

## TRANSITION AGREEMENT

THIS AGREEMENT is made and entered into between the County of El Dorado, a political subdivision of the State of California ("County"), the El Dorado County Water Agency, a body politic and corporate pursuant to the Water Code, Appendix Section 96-1 *et seq.* ("EDCWA"), the El Dorado Irrigation District, an irrigation district under the laws of the state of California ("EID"), the El Dorado Water and Power Authority, a joint powers agency ("EDWPA") and the Georgetown Divide Public Utility District, a public utility district under the laws of the state of California ("GDPUD"), (collectively "El Dorado Parties") and shall be and become effective upon full execution by all of the El Dorado Parties.

### RECITALS

**WHEREAS**, on March 2, 2004, pursuant to the Joint Exercise of Powers Act (Government Code § 6500 *et seq.*), the El Dorado Parties executed a Joint Powers Agreement for Formation of EDWPA ("Joint Powers Agreement") for the purposes, among others, of acquiring use of water storage facilities and water rights, and protecting, preserving, and enhancing the water and power interests of the El Dorado Parties; and

**WHEREAS**, the Joint Powers Agreement was revised by a First Amendment to the Agreement effective November 1, 2005; and

**WHEREAS**, on November 22, 2005, the El Dorado Parties, entered into an agreement with the Sacramento Municipal Utility District ("SMUD") for use of SMUD facilities in the Upper American River Project ("UARP") for storage and delivery of American River water for which the El Dorado Parties obtain water rights and authorizations ("Cooperation Agreement"); and

**WHEREAS**, among other provisions, the Cooperation Agreement requires SMUD to compensate the County for impacts on facilities, services and other resources within the County associated with the operation of the UARP and the issuance of a new license for the UARP, and provides for the Designated Representative of the El Dorado Parties; and

**WHEREAS**, concurrently with the execution of the Cooperation Agreement, the El Dorado Parties and EDWPA entered into the Intra-County Coordination Agreement ("Coordination Agreement") allocating the benefits, burdens, rights, and obligations of

the Cooperation Agreement, and granting to the El Dorado Parties certain rights to use the UARP for the diversion and storage of American River water; and

**WHEREAS**, among other provisions, the Coordination Agreement allocates to GDPUD the right to use the UARP facilities for the purpose of receiving Annual Deliveries of up to 10,000 acre-feet as well as the right to any associated SMUD Seasonal Storage, and allocates to EID the right to use the UARP facilities for the purpose of receiving up to 20,000 acre-feet of the SMUD Seasonal and Carry-Over Storage until year 2025, and up to 30,000 acre-feet per year thereafter; and

**WHEREAS**, among other provisions, the Coordination Agreement requires all parties to share the costs and expenses of the water supply acquisition efforts; and

**WHEREAS**, all parties to the Coordination Agreement have executed a Supplemental Water Acquisition Project Cost Share Agreement ("Cost Share Agreement") that, among other provisions, establishes EID's and GDPUD's contributions toward anticipated costs of the water supply acquisition efforts; and

**WHEREAS**, EDWPA has filed a Supplemental Water Rights Project ("SWRP") application with the California State Water Resources Control Board on February 26, 2008, and an amended application on October 27, 2008, that seeks partial assignment of State Filed Applications (SFA) 5644 and 5645, which includes GDPUD's service area and water demands ("Application"); and

**WHEREAS**, GDPUD has concluded that it is currently unable to access the Supplemental Water to be stored pursuant to the Cooperation Agreement due to the lack of a feasible and appropriate diversion point; and

**WHEREAS**, under the current circumstances, GDPUD is financially unwilling to sustain its allocated contributions toward the cost of obtaining Supplemental Water; and

**WHEREAS**, Article VII of the Joint Powers Agreement makes provision for withdrawal of any party to the Agreement, and Section 8 of the First Amendment to the Joint Powers Agreement modifies the provisions for such withdrawal.

**NOW THEREFORE**, the El Dorado Parties agree as follows.

1. **GDPUD Withdrawal from EDWPA.** Effective thirty (30) days from and by execution of this Transition Agreement by all El Dorado Parties, GDPUD withdraws from EDWPA pursuant to Section 8 of the First Amendment to the Joint Powers Agreement.



2. **Remittance to GDPUD of its Contributions.** Effective upon and by execution of this Transition Agreement by the El Dorado Parties, EDWPA shall remit to GDPUD all of GDPUD's contributions to EDWPA for the Application, totaling \$289,809.

3. **EDWPA's Right to Continue SWRP Application.** EDWPA shall continue to pursue the Application and GDPUD shall cooperate and not oppose the Application.

4. **GDPUD's Right to Apply for SFA 5644 Water.** The El Dorado Parties agree that GDPUD may apply at any time in the future for any unassigned portions of SFA 5644 water that are not the subject of the Application. GDPUD shall not apply to the State for SFA 5644 water subject to the Application while the Application is pending, or after it is assigned to the Designated Representative pursuant to the Application. The El Dorado Parties shall cooperate with and not oppose GDPUD's efforts to obtain such water for the GDPUD service area. Except as stated herein, nothing in this Transition Agreement shall be construed to limit or restrict GDPUD's right to secure rights for storage or diversion of SFA 5644 water.

5. **Deletion of Upper Diversion CEQA Study.** The El Dorado Parties agree that the upper diversion alternative study is not required to be included in the CEQA analysis for EDWPA's Application.

6. **Cooperation Agreement.**

6.1. **Position of the Parties.** GDPUD shall remain a party to the Cooperation Agreement.

6.2. **SMUD Payments.**

6.2.1. In accordance with Section 4.2 of the Cooperation Agreement, the County will receive from SMUD an annual amount of \$590,000, which amount will be adjusted annually in accordance with Section 4.5 of the Cooperation Agreement.

6.2.2. The payments to GDPUD set forth in Section 6.3 of the Coordination Agreement shall continue under the terms provided herein. Each year, as long as the Cooperation Agreement remains in effect and the County receives payment from SMUD pursuant to Section 4.2 of the Cooperation Agreement, within thirty (30) days of the County's receipt of said Annual Payment, the County shall pay to GDPUD 9/59 of the amount the County receives, without administrative or processing charges or fees. This agreement reaffirms the commitment made in Section 6.3 of the Coordination Agreement.

6.2.3. GDPUD shall use the funds referenced herein for water conservation efforts and the development of new water projects and resources.

7. **Cost-Share Agreement.**

7.1. **GDPUD Withdrawal.** Effective upon and by execution of this Transition Agreement by the El Dorado Parties, GDPUD withdraws from the Cost-Share Agreement and is released of all of its obligations thereunder.

7.2. **Transfer of Rights.** Effective upon and by execution of this Transition Agreement by the El Dorado Parties, GDPUD transfers and assigns all of its rights, title, interest, and benefits under the Cost-Share Agreement to the Designated Representative.

7.3 **Continuation.** The Cost-Share Agreement shall continue in full force and effect as to the County, EDCWA, EID and EDWPA.

8. **Coordination Agreement.**

8.1. **GDPUD Withdrawal.** Effective upon and by execution of this Transition Agreement by the El Dorado Parties, GDPUD withdraws from the Coordination Agreement and is released, except as reserved by Section 8.3 of this Transition Agreement, of all of its obligations thereunder.

8.2 **Transfer of Rights.** Effective upon and by execution of this Transition Agreement by the El Dorado Parties, GDPUD transfers and assigns all its right, title, interest and benefits under the Coordination Agreement to the Designated Representative, excepting only GDPUD's fractional SMUD payments under Section 6.3 of the Coordination Agreement as referenced in Section 6.2.2 above.

8.3 **Survival of Provisions.** The provisions of Sections 2.1, 2.2, and 3.8 (and its subsections) of the Coordination Agreement shall continue in full force and effect as to GDPUD.

8.4 **Continuation.** The Coordination Agreement shall continue in full force and effect as to the County, EDCWA, EID and EDWPA

9. **Package.** The above provisions constitute an entire package, the sections of which may not be separated from the whole. In the event of any inconsistency between this Agreement and any of the above referenced agreements, the provisions of this Agreement shall prevail.



10. **Automatically Operative Provisions.** By execution of this Transition Agreement by the El Dorado Parties, Sections 1, 7.1, 7.2, 8.1 and 8.2 are immediately effective without further action, conduct or writings, and this Transition Agreement may be used as and is evidence of the performance referenced in those Sections.

11. **Execution Authority.** By signing this Transition Agreement, each of the El Dorado Parties represents and warrants to each and all of the other signatory El Dorado Parties that it has the full and unrescinded authority to do so and thereby does bind its governmental entity to each and all of the terms of this Transition Agreement.

12. **Entire Agreement.** This Transition Agreement contains the entire understanding and agreement of the El Dorado Parties as to the subject matter herein, and supersedes all prior or contemporaneous promises, representations, agreements or understandings except as stated or referenced in this Transition Agreement. This Transition Agreement may not be altered, amended, or modified except in a writing executed by all El Dorado Parties. Each El Dorado Party waives its right to claim, contest, or assert that this Transition Agreement was modified, canceled, superseded, or changed by any oral agreement, course of conduct, waiver, or estoppel.


13. **Remedies.** Each El Dorado Party acknowledges and agrees that the covenants, agreements, and representations of the El Dorado Parties as set forth in this Transition Agreement are unique and of such a nature as to be inherently difficult to value in monetary damages, and that a remedy at law for any breach will by itself be inadequate. Accordingly, each El Dorado Party agrees that if any breach occurs, the remedy of specific performance or other injunctive or equitable relief in addition to compensatory relief will be available to the fullest extent under law.

14. **Signatures - Counterparts.** This Transition Agreement and any amendments hereto, may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Transition Agreement will not be effective until the execution and delivery between each of the El Dorado Parties of at least one set of counterparts. The El Dorado Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any of such completely executed counterparts will be sufficient proof of this Transition Agreement.

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IN WITNESS WHEREOF, the Parties have executed this Transition Agreement effective as of the day and year of the last of the El Dorado Parties to sign, as set forth above.

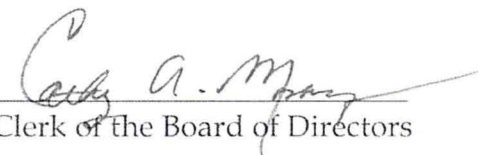
Dated: 3/10/09

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Attest:   
Clerk of the Board of Supervisors

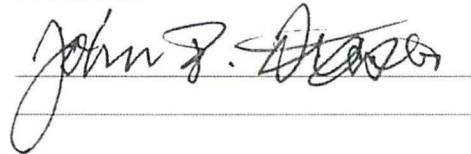
COUNTY OF EL DORADO

\_\_\_\_\_  
  
\_\_\_\_\_, Chairman

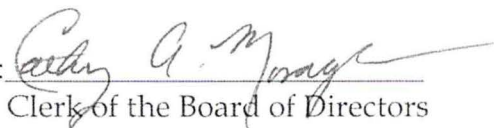
Dated: 3-11-09

Attest:   
Clerk of the Board of Directors

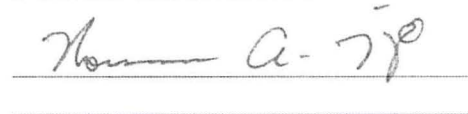
EL DORADO COUNTY WATER  
AGENCY

  
\_\_\_\_\_, Chair

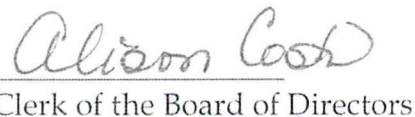
Dated: 3-11-09

Attest:   
Clerk of the Board of Directors

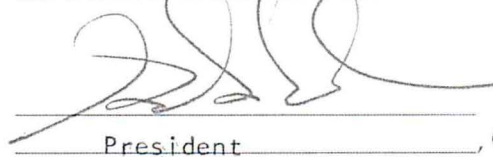
EL DORADO COUNTY WATER AND  
POWER AUTHORITY

  
\_\_\_\_\_, Chair


Dated: 3/9/09

Attest:   
Clerk of the Board of Directors

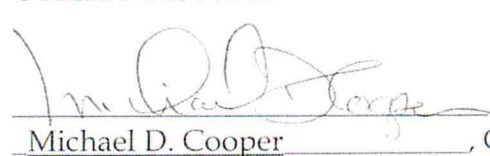
EL DORADO IRRIGATION DISTRICT

  
\_\_\_\_\_, Chair  
President

Dated: 3-5-09

Attest:   
Clerk of the Board of Directors

GEORGETOWN DIVIDE PUBLIC  
UTILITY DISTRICT

  
\_\_\_\_\_, Chair  
Michael D. Cooper

Approved as to form:

Leon B. Green  
County Counsel for El Dorado County

Date: 3/10/09

Terrence L. Akhavan  
General Counsel for El Dorado County Water Agency

Date: 3/11/09

Terrence L. Akhavan  
General Counsel for El Dorado Water and Power Authority

Date: 3/11/09

Shawn J. Ray  
General Counsel for El Dorado Irrigation District

Date: 3-9-09

Wm M. Wright  
General Counsel for Georgetown Divide Public Utility District

Date: 3-5-09