER shall monitor and prepare and submit reports as required by DWR's Technical Information for water made available through GROUNDWATER SUBSTITUTION. In the event that SELLER does not produce the groundwater necessary to provide the water requested pursuant to Section 6(a), for which BUYERS have contracted and paid for, SELLER will promptly refund to BUYERS any payments made in accordance with this AGREEMENT for each acre-foot not produced. Any refunds shall include interest at the CONTRACT INTEREST RATE.

d. SELLER shall make transfer water subject to this AGREEMENT available at the POINT OF DELIVERY, and SELLER shall not schedule the delivery of water to be transferred under this AGREEMENT. With the exception of SELLER's responsibility for the ASSUMED DEPLETION LOSS pursuant to Section 4(c) (applicable for GROUNDWATER SUBSTITUTION transfers) and to the extent provided for in Section 6, BUYERS shall be responsible for and shall bear all

risks for all conveyance and other losses related to the inability of BUYERS or DWR to convey the water from the POINT OF DELIVERY to BUYERS, and for any carriage water losses assessed against BUYERS by USBR or DWR.

BUYERS understand and acknowledge that the transfer of water will occur within the current and future regulatory parameters for the SWP, including all Biological Opinion and Incidental Take Permit requirements under the federal and state endangered species acts and any additional restrictions being implemented as a result of interim operational remedies imposed by a state or federal court.

SELLER shall in no way be responsible for BUYERS' inability, infeasibility, frustration of purpose, or increased expenses resulting from transferring or transporting the water after the POINT OF DELIVERY. To the extent provided in Section 6(a), BUYERS' obligations under this AGREEMENT shall remain the same notwithstanding difficulty, increased costs, impossibility, or inability to transport the water to BUYERS' place of use except as provided in this AGREEMENT.

- e.* The water made available by SELLER's GROUNDWATER SUBSTITUTION or RESERVOIR REOPERATION pursuant to this AGREEMENT shall be for the exclusive use of the BUYERS, and SELLER shall take no actions, except those

permitted by this AGREEMENT, that would reduce the water transferred under this AGREEMENT.

7. *Obtaining Approvals; Environmental Compliance; and Related Costs.*

a. Approvals. SELLER will be responsible for preparing any necessary CEQA and SWRCB documentation.

i. For GROUNDWATER SUBSTITUTION, if SELLER is required to obtain approval by the SWRCB under Water Code Section 1725, it will obtain the required approval by May 20, 2022, unless by mutual agreement the PARTIES modify this date, under terms and conditions satisfactory to each PARTY. SELLER shall be responsible for obtaining such approval with any necessary cooperation and assistance from BUYERS. If the SWRCB approval has not been obtained by May 20, 2022, BUYERS and SELLER will confer to determine whether they will mutually agree to continue this AGREEMENT, with or without appropriate amendments.

ii. For RESERVOIR REOPERATION, if applicable, SELLER will be responsible for preparing necessary CEQA, NEPA, and SWRCB documentation, acquiring Warren Act Contract or other contract or agreement with USBR as determined necessary, and executing refill agreements with USBR and/or DWR by May 20, 2022, unless by mutual agreement, the PARTIES modify this date under terms and conditions satisfactory to each PARTY.

b. SELLER is required to obtain USBR's (where applicable) and DWR's consent to the water transfer provided for under this AGREEMENT. BUYERS and

SELLER will cooperate with and assist each other as necessary in obtaining approval and agreement from USBR and/or DWR.

- c. BUYERS will reimburse SELLER's reasonable and documented out-of-pocket administrative expenses, including but not limited to legal, environmental, and engineering consultants' fees and expenses incurred by SELLER in preparing, negotiating, administering, implementing and supporting this AGREEMENT, for developing and administering mitigation and monitoring programs for GROUNDWATER SUBSTITUTION, and obtaining any necessary approvals supporting this AGREEMENT, regardless of whether water is transferred, unless SELLER fails to provide any water after the BUYERS provide notification to purchase water as set forth in Section 6.a). Subject to the foregoing, SELLER shall be entitled to this reimbursement for such costs incurred after January 1, 2022, and upon the BUYERS and SELLER executing this AGREEMENT.
- Except as set forth in Section 7(d), the maximum amount that a SELLER will be reimbursed for its out-of-pocket administrative expenses is \$75,000 (for actual net deliveries (before carriage losses) of greater than 5,000 acre-feet) and \$37,500 (for actual net deliveries (before carriage losses) between 4,999 acre-feet and 500 acre-feet). Water quantity offered by the SELLER but suspended, reduced, and/or terminated per Section 6(c)(iv) will be counted towards the aforementioned administration reimbursement quantification tiers. SELLER may invoice BUYERS one time for such expenses after May 30, 2022. BUYERS shall pay such invoices within thirty (30) days of BUYERS' receipt of the invoice.
- SELLER shall invoice BUYERS for all costs under this section by no later than

December 31, 2022. If SELLER fail to invoice by December 31, 2022, BUYERS are not obligated to pay the costs set forth in this Section 7(c).

- d.* In the event of an administrative challenge and/or litigation related to the proposed 2022 water transfer, SELLER and BUYERS will promptly meet and confer to perform a risk assessment of the litigation/challenge, and cooperate in good faith to determine whether to terminate the AGREEMENT due to the litigation/challenge. If litigation and/or an administrative challenge is pending as of May 20, 2022 either PARTY may elect to terminate the AGREEMENT due to any such litigation/challenge. If either PARTY so elects to terminate the AGREEMENT, BUYERS shall still be obligated to pay SELLER's reasonable and documented out-of-pocket administrative expenses, and for all of the water transferred to BUYERS prior to such termination. If litigation and/or an administrative challenge is initiated after May 20, 2022, SELLER and BUYERS will promptly meet and confer to perform a risk assessment of the litigation/challenge, but termination of this AGREEMENT may only occur through agreement of both BUYERS and SELLER or at the option of SELLER in their sole discretion. SELLER will take all necessary and appropriate actions to defend the transfer on behalf of BUYERS and SELLER. Except as set forth in Section 7(d)(ii), BUYERS will reimburse 100% of SELLER's actual out-of-pocket expenses incurred in defending the proposed 2022 water transfer. BUYERS shall cooperate in defending the litigation as requested by SELLER. SELLER shall invoice BUYERS for expenses under this section on a monthly basis (supported by invoices) beginning the month following initiation of the proceeding or challenge, and BUYERS shall pay such invoices within thirty (30)

days of BUYERS' receipt of each invoice. However, BUYERS may still dispute such invoices after paying.

- i.* Subject to Section 7(d)(ii), BUYERS shall bear their own costs of any litigation and/or administrative challenge and shall pay any remedial award associated therewith, whether levied against BUYERS or SELLER.
- ii.* As to claims that solely challenge SELLER's conduct within SELLER's service area or above the POINT OF DELIVERY, and excepting claims governed by Section 7(d), including CEQA, Endangered Species Act, or administrative challenges to the entire transfer program, SELLER shall have primary responsibility for defending such claims on behalf of both SELLER and BUYERS, and BUYERS shall participate in defending against such claims to the extent it deems necessary or appropriate, in BUYERS' sole discretion. BUYERS shall bear their own fees and costs of defending against such claims. Except as provided in Section 7(c), SELLER shall bear its own fees and costs of defending against such claims and shall pay any monetary awards associated therewith.
- e.* Notwithstanding anything to the contrary in Sections 7(c) and (d), BUYERS shall not be required to reimburse SELLER for the time spent by their directors, officers, or employees relating to this transfer.
- f.* SELLER is required to obtain USBR's (where applicable) and DWR's agreement that the water made available by SELLER at the POINT OF DELIVERY in accordance with the Technical Information is transferable to BUYERS. BUYERS are required to obtain DWR's agreement to divert the quantity of water calculated pursuant to Section 4(b), less carriage and any other water losses

assessed by DWR, at the H.O. Banks Pumping Plant for delivery to BUYERS, consistent with BUYERS' SWP water supply contract. SELLER will cooperate with and assist BUYERS as requested to obtain DWR's agreement, but SELLER shall not act as a guarantor of such an agreement. BUYERS and SELLER acknowledge that DWR's approval will occur subsequent to executing this AGREEMENT. If DWR's agreement is not obtained, BUYERS and SELLER will confer to determine whether they will mutually agree to continue this AGREEMENT, with or without appropriate amendments.

- g.** SELLER shall obtain any and all other necessary approvals required to effectuate the water transfer under this AGREEMENT, except that BUYERS shall obtain all authorizations for the conveyance of the transfer water from the POINT OF DELIVERY to BUYERS' places of use.

8. Water Rights Not Affected.

No transfer of water pursuant to this AGREEMENT shall confer any appropriative, public trust, or other right to water on any person or entity. Nothing in this AGREEMENT shall act as a forfeiture, diminution, or impairment of any rights of SELLER to its full deliveries of water after the expiration of the AGREEMENT, and shall in no way prejudice any of SELLER's rights thereto. Consistent with the provisions of California Water Code Sections 109, 475, 1011, 1244, and 11961, the PARTIES agree that no transfers under this AGREEMENT, nor the AGREEMENT itself, is evidence of the availability of surplus water beyond the term of the AGREEMENT, nor evidence of lack of beneficial use of the water involved in the transfer, and they shall not contend otherwise. The only rights granted to the PARTIES as a result of this AGREEMENT are those expressly set forth herein.

9. General Indemnity.

Subject to the provisions of Section 7(d) regarding allocation of litigation expenses, each Party (that is, SELLER on the one hand, and BUYERS on the other hand) agrees to protect, defend, indemnify, and hold harmless the other Party and its/their directors, officers, agents, servants, employees, and consultants, in addition to the CONTRACTORS' directors and employees from and against any and all losses, claims, liens, demands, and causes of action of every kind and character, without limitation by enumeration, occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by the indemnifying Party hereunder.

10. Construction and Interpretation.

It is agreed and acknowledged by the PARTIES 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.

11. Obligations Prior to Termination.

Notwithstanding any other provision hereof, the obligations of the PARTIES incurred pursuant to this AGREEMENT prior to the termination of this AGREEMENT, including without limitation the obligations to make refunds as required, shall survive the termination.

12. Severability.

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

13. Governing Law.

This AGREEMENT shall be interpreted and enforced pursuant to the laws of the State of California.

14. Modifications.

This AGREEMENT can only be modified in writing and if executed by both PARTIES.

15. Entire Agreement.

This AGREEMENT contains the entire understanding of the PARTIES related to their interests, obligations, and rights in connection with the subject matter set forth herein. All prior communications, negotiations, stipulations, and understandings, whether oral or written, are of no force or effect, and are superseded, except as referenced herein.

16. No Third Party Beneficiary.

The PARTIES to this AGREEMENT do not intend to create any third party beneficiaries to this AGREEMENT and expressly deny the creation of any third party beneficiary rights hereunder toward any person or entity.

17. Time.

Time is of the essence in the performance of each and every term of this AGREEMENT.

18. Waiver.

The waiver or failure to declare a breach as a result of the violation of any term of this AGREEMENT shall not constitute a waiver of that term or condition and shall not provide the basis for a claim of estoppel, forgiveness or waiver by any PARTY to that term or condition.

19. Attorneys' Fees.

If it shall be necessary for any PARTY hereto to commence legal action or arbitration to enforce the terms and provisions of this AGREEMENT, each PARTY shall be responsible for its own attorneys' fees, expenses, and costs incurred therein.

20. Captions.

The section and subsection captions in this AGREEMENT are for convenience only and shall not be used in construing the AGREEMENT.

21. Additional Documents.

Each PARTY agrees to make, execute, and deliver any and all documents and to join in any application or other action reasonably required to implement this AGREEMENT.

22. Notice.

Any and all communications and/or notices in connection with this AGREEMENT shall be emailed, or either hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

To: Plumas Mutual Water Company

Steve Danna, President
1001 Feather River Blvd.
Plumas Lake, CA 95961
sdanna@dannafarms.com with cc to dcooper@minasianlaw.com

To: State Water Contractors

Chandra Chilmakuri
1121 L Street, Suite 1050
Sacramento, CA 95814-3944
cchilmakuri@swc.org

To: BUYERS

See **Appendix A** attached hereto for list of names and addresses of BUYERS. The PARTIES may change the foregoing addresses by providing written notice in compliance with this section.

23. BUYERS' Liability.

BUYERS, and each of them, shall be jointly and severally liable for complying with the obligations, liabilities, terms, and conditions of this AGREEMENT, including, without limitation, the obligations set forth in Sections 5 and 7.

24. Counterparts; Electronic Execution.

This AGREEMENT may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto except for having an additional signature page executed by any other PARTY. Each PARTY agrees that each other PARTY may rely upon the electronic signature of any PARTY on this AGREEMENT as constituting a duly authorized, irrevocable, actual, current delivery of this AGREEMENT as fully as if this AGREEMENT contained the original ink signature of the PARTY supplying an electronic signature.

IN WITNESS WHEREOF, the PARTIES hereto have executed this AGREEMENT as of the day and year first written above.

PLUMAS MUTUAL WATER COMPANY

By _____ Dated: _____
Steve Danna
Title: President

ANTELOPE VALLEY-EAST KERN WATER AGENCY

By _____ Dated: _____
Title: _____

CENTRAL COAST WATER AUTHORITY

By _____ Dated: _____
Title: _____

COUNTY OF KINGS

By _____ Dated: _____
Title: _____

DUDLEY RIDGE WATER DISTRICT

By _____ Dated: _____
Title: _____

KERN COUNTY WATER AGENCY

By _____ Dated: _____
Title: _____

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By _____ Dated: _____

Title: _____

THE NAPA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By _____ Dated: _____

Title: _____

PALMDALE WATER DISTRICT

By _____ Dated: _____

Title: _____

ZONE 7 WATER AGENCY

By _____ Dated: _____

Title: _____

Appendix A

BUYER LIST Buyers' Addresses

To: Antelope Valley-East Kern Water Agency

Tom Barnes
6450 West Avenue N,
Palmdale, CA 93551
tbarnes@avek.org

To: Kern County Water Agency

Lauren Bauer
3200 Rio Mirada Drive
Bakersfield, CA 93308
lbauer@kcwa.com

To: Central Coast Water Authority

Ray Stokes
255 Industrial Way
Buellton CA 93427
ras@ccwa.com

To: Metropolitan Water District of Southern California

James Bodnar
P.O. Box 54153
Los Angeles, CA 90054-0153
jbodnar@mwdh2o.com

To: County of Kings

Jacob Westra
1001 Chase Ave
Corcoran, CA 93212
jwestra@tlbwsd.com

To: The Napa County Flood Control and Water Conservation District

Christopher M. Silke, P.E.
804 First Street
Napa, California 94559-2623
christopher.silke@countyofnapa.org

To: Dudley Ridge Water District

Rick Besecker
286 W. Cromwell Avenue
Fresno, CA 93711-6162
rbesecker@ppeng.com

To: Palmdale Water District

Peter Thompson II
2029 East Avenue Q
Palmdale CA 93550
pthompsonii@palmdalewater.org

To: Zone 7 Water Agency

Valerie Pryor
100 North Canyons Parkway
Livermore CA 94551
vpryor@zone7water.com