

EL DORADO – SMUD COOPERATION AGREEMENT

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EL DORADO – SMUD COOPERATION AGREEMENT

This El Dorado - SMUD Cooperation Agreement (“Agreement”) is made and entered into this **22nd day of Nov., 2005 (“Effective Date”)** by and between the following parties:

- The County of El Dorado (the “County”), the El Dorado County Water Agency (“EDCWA”), Georgetown Divide Public Utility District (“GDPUD”), El Dorado Irrigation District (“EID”), and El Dorado Water and Power Authority (“EDWPA”), collectively, the “El Dorado Parties”; and
- Sacramento Municipal Utility District (“SMUD”),

individually “Party” and collectively the “Parties.”

RECITALS

A. The County of El Dorado (“County”) is a subdivision of the State of California whose jurisdiction is El Dorado County.

B. El Dorado Water and Power Authority (“EDWPA”) is a joint powers authority organized under the Joint Exercise of Powers Act (Gov. Code, § 6500 et seq.), comprising the County, EDCWA, EID, and GDPUD.

C. El Dorado County Water Agency (“EDCWA”) is a district created by Chapter 96 of the California Water Code Appendices. EDCWA’s jurisdictional area consists of all territory lying within the boundaries of El Dorado County. Public water purveyors within its jurisdictional area include EID, GDPUD, Grizzly Flats Community Services District, a portion of the Tahoe City Public Utility District, and the South Tahoe Public Utility District.

D. El Dorado Irrigation District (“EID”) is an irrigation district organized and existing under the Irrigation District Law, California Water Code Division 11.

E. Georgetown Divide Public Utility District (“GDPUD”) is a public utility district created under the Public Utility District Act in 1946.

F. Sacramento Municipal Utility District (“SMUD”) is a political subdivision of the State of California and a municipal utility district organized and existing under the provisions of the Municipal Utility District Act, California Public Utilities Code sections 11501, *et seq.*

G. SMUD is the owner, licensee, and operator of the Upper American River Project (“UARP”), the facilities of which are used to divert, store, and release water within the watersheds of the South Fork and the Middle Fork of the American River for the purpose of

generating and transmitting electric power to a 900-square-mile service area that includes the County of Sacramento and small portions of Placer and Yolo Counties.

H. The UARP is licensed by the Federal Energy Regulatory Commission (“FERC”) under the Federal Power Act as hydropower Project number 2101 and consists of eleven (11) reservoirs and eight (8) powerhouses (“UARP Facilities”), all of which are located within the boundaries of the County, and related facilities.

I. On July 11, 1957, the County and SMUD entered into the “Agreement Between County of El Dorado and Sacramento Municipal Utility District” (the “1957 Agreement”) in which, among other things, SMUD agreed to permit the County to make use of certain of the UARP Facilities for the provision of water for irrigation, domestic, municipal, and stockwatering purposes within El Dorado County, and the County agreed to withdraw its protests to SMUD’s then-pending applications for non-consumptive water rights for the UARP.

J. On December 7, 1961, the County, EDCWA, and SMUD entered into the “Supplemental Agreement Between County of El Dorado, El Dorado County Water Agency, and Sacramento Municipal Utility District” (the “1961 Agreement”) in order to supplement the 1957 Agreement.

K. Effective as of September 27, 1993, the County and EDCWA transferred and assigned their right, title, and interest in, and delegated their duties under, the 1957 Agreement and the 1961 Agreement, to EID, and by such assignment EID agreed to exercise the rights and entitlements, and otherwise act in furtherance of developing and using the benefits subject to the burdens, of the 1957 and 1961 Agreements for irrigation, domestic, municipal, and stockwatering purposes within El Dorado County.

L. The term of SMUD’s original FERC license for the operation of the UARP expires in 2007 (“Original License”). In 2001, utilizing FERC’s alternative licensing procedures, SMUD initiated the relicensing process (“Current Relicensing Process”) to obtain its first new license for the UARP from FERC (the “New License”). For purposes of this Agreement, the term “Original License” includes any annual licenses issued by FERC on expiration of the Original License, and the term “New License” means the new license issued to SMUD by FERC in the Current Relicensing Process and any annual license issued by FERC in the relicensing process next following the Current Relicensing Process. The term “Subsequent New License” means any new license issued to SMUD in any relicensing process after the Current Relicensing Process (“Subsequent Relicensing Process”) and any annual licenses issued by FERC after expiration of such Subsequent New License and before issuance of the next Subsequent New License.

M. The El Dorado Parties have been active participants in the Current Relicensing Process respecting any impacts that the UARP will have on facilities owned or services provided by, or any resource or other interest subject to the jurisdiction of, any of the El Dorado Parties during the term of the New License (the “Impacts”).

N. The El Dorado Parties desire to receive delivery of water from the UARP Facilities for beneficial uses within the boundaries of El Dorado County.

O. Issues have arisen between the El Dorado Parties and SMUD concerning (i) the Impacts, (ii) the Parties' respective rights and obligations under the 1957 Agreement and the 1961 Agreement, and (iii) other matters pertaining to the Current Relicensing Process.

P. Prior to the execution of this Agreement, SMUD filed applications with the SWRCB for administrative modifications to its existing non-consumptive water rights and for additional non-consumptive water rights which SMUD has determined are necessary to ensure that its water rights accommodate both SMUD's actual and historic operations. A summary of the applications is attached as Exhibit "B".

Q. Prior to execution of this Agreement, SMUD filed its Application for License for Major Modified Project with FERC on Friday, July 15, 2005.

R. The Western Slope of El Dorado County Water Supply, Demand and Need Projections, attached as Exhibit "A", demonstrates that water supplies presently available to meet the projected El Dorado County General Plan water demands, including those supplies available to EID and GDPUD as shown in Exhibit "C", are almost fully utilized and that if the El Dorado Parties take no action to obtain supplemental water, the water demands on the Western Slope of El Dorado County will soon exceed available supplies with the deficit increasing to as much as 30,000 afy in 2025.

S. Prior to and in anticipation of the execution of this Agreement by all Parties, the El Dorado Parties commenced good faith discussions with the City of Sacramento (the "City") for the acquisition of a water supply to be diverted under this Agreement. In furtherance of that end, this Agreement contains specific provisions respecting the El Dorado Parties' conduct of those negotiations and their efforts to secure the approval of such a supply by the Water Forum. An arrangement with the City as provided in this Agreement is the source of a water supply for the El Dorado Parties that all Parties recognize as the most logical alternative, and SMUD acknowledges its agreement to facilitate discussions between the Parties and the City to effectuate this alternative. One purpose of this Agreement is to provide terms and conditions for the delivery of such water in support of the El Dorado Parties' acquisition of this supply.

T. Prior to the execution of this Agreement, the governing board of each Party made findings and determined, pursuant to applicable law, including, but not limited to, the Guidelines for the California Environmental Quality Act ("CEQA"), 14 California Code of Regulations § 15061(b)(3), that the approval and execution of this Agreement is not approval of a "Project," as defined by CEQA, because, as to any future activity contemplated by this Agreement that has the possibility or potential for having a significant effect on the environment, (1) the approval and execution of this Agreement is not a decision that commits, and does not commit, any of the Parties to a definite course of action, (2) any such activity is speculative, not currently capable of precise definition, and may never occur, (3) because of the foregoing, it would not be possible to conduct an environmental review of any such activity or Project prior to the approval and execution of this Agreement that fulfills the requirements of CEQA to identify and mitigate

potential significant environmental effects and to identify possible alternatives to the Project or Projects, and (4) any such activity or Project will be the subject of further authorization from the governing boards of the relevant Parties, and such authorization will be preceded by an environmental review that complies with all of the requirements of CEQA.

U. A Notice of Exemption stating CEQA does not apply to the approval or execution of this Agreement was filed by each Party as required by law.

V. The Parties recognize and acknowledge all of the following:

(1) No commitment can be made to carry out any Project unless and until the environmental review and assessment required by CEQA has been completed;

(2) For the purposes of this Agreement, Projects that may require CEQA compliance include: 1) the acquisition of water rights for the storage and delivery of water to the El Dorado Parties; 2) modification of SMUD's operation of the UARP in order to deliver water to one or all of the El Dorado Parties; and 3) construction of any facilities necessary for delivery of water to any of the El Dorado Parties. In addition, if any Party exercises its right to re-open for good faith negotiations by the Parties on the issues and on the terms and conditions specified in Article XIII, the Parties recognize that compliance with CEQA may be required.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises, covenants, and conditions contained in this Agreement, the Parties agree as follows:

ARTICLE I EFFECTIVE DATE; TERM OF AGREEMENT; DEFINED TERMS

1.1 **Effective Date.** This Agreement will become effective as of the Effective Date upon its execution by all Parties.

1.2 **Term.** Unless terminated earlier pursuant to Section 14.1, this Agreement will continue in effect for the terms of the Original License, the New License issued to SMUD in the Current Relicensing Process, and all Subsequent New Licenses issued to SMUD in any Subsequent Relicensing Process ("Term").

1.3 **Defined Terms.** Exhibit "D" contains a list of defined terms and their meanings for purposes of this Agreement, which terms are indicated by capitalization.

ARTICLE II PURPOSE OF AGREEMENT

2.1 **Statement of Intent.** Except as otherwise specifically provided in this Agreement, the Parties intend by this Agreement to resolve and conclude for the Term of this Agreement all issues between the El Dorado Parties, or any of them, and SMUD relating to (i) the Current Relicensing Process, (ii) the New License issued to SMUD in the Current

Relicensing Process, (iii) all Subsequent New Licenses issued to SMUD in any Subsequent Relicensing Process, (iv) the 1957 Agreement and the 1961 Agreement, and (v) the delivery of water from, and the storage of water in, the UARP for the benefit of any or all of the El Dorado Parties. Without limiting the generality of the foregoing sentence, the installment and annual payments SMUD is to make pursuant to Article IV fully cover and compensate the County and any agency of the County for all of the following that may be occasioned by the relicensing and issuance of the New License to SMUD and any Subsequent New License to the extent the terms and conditions of the Subsequent New License are essentially the same as those of the New License: Any injury to, and any measures that may be necessary or desirable for the protection, mitigation, or enhancement of, any facility owned or operated by, or any resource or other interest within the jurisdiction, authority, or responsibility of, the County and any agency of the County.

2.2 Effect on 1957 Agreement and 1961 Agreement. For the Term of this Agreement, this Agreement contains the exclusive and complete statement of the Parties' respective rights and obligations concerning the matters specified in Section 2.1 and in the 1957 Agreement and the 1961 Agreement and will control such matters to the exclusion of the 1957 and 1961 Agreements. However, should this Agreement terminate or the provisions of Articles V through VIII terminate, each Party will retain its respective rights and obligations as set forth in the 1957 Agreement and the 1961 Agreement, whatever they may be, as if this Agreement had not been in effect and no Party will rely on this Agreement in any way for purposes of interpreting or supplementing the 1957 Agreement or the 1961 Agreement.

2.3 Headwater Benefits. This Agreement does not affect any right EID may have respecting headwater benefits under section 10(f) of the Federal Power Act.

ARTICLE III CURRENT UARP RELICENSING PROCESS

3.1 FERC Notification of Agreement. Within ten (10) days after the Effective Date, SMUD will inform the FERC of the execution of this Agreement, and file a copy of the Agreement therewith.

3.2 Support of Relicensing.

3.2.1 Current Relicensing Process; Other Government Agencies. Within forty-five (45) days after the Effective Date, each El Dorado Party that participated in any aspect of SMUD's Current Relicensing Process, including the Alternative Licensing Process and the Settlement Negotiation Group, either through its own representative or through a third party representative, will by letter advise FERC, the third-party facilitator used to conduct relicensing meetings, and SMUD that such party supports issuance of the New License to SMUD for the UARP under terms and conditions contained in SMUD's July 15, 2005 application and request that such notice be distributed to all participants in the Current Relicensing Process and any other federal agency and California state or local agency involved in, or with jurisdiction over, any aspect of the Current Relicensing Process.

3.2.2 Intervention in Current Relicensing Process. Within the period specified by FERC for interventions in the Current Relicensing Process, each El Dorado Party will file a motion with FERC seeking to intervene as a party. Such motion will (i) state that, because of the provisions of this Agreement, the El Dorado Party supports issuance of the New License to SMUD for the UARP under terms and conditions contained in SMUD's July 15, 2005 application, and (ii) reserve the right to raise issues that are resolved by this Agreement if (a) litigation is initiated challenging this Agreement on grounds which, if sustained, cannot be cured by the Parties, and (b) such litigation is not finally resolved by the latest time that the El Dorado Parties properly may raise such issues for consideration by FERC in the Current Relicensing Process. This Agreement will terminate automatically upon the exercise of such right by the El Dorado Party, and the County will refund all payments made to it by SMUD with interest at the rate specified in Section 9.1 within thirty (30) days after such El Dorado Party raises any contested issue resolved by this Agreement before FERC.

3.3 Cooperation with SMUD.

3.3.1 Coordination of Communications. The County will exercise its good faith and best efforts to coordinate communications originating from public agencies and non-governmental organizations within El Dorado County regarding the Current Relicensing Process to the end that any such communications are supportive of the objective of this Agreement.

3.3.2 PM&E Measures. If any California State agency, public agency, or nongovernmental organization within El Dorado County should seek PM&E Measures respecting Impacts of the UARP within El Dorado County more stringent than those specified in SMUD's July 15, 2005 application for a New License, on request of SMUD, the County will file, or provide to SMUD for filing, a statement with FERC to the effect that in view of the provisions of this Agreement, the County supports those measures in SMUD's application as filed or as SMUD may have reasonably modified or proposed to modify a previous measure for the purpose of further lessening impacts of the UARP.

3.3.3 Duplication of Compensation. The El Dorado Parties will cooperate with SMUD and provide to SMUD for filing with FERC or other federal, state, or local government agencies such documents as SMUD may reasonably require to the end that SMUD will not become obligated through the Current Relicensing Process or any Subsequent Relicensing Process to provide compensation for any of those matters specified in Section 4.4 that duplicates or is for the same purpose as payments to be made by SMUD under Article IV.

3.4 Iowa Hill Development.

3.4.1 Publication of Material Dates. Within ten (10) days after the Effective Date, SMUD will provide the El Dorado Parties with a description of the process and, to the extent known, a list of the material dates for FERC's consideration of and decision on SMUD's application to include the Iowa Hill Development in the New License and for any necessary decisions by other public agencies in that connection. The Parties will cooperate in the joint publication of the material dates in a manner reasonably calculated to obtain broad public awareness of the approval process and opportunities for public input. The El Dorado Parties

acknowledge FERC establishes the schedule regarding its procedural deadlines and events relevant to the Current Relicensing Process and that the material dates provided by SMUD are target dates subject to change.

3.4.2 Iowa Hill Joint Advisory Committee. On request of SMUD or the El Dorado Parties but no later than 30 days after SMUD's issuance of its Notice of Intention to Proceed (as defined in Section 4.3.1, below) with the Iowa Hill Development, the County and SMUD will form a Joint Advisory Committee to receive public input and to develop reasonable and feasible measures to substantially mitigate the impacts of activities related to the construction of the Iowa Hill Development on the surrounding communities and existing infrastructure.

3.4.2.1 The Joint Advisory Committee will be headed by co-chairs, one appointed by SMUD and one by the County.

3.4.2.2 The co-chairs will establish reasonable ground rules and meeting schedules.

3.4.2.3 The Joint Advisory Committee will meet as frequently as necessary for the duration of the construction of the Iowa Hill Development.

ARTICLE IV PAYMENTS BY SMUD

4.1 SMUD Initial Payment. SMUD will pay to the County the sum of \$2,600,000 in two separate installments: (i) \$1,000,000 within ten (10) days after the Effective Date of this Agreement; and (ii) \$1,600,000 within ten (10) days after the New License becomes final and non-appealable but no later than August 1, 2012.

4.2 SMUD Annual Payments. SMUD will pay to the County, for the Term of this Agreement, an annual amount of \$590,000 in accordance with this Section 4.2. The first payment under this Section 4.2 will be due and payable on the later of thirty (30) days after the date on which the New License issued by FERC becomes final and is no longer subject to judicial review or July 1 of such year. Payments for all subsequent years will be due and payable on each July 1.

4.3 Iowa Hill Development. Should SMUD determine to construct the Iowa Hill Development, it will make payments to the County as described in this Section 4.3.

4.3.1 Payment Upon Notice of Intention to Proceed. Within ten (10) days after SMUD's Board of Directors authorizes initiation of final design of the Iowa Hill Development, SMUD will give the County a "Notice of Intention to Proceed" and will pay to the County a one-time payment of \$250,000.

4.3.2 Iowa Hill Annual Payments Upon Notice of Commencement of Construction. Within ten (10) days after awarding the first construction contract for the actual construction of the Iowa Hill Development, SMUD will give the County a "Notice of

Commencement of Construction” and will make an initial Iowa Hill Annual Payment to the County in the amount of \$50,000. SMUD will make additional Iowa Hill Annual Payments of \$50,000 by July 1st of each subsequent calendar year for the Term of this Agreement.

4.3.3 Iowa Hill Socioeconomic Impacts Payments

4.3.3.1 Assessment Panel. Within ninety (90) days of the completion of construction for the Iowa Hill Development, SMUD and the County will form the Iowa Hill Socioeconomic Impacts Assessment Panel (“Panel”) to conduct the socioeconomic assessments described in Section 4.3.3.2. SMUD and the County will each nominate a representative to serve on the Panel, and the two representatives will select a third Panel member. Each panelist will have the requisite experience and qualifications to competently study, measure, and place a monetary value on socioeconomic impacts of construction projects. SMUD and the El Dorado Parties will each bear the cost of their selected panelist. SMUD and the El Dorado Parties collectively will share equally all charges and expenses of the neutral panelist.

4.3.3.2 Socioeconomic Impact Assessment. The Panel will conduct a two-phased assessment of negative socioeconomic impacts attributable to the construction of the Iowa Hill Development following the analytical methodology specified in Exhibit “I” attached hereto and make Iowa Hill Measured Impacts Payments accordingly.

4.4 Use of Payment Funds. SMUD’s payments as described in Section 4.1 are to be utilized by the County for capital improvements to Ice House Road and other miscellaneous capital projects related to the UARP and its impacts on facilities owned or services provided by, or any resource or other interest within the jurisdiction of, the County. SMUD’s payments as described in Section 4.2 are to be utilized by the County for purposes of road maintenance, watershed management, and other miscellaneous activities related to the UARP and its impacts on facilities owned or services provided by, or any resource or other interest within the jurisdiction of, the County. SMUD’s payments as described in Section 4.3 are to be utilized by the County in order to minimize, avoid, or mitigate socioeconomic impacts attributable to the construction of the Iowa Hill Development within those areas of the County affected by such construction. The determination of which specific uses of payments by SMUD under this Article IV are consistent with the limitations of this Section are to be made by the County in its sole discretion.

4.5 Adjustment of Payments. The amount of the installment payments specified in Section 4.1, the annual payments specified in Section 4.2, and the Iowa Hill Annual Payments specified in Section 4.3.2 will be adjusted annually by the All Urban Consumer’s Price Index, All Items (Base Period 1982-84 = 100). The inflation adjustment for the installment payments specified in Section 4.1 will commence September 1, 2004 and will continue annually for the Term of this Agreement. Such adjustment for the annual payments, as specified in Sections 4.2 and 4.3.2, respectively, will commence upon the Effective Date and continue for the Term of this Agreement. Should said index either cease to exist or be modified so that it no longer performs its prior function, the Parties will meet and confer in order to determine a replacement index that most closely approximates said index.

**ARTICLE V
WATER DELIVERIES BY SMUD**

5.1 Delivery and Storage Obligation. SMUD will deliver El Dorado Water to, and store El Dorado Water for, the El Dorado Parties as provided in this Article V.

5.1.1 Annual Deliveries. Each year SMUD will make Annual Deliveries of El Dorado Water to the El Dorado Parties in an amount which, together with Deliveries to Carryover Storage during such year, does not exceed 30,000 acre-feet through 2025 and thereafter 40,000 acre-feet for the remaining Term of this Agreement. Annual Deliveries of water will be made in accordance with the provisions of Exhibit "H" and will be made by direct delivery and from seasonal storage in accordance with applicable law.

5.1.2 Deliveries from Carryover Storage. In any year in which the El Dorado Parties are restricted from receiving Annual Deliveries to the full extent permitted under this Agreement due to drought or an El Dorado Parties Emergency Condition, SMUD will deliver El Dorado Water from Carryover Storage to the El Dorado Parties in an amount which does not exceed the least of (i) the then-existing amount of Carryover Storage, (ii) 15,000 acre-feet, or (iii) that quantity which when added to Annual Deliveries during that year does not exceed 35,000 acre-feet through 2025 and thereafter 40,000 acre-feet for the remaining Term of this Agreement.

5.1.3 Deliveries to Carryover Storage. At any time when the Daily Net Storage is above 150,000 acre-feet, SMUD will make deliveries of El Dorado Water to Carryover Storage in reservoirs determined by SMUD in an amount up to the lesser of (i) the quantity which when added to the total quantity of water then in Carryover Storage does not exceed 15,000 acre-feet, or (ii) the quantity which when added to Annual Deliveries during that year does not exceed 30,000 acre-feet through 2025 and thereafter 40,000 acre-feet for the remaining Term of this Agreement. To be eligible for Carryover Storage, El Dorado Water must physically flow into one of the Loon Lake, Union Valley, and Ice House Reservoirs. Deliveries to Carryover Storage in any year will be made by a delivery of El Dorado Water to storage from the source or during the last quarter of any year by a conversion to Carryover Storage of El Dorado Water previously placed in Seasonal Storage during the same year.

5.2 Notice for Initiation of Deliveries and Storage; Construction of Interconnections.

5.2.1 Delivery Initiation Notice. The El Dorado Parties will give SMUD at least six (6) months advance notice of their intent to initiate delivery and storage of El Dorado Water under this Agreement ("Delivery Initiation Notice"), such notice to include the following: (i) a detailed specification of all water rights pursuant to which El Dorado Water will be diverted, stored, and delivered, (ii) the sources of all El Dorado Water to be diverted into the UARP for delivery to the El Dorado Parties or storage and by source the annual quantity to be diverted, the maximum rate of diversion, and the point of diversion, (iii) the date on which diversions into the UARP are to begin, and (iv) the date on which deliveries to the El Dorado Parties are to begin. In addition, at least ninety (90) days prior to the initiation of deliveries, the El Dorado Parties will provide SMUD with an annual forecast meeting the requirements of

Section 5.3 for the remainder of the year in which deliveries are to begin and, if the notice is given on or after September 1, for the following year.

5.2.2 Interconnection with White Rock Penstock.

5.2.2.1 White Rock Delivery Notice. Concurrently with or after giving the Delivery Initiation Notice specified in Section 5.2.1, the El Dorado Parties will also give SMUD notice of their intent to take delivery of El Dorado Water at the White Rock Delivery Point (“White Rock Delivery Notice”) at least six (6) months prior to beginning siting and engineering for the pipeline and other facilities necessary to interconnect with the White Rock Penstock.

5.2.2.2 Interconnection Construction Agreement. Promptly after delivery of the White Rock Delivery Notice, the Parties will begin and diligently pursue good faith negotiations over an agreement addressing the interconnection of the pipeline facilities of the El Dorado Parties to SMUD’s existing takeout on the White Rock Penstock, the agreement to cover timing, construction, and equipment necessary for such purpose. Such agreement will be based on, and incorporate, the following principles: (1) SMUD will design, construct, own, maintain and control that portion of the interconnection extending from the existing White Rock Penstock tap to a point immediately downstream of a shutoff valve to enable SMUD to shutoff the flow of water in an emergency or otherwise as may be necessary to protect the White Rock Penstock and other SMUD facilities; (2) The El Dorado Parties will design, construct, own, maintain and control interconnection facilities downstream of the SMUD shutoff valve, which facilities will include a valve to control the rate of flow into the El Dorado Parties’ system and to shut off such flow in an emergency or otherwise as may be necessary to protect the El Dorado Parties’ system; (3) SMUD will have design approval of the interconnection facilities to be constructed by the El Dorado Parties for purposes of determining, in its reasonable discretion, that such facilities do not adversely affect the safety, operation, or maintenance of the White Rock Penstock as it then exists; and (4) SMUD and the El Dorado Parties will, collectively, each bear its own costs associated with the construction of its respective portion of the interconnection facilities.

5.2.2.3 Point of Delivery. All El Dorado Water delivered by SMUD through the White Rock Penstock will be deemed delivered at the interconnection shutoff valve controlled by the El Dorado Parties as described in Section 5.2.2.2.

5.2.2.4 FERC Approval of Interconnection Facilities. SMUD will make all necessary applications to FERC to obtain FERC approval to use the UARP facilities to withdraw and store water for consumptive use in a manner consistent with this Agreement. The El Dorado Parties will bear the cost of the applications, including costs associated with conducting all environmental and other studies FERC may request and will provide to SMUD for filing with FERC such additional information as FERC may require in connection with such applications.

5.3 Annual Delivery Forecasts. The El Dorado Parties will by notice provide SMUD with an annual forecast (“Annual Forecast”) of their estimated delivery requirements for

each calendar year no later than September 1 of the prior year. Each forecast will specify, by month, (i) the quantity, rate of delivery, and point of delivery for Annual Deliveries, (ii) the quantity of water to be delivered to Carryover Storage, and (iii) the quantity, rate of delivery, and point of delivery for deliveries from Carryover Storage to the extent known. The El Dorado Parties may periodically revise such forecasts by notice to SMUD given at least thirty (30) days prior to the beginning of the month in which the forecast is to take effect.

5.4 Delivery Scheduling.

5.4.1 Annual Deliveries; Deliveries from Carryover Storage. The El Dorado Parties will schedule all Annual Deliveries and Deliveries from Carryover Storage by delivery point on a daily basis in accordance with the then-effective Annual Forecast, the scheduling requirements set forth in Exhibit "E," the delivery constraints set forth in Exhibit "H", and other applicable provisions of this Agreement. Subject to the provisions of Exhibit "H", SMUD will operate the UARP so as to deliver the total quantity so scheduled to the extent physically and legally possible. The El Dorado Parties will be under no obligation to schedule deliveries in any year or at all.

5.4.2 Deliveries to Carryover Storage. The El Dorado Parties will schedule all deliveries to Carryover Storage in accordance with the then-effective Annual Forecast on a monthly basis by notice to SMUD at least fifteen (15) days prior to the first month in which such deliveries are to occur.

5.4.3 Scheduling Communications. Promptly after the El Dorado Parties have given their Delivery Initiation Notice, the Parties will begin and diligently pursue good faith negotiations over an data interchange agreement ("DI Agreement") that will provide for all necessary operational procedures, data transfer, and communications protocols between the El Dorado Parties and SMUD pertaining to delivery scheduling, emergency conditions, conditions requiring constraints on or curtailments of deliveries, delivery monitoring, the giving of notices by electronic means, and other pertinent subjects.

5.5 Delivery Points. Annual Deliveries and deliveries from Carryover Storage will be made at the White Rock Delivery Point as further specified in Section 5.2.2.3 or the SFAR Delivery Point.

5.6 Storage Constraints.

5.6.1 Carryover Storage Losses. El Dorado Water in Carryover Storage or Seasonal Storage is not subject to spill or other loss, except as specifically provided herein. In the event that SMUD sustains a significant loss of storage in any of Loon Lake, Union Valley, or Ice House Reservoirs by reason of (i) a condition (other than that caused by a dry water year type) or event (by way of example only, an earthquake) beyond SMUD's control, or (ii) an order of FERC or any other governmental entity or court that requires SMUD to operate the UARP for needs other than the direct needs of SMUD (by way of example only, a state or regional energy crisis), then the El Dorado Parties will sustain a loss in total Carryover Storage proportionate to the loss in total storage sustained by SMUD.

5.6.2 Status of Reservoirs. SMUD will provide written notice to the El Dorado Parties on the first of each month the status of its reservoirs within the UARP, including, without limitation, information on Full Capacity, Daily Net Storage, as well as projected Daily Net Storage.

5.7 Rate of Deliveries at White Rock Delivery Point. Annual Deliveries and deliveries from Carryover Storage at the White Rock Delivery Point cannot exceed a delivery rate of 100 cfs, provided that during the period of May 1 through October 31 of any year, the El Dorado Parties may schedule deliveries at a rate of up to 200 cfs during the hours from Midnight to 6:00 a.m.

5.8 Constraints on Delivery.

5.8.1 Constraints Based on Daily Net Storage, Climatic Conditions. Constraints on deliveries to the El Dorado Parties that are based on Daily Net Storage or the existence of a Critically Dry Condition are specified in Exhibit H.

5.8.2 Curtailments for Super-Peaking Hours, Outages, Slab Creek Minimum Operating Level. The El Dorado Parties will not be entitled to receive any deliveries at the White Rock Delivery Point when any one or more of the following conditions exist:

- (i) From May 1 through September 30 of any year from 2:00 p.m. to 7:00 p.m. (referred to as "Super-Peaking Hours");
- (ii) During planned, unplanned, or emergency outages in the UARP that impact SMUD's ability to make water available to the White Rock Delivery Point; and
- (iii) Whenever the elevation of Slab Creek Reservoir drops below 5 feet above SMUD's Slab Creek Reservoir Minimum Operating Level, which level as of the Effective Date is 1,815 feet.

5.8.2.1 Changes in Slab Creek Minimum Operating Level. The El Dorado Parties acknowledge that SMUD may adjust the Slab Creek Reservoir Minimum Operating Level from time to time to reflect changes in the operating characteristics of that reservoir. SMUD agrees, however, that a proposed adjustment to the Slab Creek Reservoir Minimum Operating Level associated with SMUD's election to proceed with the Iowa Hill Development will be initially addressed in accordance with Section 13.6. Subsequent adjustments remain subject to the provisions of this Section 5.8.2. SMUD will promptly notify the El Dorado Parties of any adjustment in the Slab Creek Reservoir Minimum Operating Level.

5.8.3 SMUD Emergency Condition. During a SMUD Emergency Condition, SMUD will be excused from making Annual Deliveries and from delivering El Dorado Water from Carryover Storage to the El Dorado Parties for the period and to the extent such deliveries are precluded by the emergency condition.

5.8.4 Notices of Existence of Conditions Constraining Deliveries. SMUD will give notice to the El Dorado Parties of the existence of the conditions that will constrain deliveries to the El Dorado Parties as follows, such notice to be given by telecopier or other electronic means and to include information as to the reason for the outage, the expected duration of the outage, and the expected impact on deliveries:

- (i) For a planned outage as specified in Section 5.8.2(ii), as soon as practicable after SMUD has placed the outage in its operating schedule;
- (ii) For an unplanned or emergency outage as specified in Section 5.8.2(ii), promptly upon learning of the outage or determining that the outage will occur;
- (iii) For curtailments pursuant to Section 5.8.2(iii) because the Slab Creek Reservoir elevation is below 5 feet above SMUD's Slab Creek Reservoir Minimum Operating Level, as soon as practicable after SMUD determines that the reservoir elevation will be or is below such operating level;
- (iv) For a SMUD Emergency Condition, as soon as practicable after the condition has been declared;
- (v) For delivery constraints pursuant to Exhibit "H" attributable to Daily Net Storage, no notice will be required unless the pertinent reservoir conditions are different than those specified in SMUD's applicable status of reservoirs notice given under Section 5.6.2, in which case notice will be given as soon as practicable after SMUD determines that the Daily Net Storage will be or is at a level that triggers such delivery constraints.

5.9 Compliance with FERC License. Nothing in this Agreement will be construed to require SMUD to deliver El Dorado Water to, or store El Dorado Water for, the El Dorado Parties in a manner that violates or that SMUD reasonably determines may violate the FERC license then in effect for the UARP. Whenever SMUD believes that the delivery of water to the El Dorado Parties may violate the FERC license, SMUD will provide advance written notice identifying the time it intends to suspend delivery and the reasons for the suspension unless it is impracticable to do so under the circumstances. Following SMUD's suspension of water deliveries to the El Dorado Parties because of an actual or threatened violation of the FERC license, SMUD will meet with the El Dorado Designated Representative to determine what measures must be implemented to resume scheduled deliveries as soon as possible and propose a timeline for correcting the violation and resuming scheduled deliveries if physically possible. SMUD will use its best efforts during the course of such meetings to determine measures that will allow the El Dorado Parties to receive scheduled deliveries if physically possible. SMUD will use its best efforts during the course of any relicensing process to the end that a New License or Subsequent New License contain provisions that would not require SMUD to take an action that is inconsistent with its obligations under this Agreement.

ARTICLE VI
ACQUISITION OF RIGHTS TO EL DORADO WATER; SMUD WATER RIGHTS

6.1 Acquisition of Rights to El Dorado Water. The El Dorado Parties will secure, as more specifically provided in Exhibit "G", all necessary water rights and authorizations for the delivery, storage, and use of American River water for purposes of this Agreement ("El Dorado Water") through either:

- (a) first, a transfer and/or assignment of water right permits from the City of Sacramento and an amendment of such permits by the SWRCB or, if the El Dorado Parties are unable to secure such a transfer or assignment
- (b) any or all of (i) a new appropriation of American River water under applicable law, (ii) the partial assignment of state-filed applications nos. 5644, 5645, 7937, 7939, 18063, 18065, 18067, 18069, 18071, and 18072, and (iii) a transfer or assignment from a third party in accordance with applicable law.

Such authorizations for El Dorado Water together will not exceed the amounts to which the El Dorado Parties are entitled to receive delivery as Annual Deliveries and deliveries to Carryover Storage under this Agreement and will otherwise be consistent with this Agreement.

6.2 Facilitation, Notice Regarding City Negotiations. Given the statements contained in Recital S respecting an agreement between the El Dorado Parties and the City for the acquisition of water that may be diverted under this Agreement, the El Dorado Parties will provide SMUD with a written statement of the progress of their effort to engage in good faith negotiations with the City within twenty (20) days after the Effective Date. In addition, on the written request of the El Dorado Parties or the City, SMUD will exercise reasonable efforts to assist the negotiations and discussions between and among El Dorado Parties, the City, and the Water Forum. However, if the El Dorado Parties are not successful in obtaining a transfer and/or assignment of the City's water rights as specified in Section 6.1(a) and Exhibit "G", the El Dorado Parties will give SMUD written notice of the same, containing a summary of the reasons for terminating the negotiations, at least fifteen (15) days prior to pursuing an alternative source of water under Section 6.1(b) and Exhibit "G".

6.3 Water Forum. The El Dorado Parties will enter into good faith negotiations with the Water Forum in order to obtain its support by means of a purveyor specific agreement of the El Dorado Parties' acquisition of water rights and authorizations respecting El Dorado Water pursuant to Section 6.1 and the delivery and storage of such water pursuant to this Agreement. The El Dorado Parties will engage in diligent negotiations through December 31, 2006, after which the El Dorado Parties will be deemed to have satisfied their obligation with regard to the Water Forum, without regard to the source of water supply selected for acquisition and use by the El Dorado Parties or method of procurement. The El Dorado Parties will have sole and complete discretion as to whether the form and conditions of Water Forum support and/or the terms of a purveyor specific agreement are satisfactory to proceed with the consummation of a purveyor specific agreement. If the El Dorado Parties are unable to obtain the support of the Water Forum in a manner acceptable to the El Dorado Parties as to any source of water within the period specified above, the El Dorado Parties will promptly give SMUD notice to that effect,

such notice to specify with particularity the terms and conditions insisted on by the Water Forum that are unacceptable to the El Dorado Parties and the reasons they are unacceptable.

6.4 Section 8 of 1961 Agreement. The Parties agree that their rights and obligations under this Agreement will be subject to the following:

The El Dorado Parties agree that they will not protest any petition or application SMUD may file with the SWRCB for changes in points of diversion, changes in places of use for generation of hydroelectric energy, or for additional water rights for SMUD's UARP as now constituted or as it may be enlarged or modified in the future, provided that all of SMUD's water rights hereinbefore or hereafter acquired for said UARP will remain subject to Conditions 8 in Permits 10703, 10704, and 10705, which conditions reads as follows: "No diversion or use of water will be made under the permits which will in any way interfere with diversion or use of water for irrigation or domestic purposes, whether such higher uses are made under either prior or subsequent rights." The El Dorado Parties agree that they will not object to any requests which SMUD may file with the FERC for changes in the capacities or location of the UARP Facilities or the inclusion of additional facilities as a part of said project subject to Condition 8.

So long as the El Dorado Parties' priority referenced above is acknowledged and respected, the El Dorado Parties will not contest any adjustments in SMUD's existing water rights or application for new non-consumptive water rights deemed necessary by SMUD to ensure that SMUD's water rights accommodate SMUD's actual, historic operations, and to accommodate the Iowa Hill Development. SMUD has included the above-listed condition in its application for new water rights referenced in Exhibit "B" and will include such condition in any additional application for new water rights to be used in connection with the UARP or Iowa Hill Development.

6.5 Reservation of Rights. Nothing in this Agreement limits or affects the El Dorado Parties' rights to secure water rights for storage or use in facilities other than the UARP. Subject to the provisions of Section 6.4, the Parties expressly reserve their rights, whatever they may be, in relation to any proposed appropriation, diversion, or storage of water by any Party at locations, in amounts, and from sources other than as specified in this Agreement.

ARTICLE VII METERING; ACCOUNTING; AUDIT

7.1 Metering. The El Dorado Parties will provide for metering of all water delivered to the El Dorado Parties at the White Rock Delivery Point as provided in this Section 7.1 ("White Rock Meter(s)").

7.1.1 Installation. Prior to initiating diversions from the White Rock Delivery Point, the El Dorado Parties will install a White Rock Meter(s) which will measure the quantity of water delivered by SMUD to the El Dorado Parties at the White Rock Delivery Point. The White Rock Meter(s) will comply with all requirements of applicable laws and prudent industry practices, be capable of measuring rate of flow and quantity of water delivered, and be capable of being electronically polled by SMUD for both real-time and after-the-fact data.

7.1.2 Calibration and Maintenance. The El Dorado Parties will calibrate and adjust the White Rock Meter(s) prior to initiation of deliveries and thereafter on a regular basis in accordance with all requirements of applicable laws and prudent industry practices, and in any event, as soon as practicable after receipt of information, from SMUD or otherwise, that indicates that the device(s) may be inaccurate. The El Dorado Parties will operate, maintain, repair, and replace the White Rock Meter(s) as may be required by all provisions of applicable law and prudent industry practices. The El Dorado Parties will give SMUD reasonable advance notice of any testing or calibration of the White Rock Meter(s) and the opportunity to be present at such testing or calibration.

7.1.3 Recording, Reporting. The El Dorado Parties will provide for daily recordation of such deliveries, with summaries of the resulting readings to be transmitted monthly to SMUD in accordance with Section 7.3.

7.2 Deliveries at SFAR Delivery Point. Deliveries at the SFAR Delivery Point will not be metered or otherwise measured, but will be deemed to have been delivered pursuant to the then-effective schedule of the El Dorado Parties.

7.3 Accounting, Reporting and Audit Rights. Within twenty (20) days after the end of each month, the El Dorado Parties will provide SMUD a written report stating for such month all reasonably necessary information to determine the payments due to SMUD under Article VIII hereof, including, without limitation, (a) the daily quantity of all water delivered to the El Dorado Parties, separately identifying the quantities delivered as part of Annual Deliveries and the quantities delivered from Carryover Storage, and (b) the delivery point for such deliveries. SMUD will have the right, during the twelve month period following the end of each year and upon advance notice of not less than ten (10) days, to conduct an examination and audit of the books, records, and other supporting data of the El Dorado Parties for such year to the extent reasonably necessary to verify the payments due to SMUD hereunder. The El Dorado Parties will cooperate in the scheduling of such audit and will cooperate in the sharing of necessary information.

ARTICLE VIII PAYMENTS BY EL DORADO PARTIES

8.1 SMUD Compensation.

8.1.1 Pricing for Water Delivered at White Rock Delivery Point.

8.1.1.1 All Deliveries. For water delivered to the El Dorado Parties at the White Rock Delivery Point, the El Dorado Parties will pay to SMUD the sum of the Annual Value of Foregone Power plus the Annual Surcharge for deliveries from Seasonal Storage plus the Annual Surcharge for deliveries from Carryover Storage, determined as provided in Exhibit "F".

8.1.1.2 Excess Deliveries at White Rock Delivery Point. If on any day the El Dorado Parties take water from the White Rock Delivery Point in a total quantity that exceeds the maximum quantity that would have been deliverable under the rate-of-delivery limitations specified in Section 5.7 by more than 5%, the El Dorado Parties will make an additional payment to SMUD in an amount equal to 2 times the value of foregone power on a daily basis calculated using the following formula:

$$2 \times \{ [105\%] [\text{Daily Power Price Index}] [\text{White Rock Power House Water Duty}] [(\text{quantity of water delivered at the White Rock Delivery Point}) - (\text{maximum quantity of water deliverable under Section 5.7 limitations})] \}$$

If in any month the El Dorado Parties take water from the White Rock Delivery Point in a total quantity that exceeds the total quantity specified for such month in the then-effective Annual Forecast by more than 10%, the El Dorado Parties will make an additional payment to SMUD in an amount equal to 2 times the value of foregone power on a monthly basis calculated using the following formula:

$$2 \times \{ [105\%] [\text{Daily Power Price Index}] [\text{White Rock Power House Water Duty}] [(\text{Quantity of water delivered at the White Rock Delivery Point} - \text{Quantity of water specified in then-effective Annual Forecast})] \}$$

8.1.2 Pricing for Water Delivered at SFAR Delivery Point. For water delivered to the El Dorado Parties at the SFAR Delivery Point, the El Dorado Parties will pay to SMUD the sum of the Annual Surcharge for deliveries from Seasonal Storage plus the Annual Surcharge for deliveries from Carryover Storage in proportion to the deliveries made, as provided in Exhibit "F".

8.1.3 Pricing Components.

(a) **Annual Value of Foregone Power.** The Annual Value of Foregone Power will be a function of the Daily Power Price Index, the White Rock Powerhouse Water Duty, the daily quantities of all deliveries to the El Dorado Parties at the White Rock Delivery Point (whether Annual Deliveries or deliveries from Carryover Storage) expressed in acre-feet, and a factor to cover ISO fees calculated using the formula and values specified in Exhibit "F". Without limiting the foregoing, SMUD acknowledges and agrees that any foregone compensation for lost peaking capacity is not recoverable under this Agreement.

(b) **Annual Surcharge for Deliveries from Seasonal Storage.** For all water delivered to the El Dorado Parties at the White Rock Delivery Point or the SFAR

Delivery Point during the last quarter of each calendar year, a surcharge will be assessed to cover SMUD's costs of providing Seasonal Storage to the El Dorado Parties. This surcharge will be a function of the Daily Power Price Index, the respective Cumulative Powerhouse Water Duty, the daily quantities of water delivered at such delivery points expressed in acre-feet during such calendar quarter, and a factor to cover ISO fees, calculated using the formula and values specified in Exhibit "F".

(c) **Annual Surcharge for Deliveries from Carryover Storage.** For all water delivered to the El Dorado Parties from Carryover Storage at the White Rock Delivery Point or the SFAR Delivery Point, a surcharge will be assessed to cover SMUD's costs of providing Carryover Storage to the El Dorado Parties. This surcharge will be a function of the Daily Power Index, the respective Cumulative Powerhouse Water Duty, the daily quantities of water delivered at the White Rock Delivery Point and the SFAR Delivery Point expressed in acre-feet, and a factor to cover ISO fees, calculated using the formula and values specified in Exhibit "F".

8.2 Payment to SMUD.

8.2.1 In General. The annual payments due to SMUD under Section 8.1 will be in arrears and payable in the year immediately following the year in which the deliveries are made ("Payment Year") as provided in this Section 8.2.

8.2.2 Invoice by SMUD. By January 31 of each Payment Year, SMUD will determine the amount due from the El Dorado Parties under Section 8.1 for all deliveries of El Dorado Water during the previous year and by notice invoice the El Dorado Parties for payment of such amount ("Delivery Invoice"). The invoice will include sufficient information regarding the amounts delivered, source of water delivered, point of delivery, time of delivery, and the factors specified on Exhibit "F" to enable the El Dorado Parties to verify the amount due.

8.2.3 Payment by El Dorado Parties. By February 28 of the Payment Year the El Dorado Parties will pay the amount shown on SMUD's Delivery Invoice as being due except to the extent that the El Dorado Parties dispute such amount as provided in Section 17.2.

ARTICLE IX PAYMENT PROCEDURES

9.1 Late Payments. Amounts not paid by either the El Dorado Parties or SMUD on or before the applicable due date for each payment will accrue late payment charges computed at a rate per annum which is equal to the lesser of (a) a rate which is two percent (2%) above the prime rate of interest as published by The Wall Street Journal (such rate being the base rate on corporate loans posted by at least 75% of the United States' 30 largest banks or another standard adopted by The Wall Street Journal) or (b) the maximum rate from time to time permitted by applicable law.

9.2 Payment Mechanisms.

9.2.1 Payments to SMUD by the El Dorado Parties. Payments made by the El Dorado Parties to SMUD will be made through Electronic Funds Transfer (EFT) or Fedwire as specified by SMUD by notice to an account, the number of which will be provided to the El Dorado Parties by notice.

9.2.2 Payments to the El Dorado Parties by SMUD. Payments made by SMUD to the County will be made through Electronic Funds Transfer (EFT) or Fedwire as specified by the County by notice to an account, the number of which will be provided to SMUD by notice.

**ARTICLE X
USE OF AGREEMENT BY PARTIES**

10.1 El Dorado Parties Use of Agreement. The El Dorado Parties may use this Agreement to support their acquisition pursuant to Section 6.1 of water rights for the use of American River water as El Dorado Water, including the acquisition of new water rights and changes in and transfers of existing water rights. The El Dorado Parties may not use this Agreement to support the acquisition or transfer of or change in any other water right.

10.2 SMUD Use of Agreement. SMUD may utilize this Agreement as evidence that it has fully satisfied those matters described in Section 4.4 in its dealings with all other parties to the Current Relicensing Process and related processes.

**ARTICLE XI
COMPLIANCE WITH CALIFORNIA ENVIRONMENTAL QUALITY ACT**

11.1 Notice Regarding CEQA. When any El Dorado Party decides it wishes to initiate proceedings under CEQA in regards to this Agreement, that Party will promptly give the other Parties notice of such fact and of the commencement of actions to comply with CEQA as specified in this Article XI and as required by CEQA and the CEQA Guidelines.

11.2 Responsibilities of Parties.

11.2.1 Lead Agency; Responsible Agencies. The Parties shall cooperate in determining which of the El Dorado Parties shall be lead or responsible agencies for each Project or Projects under this Agreement pursuant to Pub. Res. Code §§ 21067 and CEQA Guidelines § 15051. SMUD may be a responsible agency for each Project or Projects under this Agreement pursuant to Pub. Res. Code § 21069.

11.2.2 Environmental Review and Analysis by Lead Agency. The Lead Agency or Agencies will first consider whether the Project is exempt under CEQA. If the Project is not

exempt, the Lead Agency or Agencies will prepare an initial study to determine whether the Project may have a significant effect on the environment. The Lead Agency or Agencies will then determine if it will prepare a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report ("EIR") for the Project. If the Lead Agency or Agencies prepare an EIR for the Project, the EIR will include all analysis required by law, including identification and meaningful evaluation of (1) a range of reasonable alternatives to the Project that could feasibly attain the basic objectives of the Project, (2) feasible mitigation measures that would lessen any significant adverse effects of that Project, and (3) a no Project alternative.

11.2.3 SMUD's Responsibility for Mitigation Measures. SMUD will have the responsibility for mitigating or avoiding, at its cost, the direct or indirect environmental effects of only those parts of the Project which it decides to carry out, finance, or approve and will have the sole discretion to determine what mitigation measures under its responsibility are "feasible," as that term is defined in section 15364 of the CEQA Guidelines, to avoid, eliminate or reduce such impacts.

11.2.4 El Dorado Parties' Responsibility for Mitigation Measures. The El Dorado Parties will be responsible for implementing, at their cost, all environmental mitigation measures adopted as part of the environmental review process in order to mitigate the impacts of any Project, other than as provided in Section 11.2.3. Each El Dorado Party will have the sole discretion to determine what mitigation measures under its responsibility are "feasible," as that term is defined in section 15364 of the CEQA Guidelines, to avoid, eliminate or reduce such impacts.

11.2.5 Cooperation of Parties. The Parties will cooperate with each other, in good faith and as needed, to conduct a thorough and legally sufficient CEQA review of any Project pursuant to this Agreement.

11.3 Discretion of the El Dorado Parties. Each El Dorado Party retains its discretion to independently, fairly, and fully evaluate each Project and environmental documentation prepared pursuant to CEQA. Prior to final approval or implementation of any Project, each El Dorado Party, either as a lead agency or responsible agency as required by CEQA, shall consider the environmental documentation prepared pursuant to CEQA. If an EIR is utilized and (1) identifies significant adverse impacts that can be reduced to a less than significant level through the adoption of feasible alternatives and/or mitigation measures, or (2) identifies significant adverse impacts that cannot be reduced to a level that is less than significant, the El Dorado Parties shall have complete discretion, subject to the requirements of CEQA, to determine whether to adopt such alternatives and/or feasible mitigation measures and whether to approve the Project notwithstanding one or more significant environmental impacts together with a statement of overriding considerations, as the case may be.

If any such El Dorado Party determines not to adopt such alternatives or mitigation measures and decides not to issue a statement of overriding considerations, such El Dorado Party will not implement any provision of this Agreement to have SMUD store or deliver El Dorado Water and will not construct any water delivery facilities as contemplated under this Agreement, unless the El Dorado Party otherwise first complies with CEQA.

11.4 Discretion of SMUD. SMUD retains its discretion to independently, fairly, and fully evaluate each Project and environmental documentation prepared pursuant to CEQA. Prior to final approval or implementation of any Project, SMUD, as a responsible agency, shall consider the environmental documentation prepared pursuant to CEQA. If an EIR is utilized and (1) identifies significant adverse impacts that can be reduced to a less than significant level through the adoption of feasible alternatives and/or mitigation measures, or (2) identifies significant adverse impacts that cannot be reduced to a level that is less than significant, SMUD shall have complete discretion, subject to the requirements of CEQA, to determine whether to adopt such alternatives and/or feasible mitigation measures and whether to approve the Project notwithstanding one or more significant environmental impacts together with a statement of overriding considerations, as the case may be.

If SMUD determines not to adopt such alternatives or mitigation measures and decides not to issue a statement of overriding considerations, the El Dorado Parties and SMUD will promptly enter into good faith negotiations pursuant to Section 11.5. Until SMUD and the El Dorado Parties conclude their negotiations pursuant to Section 11.5, SMUD will not implement any provision of this Agreement to have SMUD store or deliver El Dorado Water and will not construct any water delivery facilities as contemplated under this Agreement until SMUD complies with CEQA.

11.5 Good Faith Negotiations. If SMUD determines not to adopt alternatives or mitigation measures and decides not to issue a statement of overriding considerations as provided in Section 11.4 because of the costs associated with mitigation, then the Parties shall negotiate in good faith to modify the provisions of Article VIII of this Agreement so that SMUD will be compensated for the cost of adopting such alternatives or mitigation measures. Upon such modification to this Agreement, SMUD will promptly adopt the alternatives or mitigation measures or a statement of overriding considerations on which the modification or modifications to the Agreement are based.

11.6 Additional Procedures. Consistent with the provisions of this Agreement and with CEQA, the Parties may, in good faith, establish additional and further procedures for implementing and conducting any environmental review under this Article XI. The Parties shall cooperate and take all steps reasonably necessary to obtain any additional permits from any other state or federal agency that may be necessary to implement this Agreement.

ARTICLE XII

FUTURE RELICENSING PROCEEDINGS; AMENDMENTS TO LICENSE

12.1 Notice of Subsequent Re-License. SMUD will notify the El Dorado Parties in writing of its intent to apply for any Subsequent New License concurrent with its notification provided to FERC and in no event later than five (5) years prior to the expiration of then-effective New License or Subsequent New License.

12.2 Subsequent Relicensing Processes. Promptly after the notice specified in Section 12.1, SMUD and the El Dorado Parties will begin and diligently pursue good faith negotiations over any of the amendments to this Agreement specified in the next sentence that would be appropriate in consideration of:

- (1) any changes in applicable law, or
- (2) any changes resulting from the Subsequent New License in the impacts of the UARP on then-existing (i) available public resources within El Dorado County, (ii) facilities owned or services provided by any of the El Dorado Parties, and (iii) any resource or other interest subject to the jurisdiction of any of the El Dorado Parties.

The amendments that will be the subject of negotiation are: (i) any changes in mitigation measures to be included in the relevant Subsequent New License, (ii) any additional capital payments to be made by SMUD, and (iii) any changes in annual payments to be made by SMUD. If the Parties are unable to reach agreement on such matters in time for the El Dorado Parties to intervene in such Subsequent Relicensing Process, nothing herein waives the right of any El Dorado Party to intervene and request additional mitigation associated with the impacts of the UARP on facilities owned or services provided by, or any resource or other interest subject to the jurisdiction of, such El Dorado Party that would be occasioned by such Subsequent New License.

12.3 Amendments to New License, Subsequent New License. Except in the case of dam safety or security, SMUD will notify the El Dorado Parties prior to filing an application for a capacity-related amendment to the New License or to any Subsequent New License or prior to making any modification to the UARP that may in SMUD's reasonable judgment have a material effect on the delivery of El Dorado Water. Such notice will specify with particularity the nature of the amendment or modification SMUD will seek. A capacity related amendment will have the same meaning as that term is defined in FERC regulations (18 CFR § 4.201(b)), and SMUD will provide 90-days prior notice for any capacity-related amendment that will not have a material effect on the delivery of El Dorado Water. For any capacity-related amendment or modification that will have a material effect on the delivery of El Dorado Water, SMUD will provide at least twelve (12) months advance written notice. If the El Dorado Parties believe that the amendment or modification would cause an increase in any of the impacts of the UARP on facilities owned or services provided by, or any resource or other interest within the jurisdiction of, any of the El Dorado Parties, they will give SMUD notice to that effect. The Parties then will begin and diligently pursue good faith negotiations over the matters specified in Section 12.2 with respect to such amendment or modification. If the Parties are unable to reach agreement on such matters in time for the El Dorado Parties to intervene in the license amendment process, nothing herein waives the right of any El Dorado Party to intervene and request additional mitigation associated with changes in the impacts of the UARP on facilities owned or services provided by, or any resource or other interest within the jurisdiction of, such El Dorado Party that would be occasioned by such amendment to the FERC license for the UARP.

ARTICLE XIII RE-OPENERS

13.1 General. This Agreement will be subject to being re-opened for good faith negotiations by the Parties on the issues and on the terms and conditions specified in this Article XIII. During such negotiations, each Party will make available to the other Parties all non-privileged information available to such Party that bears on the issue under negotiation.

13.1.1 Notice of Re-Opener. Any Party seeking to re-open this Agreement will provide written notice to the other Parties that it is exercising its right to re-open this Agreement (“Notice of Re-Opener”). The Notice of Re-Opener will set forth with particularity the facts that support the existence of such right and the issues to be re-negotiated.

13.2 Criteria Applicable to All Re-Opener Negotiations and Arbitrations. The following general criteria will govern, and the criteria specified in Sections 13.2.1 through 13.2.6 will be maintained in, all re-opener negotiations and any subsequent arbitrations:

13.2.1 SMUD must remain financially whole and risk neutral as measured by the configuration of the UARP as of the Effective Date of this Agreement in a manner consistent with the principles underlying the provisions of Article VIII;

13.2.2 For purposes of upholding SMUD system operational reliability and UARP operational flexibility and complying with license, regulatory, and other legal requirements, the Daily Net Storage Threshold must be a volume and calculated in a manner that is comparable to the Daily Net Storage Threshold of 150,000 acre-feet for such reservoirs under the Original License;

13.2.3 SMUD must be compensated for any re-operation conducted below the Daily Net Storage Threshold for the benefit of the El Dorado Parties in a manner consistent with the principles underlying the provisions of Article VIII and Exhibit “F”;

13.2.4 SMUD must continue to be able to operate the UARP primarily as a dispatchable hydroelectric generating project;

13.2.5 The operational elevations and constraints for Slab Creek Reservoir must be sufficient to uphold SMUD system operational reliability and UARP operational flexibility and to comply with license, regulatory, and other legal requirements;

13.2.6 The extent of the El Dorado Parties’ reasonable, detrimental reliance upon their rights under this Agreement to store and receive delivery of water or their pre-existing right, to the extent of 30,000 afy (40,000 afy after 2025), to use the White Rock Penstock or Slab Creek Reservoir for Annual Deliveries will be taken into account; such reliance to be through investment in infrastructure, approval of development, or forbearance from pursuing viable transactional opportunities or asserting legal claims against third Parties which, if successful, would have secured for the El Dorado Parties advantages similar to those under this Agreement.

13.3 Source of Water Re-Opener. The El Dorado Parties will re-open this Agreement if the El Dorado Parties desire that SMUD store and deliver water from any source of water obtained pursuant to Section 6.1(b) and Paragraph 2 of Exhibit "G" to the extent that, prior to the time that such water is obtained, the source of water does not physically flow into and through the UARP as it is then configured or the water rights for such source of water do not contain the provisions specified in Paragraph 2(b) of Exhibit "G". In such event, the following issues as to the relevant source of water will be subject to renegotiation:

- (i) amount and timing of Seasonal Storage and Carryover Storage;
- (ii) timing and rate of any and all deliveries; and
- (iii) amount of and measure for any modification in the payments due to SMUD under Article VIII hereof.

The criteria set forth in Section 13.2 above will be applied in such a manner to keep SMUD in the same position it would have been were the El Dorado Parties to support their storage and deliveries exclusively by a partial transfer and/or assignment from the City.

13.4 Points of Delivery Re-Opener. The El Dorado Parties may re-open this Agreement if the El Dorado Parties desire to add points of delivery (other than the White Rock Delivery Point, the SFAR Delivery Point, and at the Iowa Hill Development) within the UARP. In such event, the following issues as to the proposed additional points of delivery will be subject to renegotiation:

- (i) whether and to the extent to which the proposed additional points of delivery should be added;
- (ii) timing and rate of any and all deliveries; and
- (iii) amount of and measure for any modification in the payments due to SMUD under Article VIII hereof.

The criteria set forth in Section 13.2 above will be applied in such a manner to keep SMUD in the same position it would have been in if the proposed point(s) of delivery were not added.

13.5 Iowa Hill License Re-Opener. SMUD may re-open this Agreement if FERC grants SMUD a New License that allows SMUD to build and construct the proposed Iowa Hill Development, and the Board of Directors of SMUD has decided to proceed with the construction of the Iowa Hill Development. In such event, the following issues will be subject to renegotiation:

- (i) constraints, if any, on the extent, quantity, and timing of the El Dorado Parties' right to take deliveries from the White Rock Delivery Point; and

(ii) amount of and measure for any modification in the payments due from the El Dorado Parties to SMUD under Article VIII hereof.

The criteria set forth in Section 13.2 above will be applied to ensure that (a) SMUD can effectively use the Slab Creek Reservoir as the lower reservoir for the Iowa Hill Development while providing the ability for the El Dorado Parties to take deliveries under this Agreement; and (b) the Annual Value of Foregone Power payment to SMUD by the El Dorado Parties is not increased.

13.6 Re-Opener for New License.

13.6.1 SMUD may re-open this Agreement no later than forty-five (45) days after the issuance of the New License, if the New License contains Flow-Related PM&E Measures that would require SMUD to change its operations and result in an Annual Loss of Net Generation Value of greater than five percent (5%). In such event, the following issues will be subject to renegotiation:

- (i) increases in the Daily Net Storage Threshold;
- (ii) accommodation of other physical and operational constraints resulting from the PM&E Measures;
- (iii) corresponding reductions in, or changes in the timing of, deliveries to, and storage for the El Dorado Parties under this Agreement; and
- (iv) amount of and measure for any modification in the payments due from the El Dorado Parties to SMUD under Article VIII hereof.

SMUD may only exercise its right under this re-opener prior to the date the New License is issued under the terms of this Agreement if both (a) the El Dorado Parties are receiving Annual Deliveries or deliveries from Carryover Storage; and (b) SMUD is unsuccessful in seeking a stay of implementation of the Flow-Related PM&E Measures pending action under Section 313 of the Federal Power Act or under state law provisions governing appeals of conditions of a Clean Water Act 401 certification and/or an NPDES permit. To the extent SMUD is ultimately successful in its challenge to the inclusion of the Flow-Related PM&E Measures in its New License or its challenges to the 401 Certification or the NPDES Permit, the Parties will modify the renegotiated terms accordingly.

The criteria set forth in Section 13.2 above will be applied to ensure that (a) the operational considerations specified in Section 13.2 are not materially impaired by deliveries to and storage for the El Dorado Parties; and (b) payments from the El Dorado Parties to SMUD are commensurate with the changes resulting from the Flow-Related PM&E Measures.

13.6.2 For purposes of Section 13.6.1, (i) the Annual Loss of Net Generation Value of the UARP will be determined taking into account the increase or decrease that operation of the Iowa Hill Development would have on the Net Generation Value of the UARP

under the New License versus the Net Generation Value of the UARP under the Original License, (ii) in so determining the Annual Loss of Net Generation Value of the UARP it will be assumed that the Board of Directors of SMUD has decided to proceed with the construction of the Iowa Hill Development, and (iii) the amount of the increase or decrease that the Iowa Hill Development would have on Net Generation Value will be based on the best information available to SMUD at the time.

13.6.3 If SMUD ultimately elects not to construct the Iowa Hill Development, SMUD may reopen this Agreement, and the issues subject to renegotiation will be as specified in Section 13.6.1 without reference to the Iowa Hill Development.

ARTICLE XIV TERMINATION; SURVIVAL

14.1 Termination. This Agreement will terminate prior to the expiration of the Term upon the occurrence of any of the following events: (i) by mutual written agreement of the Parties, (ii) at such time as SMUD is no longer the licensee of the UARP, unless and to the extent the successor licensee assumes, or is directed by FERC to assume, the obligations of SMUD hereunder, or (iii) by any Party in the event the UARP is no longer being operated by any entity.

14.2 Survival of Provisions. The following provisions will survive any termination of this Agreement: Article IV to the extent payments from SMUD to the County are accrued and unpaid; Section 16.1 (Remedies); this Section 14.2 (Survival); Article XVII (Dispute Resolution); Section 2.2 (Effect on 1957 and 1961 Agreements); Article VIII to the extent payments due from the El Dorado Parties to SMUD are accrued and unpaid.

ARTICLE XV REPRESENTATIONS AND WARRANTIES

15.1 Representations and Warranties of El Dorado Parties. Each El Dorado Party separately represents and warrants to SMUD that:

15.1.1 Due Authority and Approval. It has all legal power and prior unqualified and un-rescinded authority to enter into this Agreement, and to consummate the transactions contemplated hereby.

15.1.2 Validity. This Agreement has been duly executed and delivered by the representing El Dorado Party, and constitutes a valid and binding obligation, enforceable against such representing El Dorado Party in accordance with its terms.

15.1.3 No Violation. To the best of the representing El Dorado Party's knowledge, neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will, as of the date of this Agreement, violate any provision of law applicable to the representing El Dorado Party, or any agreement or other instrument to

which such representing El Dorado Party is a party or by which it is bound in any material respect.

15.1.4 Litigation. There are no pending or, to the best of the representing El Dorado Party's knowledge, after due diligence, threatened proceedings against such representing El Dorado Party by or before any Governmental Entity as of the date of this Agreement concerning the execution and delivery of this Agreement, its subject matter, or the consummation by the representing El Dorado Party of the transactions contemplated hereby.

15.1.5 Decisions Respecting Delivery and Storage of Water. The El Dorado Party has not decided (1) whether it will exercise any rights provided in this Agreement for the delivery and storage of water, or (2) if it ultimately decides to exercise such right, how, or to what extent such right will be exercised, where delivery of water will be taken, what facilities will be constructed or where they will be located, or where or for what purpose such water will be put to beneficial use.

15.2 Representations and Warranties of SMUD. SMUD represents and warrants to the El Dorado Parties that:

15.2.1 Due Authority and Approval. SMUD has all legal power and prior unqualified and un-rescinded authority to enter into this Agreement, and to consummate the transactions contemplated hereby.

15.2.2 Validity. This Agreement has been duly executed and delivered by SMUD, and constitutes a valid and binding obligation of SMUD, enforceable against SMUD in accordance with its terms.

15.2.3 No Violation. To the best of SMUD's knowledge, neither the execution and delivery of this Agreement, nor the consummation by SMUD of the transactions contemplated hereby will, as of the date of this Agreement, violate any provision of law applicable to SMUD, or any agreement or other instrument to which SMUD is a party or by which it is bound in any material respect.

15.2.4 Litigation. There are no pending or, to the best of SMUD's knowledge, after due diligence, threatened proceedings against SMUD by or before any Governmental Entity as of the date of this Agreement concerning the execution and delivery of this Agreement, its subject matter, or the consummation by SMUD of the transactions contemplated hereby.

ARTICLE XVI REMEDIES

16.1 Remedies.

16.1.1 Specific Performance. The Parties acknowledge and agree that the covenants and agreements of the Parties as set forth in this Agreement, other than the agreement to pay money, are unique and of such a nature as to be inherently difficult or impossible to value

in monetary damages, and that a remedy at law for any breach will be by itself inadequate. Accordingly, each 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 available under the law.

16.1.2 Cumulation of Remedies. No remedy or election will be deemed exclusive but will, wherever possible, be cumulative with all other remedies at law or in equity.

ARTICLE XVII DISPUTE RESOLUTION

17.1 General. The Parties will resolve any dispute, claim, or controversy arising out of or relating to this Agreement or its interpretation, enforcement, or performance exclusively in accordance with sequential processes steps provided in this Article XVII, unless all Parties to the dispute or that may be affected by its resolution (“Disputing Parties”) agree in writing to dispense with one or more of the steps that precede arbitration. No Party may seek judicial relief with respect to any dispute other than in a Neutral County, (i) in the event of an emergency as provided in Section 17.6.3, (ii) to enforce the provisions of this Agreement requiring the resolution of disputes through arbitration, and (iii) to enforce an arbitration award. All remedies shall be available to such neutral arbitrator, including injunctive relief, in order to preserve the status quo pending resolution of any dispute.

17.2 Dispute by El Dorado Parties over SMUD Delivery Invoice. If the El Dorado Parties dispute any aspect of SMUD’s Delivery Invoice, they will pay to SMUD the amount not in dispute and give SMUD notice of such dispute by February 28 of the Payment Year specifying the total amount of the Delivery Invoice that is in dispute and, with reasonable particularity, the basis for the dispute, including information regarding disputed deliveries, disputed calculation of payment factors, and any other aspect of the Delivery Invoice to which the dispute extends. The amount in dispute will be submitted for expedited dispute resolution in accordance with Section 17.3.3.4, and any amount determined to be owing to SMUD will bear interest as specified in Section 9.1.

17.3 Negotiation of Re-opener Disputes under Article XIII; Suspension; Termination. The sequential steps specified in this Section 17.3 will govern all disputes between the Parties under Article XIII respecting re-openers.

17.3.1 Effectiveness of This Agreement. During negotiations on reopened issues and any arbitration conducted in accordance with Section 17.5, this Agreement will remain in full force and effect and the Parties will be obligated to continue their performance under this Agreement during such negotiations, except as provided in Section 17.3.3 below.

17.3.2 Good Faith Negotiations. If the Parties are unable to reach agreement on an issue as to which a right of re-opener has been exercised after diligent, good faith negotiations for a six (6)-month period commencing upon the Notice of Re-Opener, and the Parties do not

agree to extend the period for such negotiations, then any Party may submit the matter to binding arbitration in accordance with Section 17.5 below.

17.3.3 Suspension and Termination of this Agreement.

17.3.3.1 Suspension. If SMUD exercises its right to re-open this Agreement pursuant to Section 13.6 above (Re-Opener for New License), SMUD may, in its sole discretion, temporarily suspend (until resolution of said re-opener issues by negotiation and/or arbitration) its performance of those provisions of this Agreement that are subject to such negotiation and/or arbitration and the performance of which would, in light of the terms and conditions of the New License, impair SMUD system operational reliability or impair SMUD's ability to comply with license, regulatory, or other legal requirements.

17.3.3.2 Impairment; Notice. If SMUD elects to temporarily suspend its performance under this Section 17.3.3, SMUD will include in its Notice of Re-Opener a specification of (i) the provisions of this Agreement that are to be temporarily suspended; (ii) the terms and conditions of the New License that bear on the impairment of SMUD; (iii) the reasons the provisions, terms, and conditions would cause such impairment; and (iv) the proposed effective date of suspension. If the El Dorado Parties conclude that they would be injured by such suspension, they will provide written notice to SMUD specifying in reasonable detail the nature of such injury and the extent to which and the reason the injury is irreparable ("Notice of Injury"). Said notice will be provided to SMUD within fifteen (15) days of SMUD's Notice of Re-Opener.

17.3.3.3 Meet and Confer. The Parties will meet and confer in good faith within fifteen (15) days of the El Dorado Parties' Notice of Injury to attempt to agree upon the nature of, and the actions which might be taken to minimize, the impairments and the injuries so noticed. If the Parties are unable to agree in these informal negotiations, then within forty-five (45) days of SMUD's Notice of Re-Opener, either SMUD or the El Dorado Parties may seek expedited binding arbitration in accordance with Section 17.3.3.4 below. The arbitrator will be selected in accordance with Section 17.5.3. The arbitrator, in reaching his decision, will consider, without limitation, (i) the extent to which SMUD is entitled to temporarily suspend its performance of the provisions specified in its Notice of Re-Opener, and (ii) the extent to which such temporary suspension will cause irreparable injury to the El Dorado Parties.

17.3.3.4 Expedited Binding Arbitration. The procedural rules set forth in Section 17.5 will apply, subject to the following differences: (i) the petition for arbitration must be filed within forty-five (45) days of the Notice of Re-Opener; (ii) the responding Party must file a response within ten (10) days; (iii) arbitration hearing will be set for a date that falls within sixty (60) days of the filing of the petition for arbitration; and (iv) the arbitrator, in reaching its decision, will consider, without limitation, the extent to which SMUD is entitled to temporarily suspend its performance of the provisions specified in its Notice of Re-Opener, and the extent to which such temporary suspension will cause irreparable injury to the El Dorado Parties.

17.3.3.5 Termination. If the arbitrator sustains any aspect of SMUD's suspension, but determines that such suspension causes irreparable injury to the El Dorado Parties, then the El Dorado Parties, in their sole and absolute discretion, may terminate the following provisions of this Agreement by providing SMUD with written notice of termination within ten (10) days of the arbitrator's final determination, with the termination to be effective thirty (30) days thereafter: Article V, Section 6.1, Section 6.2, Article VII, Article VIII except with respect to deliveries made by SMUD prior to the effective date of the termination, and Article XIII.

17.4 Negotiation and Mediation of Other Disputes. The sequential steps specified in this Section 17.4 will govern all disputes between the Parties other than those disputes under Section 17.2 respecting a SMUD Delivery Invoice and Section 17.3 respecting re-openers.

17.4.1 Informal Negotiations. The Disputing Parties will first attempt to resolve the dispute through informal negotiation between representatives that are knowledgeable of the issues in dispute and have the authority to settle or recommend settlement of the dispute.

17.4.2 Formal Negotiations. If at any time it appears to a Disputing Party that the dispute will not be resolved by informal negotiation as provided in Section 17.4.1, the Disputing Party may initiate formal negotiations by providing written notice to all other Disputing Parties setting forth the subject of the dispute, the relief requested, and the reason the Party believes it is entitled to such relief under this Agreement. Each recipient of such notice will respond within ten (10) days with a written statement of its position on and recommended resolution of the dispute. If the dispute is not resolved through this exchange of correspondence, a senior executive of each Disputing Party, with full settlement authority, will meet at a mutually agreeable time and place within ten (10) days of the date of the last response to attempt to resolve the dispute. If the dispute is not resolved by these formal negotiations within thirty (30) days after the date of the notice initiating formal negotiations, any Disputing Party may submit the issue for mediation in accordance with Section 17.4.3 hereof.

17.4.3 Mediation.

17.4.3.1 Notice; Selection of Mediator. Any Disputing Party may initiate mediation by providing the other Disputing Parties with a written request to enter into mediation. The Parties will select an agreed-upon neutral mediator within ten (10) days of the written notice. The mediator selected will be experienced, neutral, without conflicts of interest, and qualified to mediate disputes of the nature of those that have arisen under this Agreement, as such qualifications are described in Section 17.5.3. If the Parties are unable to agreed upon a mediator, the El Dorado Parties, collectively, and SMUD will each appoint one mediator, with the two appointed mediators selecting a third qualified, neutral mediator who will serve as the sole mediator of the dispute.

17.4.3.2 Mediation Conference; Settlement of Dispute. Within ten (10) days of the selection of the sole mediator as provided in Section 17.4.3.1, an initial mediation conference will take place at the offices of the mediator, or such other place as the mediator may designate. The mediator may schedule two additional mediation conferences on

dates and at places reasonably determined by the mediator, to be held within thirty (30) days after selection of the sole mediator. The mediator will preside, and the Disputing Parties will be represented by a senior executive, at all mediation conferences. If the Parties reach agreement on the settlement of the dispute, within ten (10) days after the conclusion of the last mediation conference, the Parties will enter into a written settlement agreement setting out the terms and conditions of the settlement of the dispute.

17.4.3.3 Failure to Resolve Dispute. If the Parties are unable to resolve the dispute through mediation, any Disputing Party may submit the dispute to arbitration pursuant to Section 17.5.

17.5 Binding Arbitration.

17.5.1 Rules of Arbitration. The arbitration will be conducted pursuant to the Commercial Arbitration Rules, including the Procedures for Large, Complex Commercial Disputes, of the American Arbitration Association in effect at the time of the dispute (“AAA Rules”), except as otherwise provided in this Agreement.

17.5.2 Initiation of Arbitration. Any Party may initiate arbitration by giving the other Party notice of its intention to arbitrate (“Arbitration Demand”) within thirty (30) days after the conclusion of any mediation proceedings conducted under Section 17.4.

17.5.3 Appointment of Arbitrator. Within thirty (30) days after delivery of the Arbitration Demand, the Parties will mutually agree upon a single arbitrator who will be experienced in (i) the economics and operations of electric utilities with complex hydro-electric projects, (ii) the requirements of water districts with delivery obligations similar to those of the El Dorado Parties, and (iii) the process of deciding disputes and interpreting contracts similar to this Agreement. If the Parties are unable to agree upon an arbitrator within such thirty-day period, then within fifteen (15) days after the expiration of such 30-day period SMUD and the El Dorado Parties collectively will each appoint one arbitrator with the two appointed arbitrators selecting a third, neutral, qualified arbitrator who will serve as the sole arbitrator of the dispute. If the appointed arbitrators are unable to agree on the third arbitrator within thirty (30) days after their appointment, then the sole arbitrator shall be made as provided in the AAA Rules.

17.5.4 Discovery. The Parties will be entitled to take discovery of any person or entity by any or all methods specified provided in the California Code of Civil Procedure on such conditions respecting relevancy of information sought, timing, and duplicative discovery as the arbitrator may direct in order to preserve the expedited nature of arbitration.

17.5.5 Arbitration Award. The arbitrator’s award, including the relief granted, must be consistent with the provisions of this Agreement, and the arbitrator will not have jurisdiction to award relief not contemplated by the provisions of this Agreement.

17.6 Miscellaneous Provisions.

17.6.1 Good Faith. The Parties will participate in all steps of the dispute resolution process required by this Article XVII diligently and in good faith.

17.6.2 Confidentiality. All offers, promises, statements, and other communications (whether oral or written) made in the course of informal negotiation, formal negotiation, and mediation under this Article XVII by any of the Parties, their agents, employees, experts, and attorneys, and by the mediator, are confidential, privileged, and inadmissible for any purposes in any arbitration under Section 17.5, litigation, or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

17.6.3 Emergency Relief. Any Disputing Party may be permitted to seek a preliminary injunction or temporary restraining order in a Neutral County prior to the initiation of arbitration proceedings to preserve the status quo pending the resolution of the dispute before the arbitrator and only in the event of an existing or threatened emergency which has or imminently will cause substantial interference with the public health, safety and welfare. Such emergency relief will continue only until the neutral arbitrator has been designated pursuant to Section 17.5.3 and has had an opportunity to consider whether to continue such relief in effect.

17.6.4 Costs of Mediation, Arbitration. All Parties will bear their own costs of mediation and arbitration, including charges and expenses of any mediator and arbitrator appointed by them. SMUD and the El Dorado Parties collectively will share equally all charges and expenses of neutral mediators and arbitrators.

ARTICLE XVIII GENERAL PROVISIONS

18.1 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed in this State.

18.2 Entire Agreement. This Agreement contains the entire understanding and agreement of the Parties and there have been no promises, representations, agreements, warranties, or undertakings by any of the Parties, either oral or written, of any character or nature binding except as stated or referenced in this Agreement. This Agreement may be altered, amended, or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each Party waives its right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreement, course of conduct, waiver, or estoppel.

18.3 Severability. If any provision of this Agreement is determined by final judgment of any court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect and will not be affected thereby. The provision that is so invalidated or held to be unenforceable will be modified or changed by the Parties to the extent possible to carry out the intentions and directives set forth in this Agreement. However, if any Party contends the invalid or unenforceable provision remains material to its continuing performance under this Agreement, and no modification can be mutually agreed upon, then such Party may initiate the Dispute Resolution provisions set forth in

Article XVII. If a mutually satisfactory resolution is not achieved through mediation, the Party contending the invalid or unenforceable provision is material may seek arbitration in accordance with the provisions of Section 17.5 for the sole purpose of determining whether the invalid or unenforceable provision is sufficiently material that it would be unfair and inequitable to require the Party's continuing performance under this Agreement and whether any proposed modification can be incorporated so as to make performance reasonable under the circumstance. If a Party obtains a determination that continuing performance would be unfair and inequitable and that there are no reasonable modifications available, this Agreement will terminate upon the terms that may be provided by the arbitrator.

18.4 Assignment; Successors and Assigns. No Party may transfer or assign this Agreement or any part thereof without the other Parties' prior written consent, which consent may be withheld in any Party's absolute discretion. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective permitted assigns and successors in interest.

18.5 No Third Party Rights. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies on any persons other than the Parties and their respective successors and assigns.

18.6 Incorporation of Recitals and Exhibits. The Recitals sets forth above are incorporated in this Agreement and made a part hereof. All exhibits attached hereto are incorporated by this reference as though fully stated herein.

18.7 Waiver. The waiver of any breach of any provision hereunder by any Party to this Agreement will not be deemed to be a waiver of any preceding or subsequent breach hereunder, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the Party making the waiver.

18.8 Attorneys' Fees; Costs. If any legal action is brought by any Party against any other Party respecting the enforcement, interpretation, or performance of this Agreement, each Party will bear its own attorneys' fees and court costs.

18.9 No Precedent. This Agreement is entered into as a compromise and with the specific understanding that it is without any admission of fault by either Party and is without precedential value. It is not intended to be, nor will it be construed as an interpretation of any preexisting agreement and will not be used as evidence, or in any other manner, in any court or dispute resolution proceeding (with the exception of an action or proceeding to enforce the terms of this Agreement) to create, prove or interpret the obligations of any Party hereto or any of its individual members, associates, successors, or predecessors under any other agreement(s) with a Party or any non-Party to this Agreement.

18.10 Good Faith. This Agreement is subject to the covenant of good faith and fair dealing.

18.11 Other Instruments. Each Party from time to time will execute and deliver such other and further documents as another Party may reasonably deem necessary to effect the intent and carry out the provisions of this Agreement.

18.12 Representation by Counsel; Interpretation. Each Party acknowledges that it has been represented by counsel in connection with this Agreement and the transactions contemplated hereby. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the Party that drafted it has no application and is expressly waived. The provisions of this Agreement will be interpreted in a reasonable manner to effect the intent of the Parties.

18.13 Notices. All notices and other communications given under this Agreement will be given in writing as provided in this Section 18.13 or given pursuant to the DI Agreement provided for in Section 5.4.3. Notices will be conclusively deemed to have been duly given (1) when hand delivered to the other Party; (2) when received if sent by facsimile to the number set forth below and the receiving facsimile machine confirms such receipt to the sender, provided that any notice given by facsimile will be deemed received on the next business day if such notice is received after 5:00 p.m. or on a non-business day; (3) three business days after the same have been deposited in a United States post office with first class or certified mail return receipt requested postage prepaid and addressed to the Parties as set forth below; (4) the next business day after same have been deposited with a national overnight delivery service (Federal Express, DHL Worldwide Express, Express Mail, etc.), postage prepaid, addressed to the Parties as set forth below with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider; or (5) as provided in the DI Agreement.

To SMUD: General Manager
Sacramento Municipal Utility District
6201 S Street
Sacramento, CA 95817
Phone: (916) 452-3211
Fax: (916) 732-6562

To County: County of El Dorado
330 Fair Lane
Placerville, CA 95667
Phone: (530) 621-5770
Fax: (530) 621-2937

To EID: El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Phone: (530) 622-4513
Fax: (530) 622-1195

To EDCWA: El Dorado County Water Agency
3932 Ponderosa Road, Suite 200
Shingle Springs, CA 95682
Phone: (530) 621-5392
Fax: (530) 672-6721

To EDWPA: El Dorado Water & Power Authority
3932 Ponderosa Road, Suite 200
Shingle Springs, CA 95682
Phone: (530) 621-5392
Fax: (530) 672-6721

To GDPUD: Georgetown Divide Public Utility District
P.O. Box 4240
6425 Main Street
Georgetown, CA 95634
Phone: (530) 333-4356
Fax: (530) 333-9442

A Party may change or supplement the addresses given above, or designate additional addresses, for purposes of this Section by giving the other Party written notice of the new address in the manner set forth above.

18.14 Captions, Headings. The captions, headings, and index of this Agreement are for convenience only and have no force and effect in the interpretation or construction of this Agreement.

18.15 Signatures - Counterparts. This Agreement and any amendment 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 Agreement will not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The 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 Agreement.

18.16 Condition Precedent to Construction, Delivery, and Storage. The Parties will comply with the provisions of Article XI as an express condition precedent to exercising any of the rights in this Agreement that would require: 1) the acquisition of water rights for the storage and delivery of water to the El Dorado Parties; 2) modification of SMUD's operation of the UARP for delivery of water to the El Dorado Parties; or 3) construction of facilities necessary for delivery of water to any of the El Dorado Parties.

ARTICLE XIX
ALLOCATION OF RIGHTS AND OBLIGATIONS AMONG EL DORADO PARTIES

19.1 El Dorado Designated Representative. The El Dorado Parties agree that the El Dorado Designated Representative will be the sole and exclusive Party that may and is responsible for the exercise the obligations described in this Section 19.1. The El Dorado Designated Representative will be the El Dorado Water and Power Authority unless and until that entity ceases to exist, in which case the El Dorado County Water Agency will succeed to the rights and responsibilities of the El Dorado Designated Representative. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties for the following purposes under this Agreement:

19.1.1 Water Supply Acquisition. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties for all purposes in the process of acquiring the water rights and water supplies to be stored in and diverted through and from the UARP in a manner consistent with this Agreement, as contemplated by Sections 6.1, 6.2, and 6.3 of this Agreement, as follows: (a) in seeking regulatory approvals from the SWRCB and the Bureau of Reclamation; (b) in all negotiations related thereto, including but not limited to negotiations with the City, the Bureau of Reclamation, the SWRCB, the Central Valley Project Contractors and the State Water Project Contractors; and (c) in any Water Forum process that may be established as contemplated by Section 6.3 of this Agreement, except to the extent a “Purveyor Specific Agreement” requires separate representation and individual participation by one or more of the El Dorado Parties.

19.1.2 Notices. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties for providing and receiving all notices required under this Agreement, including Notices of Re-opener under Article XIII.

19.1.3 Scheduling of Deliveries. The El Dorado Designated Representative will comply with all forecasting, scheduling and notice requirements contained in Sections 5.2.1, 5.2.2, 5.3, and 5.4 of this Agreement and it will specifically identify for each El Dorado Party the quantity of water delivery being forecasted.

19.1.4 Negotiation of Interconnection Construction Agreement. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties in the negotiations of the Interconnection Construction Agreement pursuant to Section 5.2.2.2 of this Agreement.

19.1.5 Construction, Maintenance and Operation of Interconnection Facilities. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties in all matters related to the construction, maintenance and operation of the interconnection facilities described in Section 5.2.2 of this Agreement.

19.1.6 Negotiation of and communications under the Data Interchange Agreement. The El Dorado Designated Representative will serve as the representative of the El

Dorado Parties in the negotiation of and communications under the DI Agreement, pursuant to Section 5.4.3 of this Agreement.

19.1.7 Installation, Maintenance and Calibration of White Rock Meter. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties in all matters related to the installation, maintenance and calibration of the White Rock Meter pursuant to Section 7.1 of this Agreement.

19.1.8 Reporting of Deliveries. The El Dorado Designated Representative will comply with the reporting requirements set forth in Sections 7.1.3 and 7.3 of this Agreement.

19.1.9 Re-opening of this Agreement. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties in any negotiations pursuant to a re-opener as identified in Article XIII hereof.

19.1.10 Resolution of Disputes under this Agreement. In the case of any dispute that may arise under this Agreement, as between the El Dorado Parties on the one hand, and SMUD on the other, the El Dorado Designated Representative will serve as the representative of the El Dorado Parties in any proceedings in order to resolve such a dispute, as described in Article XVII of this Agreement, including litigation to the extent permitted by Sections 17.1 and 17.6.3.

19.2 Power Foregone Payments. The El Dorado Designated Representative will detail in its monthly reporting, pursuant to Sections 7.1.3 and 7.3, to which El Dorado Party the deliveries have been made and provide copies to each El Dorado Party. Any El Dorado Party that requests a correction in any El Dorado Designated Representative monthly reporting will notify El Dorado Designated Representative within fifteen (15) days of the reporting. Any disputes among the El Dorado Parties regarding the accuracy of any monthly reporting by the El Dorado Designated Representative will be resolved no later than January 15 of each Payment Year. By January 15 of each Payment Year, the El Dorado Designated Representative will provide SMUD with a final reporting of the total deliveries made to each El Dorado Party in the prior Payment Year. Such final reporting shall contain the allocation of all deliveries metered at the White Rock Meter and scheduled at the SFAR Delivery Point. The final reporting issued to SMUD by El Dorado Designated Representative will be deemed conclusive for all purposes as among the El Dorado Parties of the apportionment of water provided and the accuracy of the quantities stated therein. SMUD will provide an invoice notice to El Dorado Designated Representative as required by Section 8.2.2 of this Agreement, detailing the payments due from each El Dorado Party that received deliveries in the prior year. Each El Dorado Party receiving deliveries in the prior year shall make direct payments to SMUD for the amount of water delivered to it, pursuant to the procedures described in Section 8.2. In the event any El Dorado Party fails to make timely payment to SMUD of amounts due for Power Foregone, SMUD may proceed to initiate collection directly against the invoiced El Dorado Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

Attest: CINDY KECK, Clerk
of the Board of Supervisors

By [Signature]
Deputy Clerk 10-18-05

Attest:

Attest:

Attest:

Attest:

County of El Dorado

By: [Signature]
James R. Sweeney 10-18-05
Second Vice-Chairman

El Dorado County Water Agency

By: _____

Georgetown Divide Public Utility District

By: _____

El Dorado Irrigation District

By: _____

El Dorado Water and Power Authority

By: _____

Sacramento Municipal Utility District

By: _____

APPROVED AS TO FORM:

By: 
EL DORADO COUNTY COUNSEL

By: _____

By: _____

By: _____

By: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

County of El Dorado

By: _____

Attest:

El Dorado County Water Agency

By: James R. Sweeney
1st Vice-Chairman

Attest:

CATHY A. MONAGHAN - BOARD CLERK

Cathy A. Monaghan

Georgetown Divide Public Utility District

By: _____

Attest:

El Dorado Irrigation District

By: _____

Attest:

El Dorado Water and Power Authority

By: James R. Sweeney
Chairman

Attest:

CATHY A. MONAGHAN - BOARD CLERK

Cathy A. Monaghan

Sacramento Municipal Utility District

By: _____

APPROVED AS TO FORM:

By: _____

By: *Fredrick L. Sheep*
General Counsel
El Dorado County Water Agency

By: _____

By: _____

By: *Fredrick L. Sheep*
General Counsel
El Dorado Water & Power Authority

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

County of El Dorado

By: _____

Attest:

El Dorado County Water Agency

By: _____

Attest:

Georgetown Divide Public Utility District

By: *RW Shihon*

Attest:

H. L. Am

Assistant Clerk

El Dorado Irrigation District

By: _____

Attest:

El Dorado Water and Power Authority

By: _____

Attest:

Sacramento Municipal Utility District

By: _____

APPROVED AS TO FORM:

By: _____

By: _____

By: Wm M. Wright
General Counsel, Georgetown Divide Public Utility District

By: _____

By: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

County of El Dorado

By: _____

Attest:

El Dorado County Water Agency

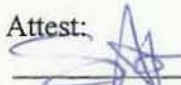
By: _____

Attest:

Georgetown Divide Public Utility District

By: _____

Attest:



STACEY AUGUST
CLERK TO THE BOARD

El Dorado Irrigation District

By: 

Attest:

El Dorado Water and Power Authority

By: _____

Attest:

Sacramento Municipal Utility District

By: _____

APPROVED AS TO FORM:

By: _____

By: _____

By: _____

By: Thomas J. Langton
EIO General Counsel

By: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year set forth above.

County of El Dorado

By: _____

Attest:

El Dorado County Water Agency

By: _____

Attest:

Georgetown Divide Public Utility District

By: _____

Attest:

El Dorado Irrigation District

By: _____

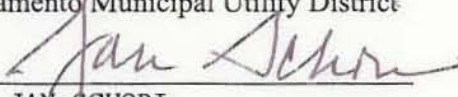
Attest:

El Dorado Water and Power Authority

By: _____

Attest:

Sacramento Municipal Utility District

By: 
JAN SCHORI
General Manager

APPROVED AS TO FORM:

By: _____

By: _____

By: _____

By: _____


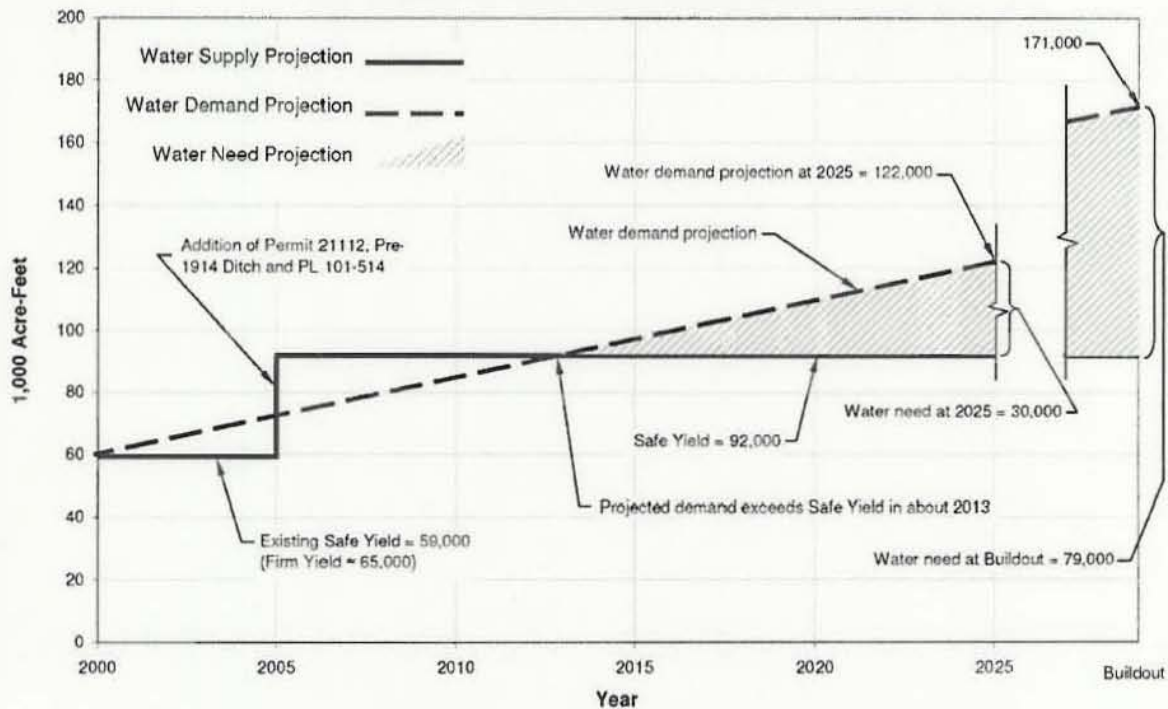
By: 
LESLIE A. DUNSWORTH
Assistant General Counsel

EXHIBIT "A"

Western Slope of El Dorado County Water Supply, Demand and Need Projections



*Based on information contained in the El Dorado County Water Agency Draft Water Resources Development and Management Plan, June 2003.

EXHIBIT "B"

Summary of Pending Water Right Applications for UARP

On May 24, 2005, SMUD filed two water right applications with the State Water Resources Control Board. These applications seek additional direct diversion and storage rights on the Upper American River Project. The first application concerns water sources in the Rubicon River basin and is intended to provide a water right that would enable SMUD to continue its historical operations during very wet years, even if the basin's runoff pattern becomes more variable during the term of SMUD's impending new FERC license. This application seeks the following rights:

- increase direct diversions from four streams at five existing diversion facilities
 - 800 cubic feet per second (cfs) at Rubicon Reservoir on Rubicon River
 - 160 cfs at Buck Island Reservoir on Little Rubicon River
 - 950 cfs at Loon Lake, Gerle Creek Reservoir and Robbs Peak Reservoir on Gerle Creek and South Fork Rubicon
- recognize existing storage at four reservoirs that provide minimal seasonal storage or are operated to regulate the flow of water into penstocks and tunnels for power generation
 - 1,550 acre-feet at Rubicon Reservoir
 - 760 acre-feet at Buck Island Reservoir
 - 1,200 acre-feet at Gerle Creek Reservoir
 - 100 acre-feet at Robbs Peak Reservoir
- increase the total annual quantity of water that may be diverted from Rubicon River stream sources and put to immediate beneficial use during a single hydrological year
 - up to an additional 155,000 acre-feet would be available for generation at Robbs Peak Powerhouse
 - up to an additional 129,000 acre-feet would be available for direct diversion or diversion to storage from all Rubicon River sources

The second application concerns water sources in the Silver Creek and South Fork American River basins. The application would recognize existing storage at four reservoirs that are operated to regulate the flow of water into penstocks and tunnels for power generation.

- 1,400 acre-feet at Camino Reservoir

- 6,300 acre-feet at Junction Reservoir
- 2,500 acre-feet at Brush Creek Reservoir
- 17,000 acre-feet at Slab Creek Reservoir

EXHIBIT "C"

1957 WATER SOURCES

EID Supplies in place in 1957

1. USBR/EID Contract 14-06-200-949 IR3 (Sly Park)
2. Pre-1914 water rights:
 - from Camp Creek, at Jenkinson Lake
 - from the South Fork American River, at Kyburz
 - from the North Fork Cosumnes River, at the North Fork Cosumnes Extension
 - from Clear Creek, at Crawford Ditch
 - from Squaw Hollow Creek, at East Diamond Ditch
 - from Weber Creek, at Farmer's Free Ditch
 - from Slab Creek, at the Summerfield Ditch
 - from Hangtown Creek, at the Gold Hill Ditch
 - from Bass Lake watershed, at the Bass lake Reservoir
3. Rights under Statement of Diversion and Use 10717
4. SWRCB permitted rights under Applications 7478, 1692, 15140, and 11675

GDPUD Supplies in place in 1957

1. GDPUD's Stumpy Meadows Project, consisting of various pre-1914 rights:
 - from Pilot Creek
 - from Mutton Canyon
 - from Bacon Canyon
 - from Deep Canyon
 - from an unnamed tributary to Pilot Creek
2. SWRCB permitted rights under Applications 5644A, 16212, and 16688

EXHIBIT "D"
DEFINED TERMS

"1957 Agreement" will mean that certain "Agreement Between County of El Dorado and Sacramento Municipal Utility District" entered into on July 11, 1957, by and between the County and SMUD.

"1961 Agreement" will mean that certain "Supplemental Agreement Between County of El Dorado, El Dorado County Water Agency and Sacramento Municipal Utility District" entered into on December 7, 1961, by and between the County, EDCWA and SMUD.

"Annual Deliveries" will mean delivery of water by SMUD to the El Dorado Parties under this Agreement pursuant to Section 5.1.1.

"Annual Forecast" is defined in Section 5.3.

"Annual Loss of Net Generation Value" will mean the difference between the monetary value in dollars of the average annual simulated electric generation of the UARP as a whole operating under (i) the Original License (Base Case relicensing conditions), and (ii) any New License, such simulations using the CHEOPS Model and hydrologic data for the period 1976-2000, and such values being calculated using commonly referenced forward wholesale electric market prices for NP15 the following calendar year.

"Annual Surcharge" is defined in Sections 8.1.3(b) and 8.1.3(c).

"Annual Value of Foregone Power" is defined in Section 8.1.3(a).

"Carryover Storage" will mean water that has been delivered to storage in one calendar year for delivery from such storage in any subsequent calendar year.

"CEQA" will mean the California Environmental Quality Act, as amended from time to time.

"City" will mean the City of Sacramento.

"County" will mean the County of El Dorado.

"Critically Dry Condition". A Critically Dry Condition is declared when a forecast or estimate of actual runoff shows the total water year unimpaired runoff at the American River below Folsom Lake to be less than or equal to 900,000 acre-feet. The declaration is triggered when any of the February 1, March 1, April 1, or May 1 California Department of Water Resources (CDWR) median (expected) forecasts for total water year unimpaired runoff at the American River below Folsom Lake indicate water year totals at or below this threshold. An additional trigger is the water year-end (October 1)

estimate by CDWR of the unimpaired flow of the American River below Folsom Lake. A Critically Dry Condition if triggered, is declared upon publication of the CDWR forecast/estimate, and remains in place until the next published forecast/estimate changes that declaration. (An October 1 declaration is in effect until publishing of the next February 1 forecast.)

“Current Relicensing Process” is defined in Recital L.

“Daily Net Storage” will mean the combined storage volume of SMUD’s Loon Lake, Ice House, and Union Valley Reservoirs, less any Carryover Storage, computed daily.

“Daily Net Storage Threshold” will mean the amount of water that must be in active storage for SMUD in SMUD’s Loon Lake Reservoir, Ice House Reservoir and Union Valley Reservoir at the beginning of the second year of the most critically dry period of record (as of the Effective Date of this Agreement, the 1976-77 water years).

“Delivery Initiation Notice” is defined in Section 5.2.1.

“Delivery Invoice” is defined in Section 8.2.2.

“EDCWA” will mean El Dorado County Water Agency.

“EDWPA” is defined in Recital B.

“Effective Date” is defined in the introductory paragraph.

“EID” will mean the El Dorado Irrigation District, a special district organized in 1925 and existing under the Irrigation District Law (Cal. Wat. Code, § 20500 et seq.) and authorizing statutes (Cal. Wat. Code, § 22975 et seq.).

“El Dorado Designated Representative” is defined in Section 19.1.

“El Dorado Parties” will mean, collectively, El Dorado County, the El Dorado County Water Agency, the El Dorado Water and Power Authority, the El Dorado Irrigation District, and the Georgetown Divide Public Utility District.

“El Dorado Parties Emergency Condition” will mean a condition beyond the El Dorado Parties’ control (other than that caused by water year type) resulting from a sudden occurrence such as a storm, flood, fire, or an unexpected equipment outage which affects the El Dorado Parties’ water diversion, storage, or delivery system and impairs the El Dorado Parties’ ability to make water deliveries, and which is declared by resolution of, or pursuant to a procedure adopted by, resolution of the El Dorado Parties, governing board.

“El Dorado Water” is defined in Section 6.1.

“FERC” will mean the Federal Energy Regulatory Commission or any successor.

“Flow-Related PM&E Measures” will mean any PM&E measure imposed in the New License that will affect Net Generation Value, including, but not limited to, measures setting reservoir storage levels, minimum streamflows, and recreation streamflows.

“Full Capacity” will mean the full capacity of the Ice House, Loon Lake, and Union Valley Reservoirs, and will be 340,000 acre-feet, or less if changed by SMUD.

“GDPUD” will mean Georgetown Divide Public Utility District, a public utility district created under the Public Utility District Act in 1946.

“Governmental Entity” will mean any government, or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, or other instrumentality of such government, whether federal, state, or local.

“Impacts” are defined in Recital M.

“Iowa Hill Annual Payment” is defined in Section 4.3.2.

“Iowa Hill Development” will mean the proposed pump storage project on Iowa Hill adjacent to the existing Slab Creek reservoir within the UARP, and more particularly described in that certain document entitled “Iowa Hill Pumped Storage Development Project Description.”

“ISO” will mean the California Independent System Operator.

“Major or Material Amendments” will have the definition given them in section 4.35(f) of the Federal Power Act.

“Neutral County” is any county in which none of SMUD or any of the El Dorado Parties has physical facilities or provides services.

“New License” is defined in Recital L. The New License will be considered to have been issued, for the purposes of Section 13.6.1 of this Agreement, upon the exhaustion of all rights of appeal under the provisions of Section 313 of the Federal Power Act and/or state law provisions governing appeals of conditions of a Clean Water Act 401 certification and/or an NPDES permit.

“Notice of Re-opener” is defined in Section 13.1.1.

“Original License” is defined in Recital L.

“Payment Year” is defined in Section 8.2.1.

“PM&E Measures” will mean those measures included by FERC in any New License to protect, mitigate and enhance those facilities or resources impacted by the existence and operation of the UARP.

“Project” will have the meaning attributed to it under the California Environmental Quality Act.

“Seasonal Storage” will mean storage used by SMUD within a calendar year for purposes of making Annual Deliveries to the El Dorado Parties or deliveries to Carryover Storage during the last quarter of any calendar year.

“SFAR Delivery Point” will mean the point in the South Fork of the American River immediately below the discharge point from the White Rock Powerhouse.

“Slab Creek Reservoir Minimum Operating Level” is defined in Section 5.8.2.

“SMUD” will mean Sacramento Municipal Utility District.

“SMUD Emergency Condition” will mean a condition on or affecting SMUD’s operations (other than that caused by water year type), declared in accordance with SMUD’s established practices such that its UARP operations are significantly impacted and SMUD’s ability to make deliveries to the El Dorado Parties is restricted or eliminated. Such emergency conditions include, but are not limited to, any of the following types of events: (i) an order of any Governmental Entity or court that (a) prevents SMUD from releasing water from its reservoirs for purposes of power generation or delivery of water supply, or (b) requires SMUD to release water from its reservoirs under conditions which preclude deliveries to the El Dorado Parties; and (ii) a failure of one or more of the major UARP Facilities due to any cause (act of nature or man) that restricts SMUD’s ability to deliver water to the El Dorado Parties requiring either a complete curtailment or a limit upon deliveries to the El Dorado Parties.

“Subsequent New License” is defined in Recital L.

“Subsequent Relicensing Process” is defined in Recital L.

“SWRCB” will mean the State Water Resources Control Board or a successor agency.

“Term” is defined in Section 1.2.

“UARP” will mean the Upper American River Project.

“UARP Facilities” is defined in Recital H.

“Unusable Storage Level” will mean the storage volume of SMUD’s Loon Lake, Ice House and Union Valley Reservoirs at the level below which plant intake structures are

considered to be no longer physically capable of withdrawing water from such reservoirs. The Unusable Storage Level will be at least 50,000 acre-feet, and may vary seasonally due to the impact of winter conditions on intake structures.

“Water Forum” will mean that group of parties signatory to The Water Forum Agreement.

“White Rock Delivery Point” will mean the existing 36-inch branch outlet constructed on the White Rock Penstock.

EXHIBIT "E"

SCHEDULING REQUIREMENTS

The El Dorado Parties must schedule hourly water deliveries with SMUD by 10:00 a.m. on the business day prior to the Pre-scheduling Day as defined by Western Electricity Coordinating Council (WECC) Protocols.¹ For example, typical Pre-scheduling Days will conform to the following:

- (i) Sunday, Monday – the Pre-scheduling Day is Friday, therefore, the El Dorado Parties must schedule its hourly water deliveries for Sunday and Monday by 10:00 a.m. on Thursday.
- (ii) Tuesday - the Pre-scheduling Day is Monday, therefore, the El Dorado Parties must schedule its hourly water deliveries for Tuesday by 10:00 a.m. on Friday.
- (iii) Wednesday – the Pre-scheduling Day is Tuesday, therefore, the El Dorado Parties must schedule its hourly water deliveries for Wednesday by 10:00 a.m. on Monday.
- (iv) Thursday – the Pre-scheduling Day is Wednesday, therefore, the El Dorado Parties must schedule its hourly water deliveries for Thursday by 10:00 a.m. on Tuesday.
- (v) Friday, Saturday – the Pre-scheduling Day is Thursday, therefore, the El Dorado Parties must schedule its hourly water deliveries for Friday and Saturday by 10:00 a.m. on Wednesday.
- (vi) Holidays and WECC Meeting Dates – the Pre-scheduling Day is two or more business days in advance of the holiday or WECC meeting date, therefore, the El Dorado Parties must schedule its hourly water deliveries for Holidays or WECC meeting dates, three or more business days in advance of such date.

¹ The "Pre-scheduling Days" are defined on an annual basis by the WECC, taking into account holidays, weekends and WECC meetings that need to be considered to coordinate scheduling activities in the region.

EXHIBIT "F"

PRICING CALCULATIONS AND COMPONENTS

1. The Annual Value of Foregone Power is the sum of the 365 Daily Values of Foregone Power calculated using the following formula:

$$105\% \times \{(\text{Daily Power Price Index}) \times (\text{White Rock Powerhouse Water Duty}) \times (\text{Quantity of water delivered at the White Rock Delivery Point})\}$$

based on the following components:

- a) The Daily Power Price Index to be utilized throughout any given year will be:
- January through April: Dow Jones NP15 Day-Ahead On-Peak Index, in \$/MWh
 - May through September: Weighted average of Dow Jones NP15 Day-Ahead On-Peak and Off-Peak Indices, in \$/MWh
 - October through December: Dow Jones NP15 Day-Ahead On-Peak Index, in \$/MWh
- b) The White Rock Powerhouse Water Duty is deemed to be 0.7 MWh/af.
- c) The ISO fee factor is deemed to be a 5% adder.

2. The Annual Surcharge for Seasonal Storage is the sum of the 92 Daily Surcharges for Seasonal Storage calculated using the following formula:

$$105\% \times (0.25 \times \text{Daily Power Price Index}) \times \{(\text{Cumulative Powerhouse Water Duty for the White Rock Delivery Point}) \times (\text{Quantity of water delivered daily at the White Rock Delivery Point}) + (\text{Cumulative Powerhouse Water Duty for the SFAR Delivery Point}) \times (\text{Quantity of water delivered daily at the SFAR Delivery Point})\}$$

based on the following components:

- a) The Daily Power Price Index will be the Dow Jones NP15 Day-Ahead On-Peak Price expressed in \$/MWh. The factor to cover the Daily Power Price Index is deemed to be 25%.
- b) The Cumulative Powerhouse Water Duty for the White Rock Delivery Point is deemed to be 3.0 MWh/af.

- c) The Cumulative Powerhouse Water Duty for the SFAR Delivery Point is deemed to be 3.7 MWh/af.
- d) The ISO fee factor is deemed to be a 5% adder.

3. The Annual Surcharge for Carryover Storage is the sum of the Daily Surcharge for Carryover Storage for all the days within the year in which Carryover Storage is delivered to the El Dorado Parties. The Daily Surcharge for Carryover Storage will be calculated, under the following conditions, using the following formulas:

3.1 For any deliveries from Carryover Storage when the conditions in Exhibit "H", Section 2.ii. are in effect:

$$105\% \times (0.30 \times \text{Daily Power Price Index}) \times \{(\text{Cumulative Powerhouse Water Duty for the White Rock Delivery Point}) \times (\text{Quantity of water delivered daily at the White Rock Delivery Point from Carryover Storage}) + (\text{Cumulative Powerhouse Water Duty for the SFAR Delivery Point}) \times (\text{Quantity of water delivered daily at the SFAR Delivery Point from Carryover Storage})\}$$

3.2 For any deliveries from Carryover Storage when the conditions in Exhibit "H", Section 3.ii.b.(i) are in effect:

$$105\% \times (0.40 \times \text{Daily Power Price Index}) \times \{(\text{Cumulative Powerhouse Water Duty for the White Rock Delivery Point}) \times (\text{Quantity of water delivered daily at the White Rock Delivery Point from Carryover Storage}) + (\text{Cumulative Powerhouse Water Duty for the SFAR Delivery Point}) \times (\text{Quantity of water delivered daily at the SFAR Delivery Point from Carryover Storage})\}$$

3.3 For any deliveries from Carryover Storage when the conditions in Exhibit "H", Section 3.ii.b.(ii) are in effect:

$$105\% \times (0.45 \times \text{Daily Power Price Index}) \times \{(\text{Cumulative Powerhouse Water Duty for the White Rock Delivery Point}) \times (\text{Quantity of water delivered daily at the White Rock Delivery Point from Carryover Storage}) + (\text{Cumulative Powerhouse Water Duty for the SFAR Delivery Point}) \times (\text{Quantity of water delivered daily at the SFAR Delivery Point from Carryover Storage})\}$$

3.4 For any deliveries from Carryover Storage when the conditions in Exhibit "H", Section 3.ii.b.(iii) are in effect:

$$105\% \times (0.50 \times \text{Daily Power Price Index}) \times \{(\text{Cumulative Powerhouse Water Duty for the White Rock Delivery Point}) \times$$

(Quantity of water delivered daily at the White Rock Delivery Point from Carryover Storage) + (Cumulative Powerhouse Water Duty for the SFAR Delivery Point) x (Quantity of water delivered daily at the SFAR Delivery Point from Carryover Storage}}

based on the following components:

- a) The Daily Power Price Index to be utilized throughout any given year will be:
 - January through April: Dow Jones NP15 Day-Ahead On-Peak Index, in \$/MWh
 - May through September: Weighted average of Dow Jones NP15 Day-Ahead On-Peak and Off-Peak Indices, in \$/MWh
 - October through December: Dow Jones NP15 Day-Ahead On-Peak Index, in \$/MWh
- b) The Cumulative Powerhouse Water Duty for the White Rock Delivery Point is deemed to be 3.0 MWh/af.
- c) The Cumulative Powerhouse Water Duty for the SFAR Delivery Point is deemed to be 3.7 MWh/af.
- d) The ISO fee factor is deemed to be a 5% adder.

EXHIBIT "G"

SOURCE FOR EL DORADO PARTIES WATER RIGHT; PROCEDURES

1. (a) The El Dorado Parties first will enter into good faith negotiations with the City of Sacramento in order to consummate a partial transfer or assignment from the City of Sacramento of the City's water right permits numbered 11359 and 11360. The El Dorado Parties will be deemed to have satisfied its good faith obligation with regard to the City once it has engaged in diligent negotiations for a period extending through July 31, 2006.

(b) Any partial transfer or assignment will include a provision by which the City waives any claim to water stored or delivered by SMUD to the El Dorado Parties under this Agreement and any claim the City may have against SMUD respecting such storage or delivery. SMUD, if requested by the City, will contemporaneously release City of any obligation to SMUD to use such water to provide service to SMUD's customers in SMUD's service area, as it now exists or may be enlarged. The El Dorado Parties will have sole and complete discretion as to the acceptability of the terms of any transfer or assignment resulting from its negotiations with the City.

(c) If an agreement is reached as specified in section 1 (a) and the requirements of (b) and Section 6.3 have been met, the El Dorado Parties will seek modification of the transferred or assigned permits by the SWRCB to the extent necessary for the El Dorado Parties to exercise its rights under this Agreement, and SMUD will file such documents with the SWRCB as the El Dorado Parties may reasonably request advising the SWRCB that SMUD supports such modification.

2. (a) If the El Dorado Parties are not successful in obtaining a transfer or assignment from the City, the El Dorado Parties may seek to obtain any or all of the following water rights (i) a new appropriation of American River water under applicable law, (ii) a partial assignment of state-filed applications nos. 5644, 5645, 7937, 7939, 18063, 18065, 18067, 18069, 18071, and 18072, so modified by the SWRCB to the extent necessary for the El Dorado Parties to exercise its rights under this Agreement, and (iii) any other means available under applicable law. The conditions specified in (b) through (e) will apply in such event, in addition to those specified in the last sentence of 1 above and in Section 6.3.

(b) Any water rights obtained under Section 2 must (i) contain provisions relating to diversion, rediversion, storage, purpose of use, and place of use sufficient for purposes of this Agreement and to allow water to be used within the UARP system between the point of initial introduction into the UARP system until the water is delivered by SMUD from the UARP to the El Dorado Parties under this Agreement; (ii) specify as points at which water is initially diverted into the UARP system only those points at which SMUD is then diverting or rediverting water into the UARP system; and (iii) authorize seasonal or carry-over storage only at Loon Lake, Union Valley, and Ice House Reservoirs. To the extent the El Dorado Parties secures source(s) of supply other than by means of an assignment or transfer from the City of Sacramento and the water source enters the UARP at locations downstream of the Loon Lake, Union Valley, and Ice

Parties to obtain, and any right of SMUD to oppose, similar authorization as if the Agreement had never existed.

House Reservoirs, then SMUD's obligation to store water from the identified source for the benefit of the El Dorado Parties will be reduced proportionately.

(c) Subject to (e) below, SMUD will take no position either in favor of or against the granting of a water right to the El Dorado Parties by the SWRCB as specified herein.

(d) SMUD is free to participate in the SWRCB proceeding to the extent SMUD believes its interests may be prejudiced by any interpretation advanced by the El Dorado Parties of law, SMUD's water rights, or the El Dorado Parties' water rights.

(e) To the extent that the El Dorado Parties secure a source of water other than an assignment/transfer from the City of Sacramento, the El Dorado Parties agree to defend SMUD and hold SMUD harmless against any claim by the City of Sacramento that SMUD's performance under this Agreement breaches any implied or express contractual obligation of SMUD to the City under its assignment agreement with the City.

3. Any SWRCB order or permit that authorizes storage, conveyance, or diversion of water in, through, or from UARP facilities pursuant to water rights that the El Dorado Parties obtains under Section 1. or 2. and that is issued prior to the time specified in this Agreement for SMUD to exercise its right of reopener under Section 13.6 will contain the following conditions, to become effective if the El Dorado Parties terminate this Agreement under Section 17.3.3.

(a) The El Dorado Parties' right to directly divert 30,000 afy (40,000 afy after 2025) from White Rock Penstock or Slab Creek Reservoir will continue to be in full force and effect.

(b) Any provision authorizing storage or any other diversion will continue in force or terminate as specified in (i) through (iii) following.

(i) If the El Dorado Parties believe they presently have the legal right (by contract or otherwise) to use UARP facilities for purposes beyond those specified in (a), within 30 days of giving notice of termination, the El Dorado Parties will provide SMUD with a reasonably detailed statement of the basis for such legal right, and within 30 days thereafter SMUD and the El Dorado Parties will confer on the matter.

(ii) If SMUD and the El Dorado Parties do not reach agreement within the 30-day period, the El Dorado Parties may file a declaratory relief action respecting their claimed rights in the Superior Court of a Neutral County.

(iii) If the El Dorado Parties and SMUD reach agreement or the El Dorado Parties commence a declaratory relief action within 90 days of its termination notice, the SWRCB will modify the order or permit to conform to the agreement between the El Dorado Parties and SMUD or to any final judgment in the declaratory relief action; otherwise the provision will terminate. The termination of the provision, however, will be without prejudice to any right of the El Dorado

EXHIBIT "H"

DELIVERY CONSTRAINTS

1. During a SMUD Emergency Condition, SMUD will be excused from making Annual Deliveries or from delivering the El Dorado Parties water from Carryover Storage to the El Dorado Parties for the period and to the extent such deliveries are precluded by the emergency condition.
2. On any given day when the Daily Net Storage is greater than 150,000 af, the following conditions apply:
 - i. During times when neither a Critically Dry Condition nor a SMUD Emergency Condition has been declared:
 - a. The El Dorado Parties may continue to receive Annual Deliveries up to a combined maximum of 30,000 afy.
 - b. The El Dorado Parties may not receive deliveries from the El Dorado Parties Carryover Storage.
 - ii. During times when a Critically Dry Condition or an El Dorado Parties Emergency Condition has been declared:
 - a. The El Dorado Parties may continue to receive Annual Deliveries up to a combined maximum of 30,000 afy.
 - b. The El Dorado Parties may receive deliveries from the El Dorado Parties Carryover Storage.
 - c. The sum of the El Dorado Parties Annual Deliveries and deliveries from the El Dorado Parties Carryover Storage may not exceed 35,000 afy.
3. On any given day when the Daily Net Storage is greater than the Unusable Storage Level and less than or equal to 150,000 af, the following constraints apply:
 - i. During times when neither a Critically Dry Condition nor a SMUD Emergency Condition have been declared:
 - a. The El Dorado Parties may continue to receive Annual Deliveries up to a combined maximum of 30,000 afy.
 - b. The El Dorado Parties may not receive deliveries from the El Dorado Parties Carryover Storage unless an El Dorado Parties Emergency Condition has also been declared.

- ii. During times when a Critically Dry Condition has been declared, the following restrictions on deliveries of water to the El Dorado Parties will apply:
 - a. Annual Deliveries - There will be no Annual Deliveries at the White Rock Takeout, but Annual Deliveries will continue to be permitted to the SF American River Delivery Point on the same basis as in non-critically dry years, subject to the following conditions:
 - (i) SMUD acting in its absolute discretion has first discharged the water through and/or around its White Rock Powerhouse;
 - (ii) Such water is within the quantity scheduled by the El Dorado Parties for delivery during the January 1 through September 30 period;
 - (iii) Such water was scheduled for delivery prior to the beginning of the year of delivery or within 30 days after declaration of the Critically Dry Condition.
 - b. Carryover Storage - The maximum amount of deliveries to the El Dorado Parties from Carryover Storage specified in B.1 will be modified as follows:

	<u>Net Daily Storage</u>	<u>Maximum Delivery</u>
(i)	125,000-150,000 af	15,000 afy
(ii)	100,000 – 125,000 af	7,500 afy
(iii)	Less than 100,000 af	5,000 afy

At such time as a Critically Dry Year declaration is lifted, delivery of water to the El Dorado Parties from Carryover Storage will continue to be limited as specified above until Daily Net Storage is once again greater than 150,000 af.

- 4. If the Daily Net Storage drops to the Unusable Storage Level or less, withdrawal of any remaining El Dorado Parties Carryover Storage will be suspended until Daily Net Storage returns to 90% of the Full Capacity of the three reservoirs noted in Section A.3 (340,000 af), at which time the remaining amount of the El Dorado Parties Carryover Storage will be reinstated.

EXHIBIT "I"

SOCIOECONOMIC ASSESSMENT METHODOLOGY

Guidelines for Calculation and Mitigation of Socioeconomic Impacts of Iowa Hill Project

1. *Purpose.* SMUD and the El Dorado Parties disagree regarding whether the construction of the Iowa Hill project has the potential to cause negative socioeconomic impacts in the Iowa Hill area. Given the uncertainties surrounding the potential for and magnitude and duration of these impacts, SMUD and the El Dorado Parties agree to form a study panel to assess these impacts according to the guidelines described herein. Assessed impacts will form the basis for SMUD liability for socioeconomic impacts, subject to payment caps described herein.

2. *Panel Composition and Financing.* The study panel will be comprised of three members. SMUD and the El Dorado Parties will each appoint one member. The third member will be appointed by mutual consent of the first two panel members.

SMUD and the El Dorado Parties collectively will each cover the costs of its representative. Costs for the third member will be borne equally by SMUD and the El Dorado Parties. The total cost SMUD spent on its representative and the third member will be capped at \$50,000. Any additional amount spend beyond this cap will be deducted from the EDC payment cap described in Section 5 below.

3. *Timeline.* The SMUD and the El Dorado Parties' representatives will be appointed no later than three months prior to the anticipated completion of Iowa Hill Pumped Storage Project construction. Within two months of such appointment, these representatives will select a third panel member.

The panel will complete its calculation of socioeconomic impacts and submit its findings on traffic, business and the then-available aesthetic impacts in a final report within three months of completion of construction of the Iowa Hill project. If necessary, business and aesthetic impacts may be measured up to five years from the completion of construction of the Iowa Hill project, as described herein. The panel will complete this additional business and aesthetic impacts calculation and submit its findings no later than sixty-three months after the completion of construction of the Iowa Hill project.

4. *Method for Calculation of Impacts.* The panel will consider three types of socioeconomic impacts of construction of the Iowa Hill project: traffic congestion caused by construction of the project, business impacts, and aesthetic impacts. The panel will adhere to the following guidelines in its assessment of socioeconomic impacts:

a) **Traffic Congestion: Mitigation Measured During Construction Period**

Roads and road segments potentially affected by construction of the Iowa Hill project are defined in Attachment A (TBD).

In determining the effect of Iowa Hill construction on traffic congestion, the panel will consider the following, non-exclusive set of parameters:

- Relevant average rate of travel for the roads and road segments identified in Attachment A for weekdays vs. weekend and for various seasons. This average rate of travel will be measured periodically (a) prior to the commencement of Iowa Hill Project construction to develop baseline conditions and (b) for coincident periods during the actual period of construction.
- The lengths of affected roads and road segments.
- Relevant average car trips per day on potentially affected roads and road segments for weekdays vs. weekend and for various seasons.
- Average hourly wage rate in El Dorado County deemed to be \$15/hour.
- Effect on road congestion of other economic activities that may cause baseline average rate of travel measurements to be inaccurate.

Rates of travel prior to and during construction of the Iowa Hill project on affected roads and road segments will be measured seasonally during peak travel times, and on weekend afternoons. Measurements of rates of travel will be taken according to a method to be developed by SMUD and EDC staff within 90 days of SMUD's decision to undertake the Iowa Hill project. The El Dorado Parties collectively and SMUD will share equally in the costs of collecting annual estimates of rates of travel on affected roads. SMUD's share of these measurement costs does not count towards the \$2 million cap set forth in Section 5 below.

Traffic impacts will be calculated by the panel post-construction. Total annual traffic congestion impacts for each affected road segment are the sum of weekday and weekend impacts for the various seasons. Total traffic congestion impacts are determined by summing annual impacts for each affected road segment over the years of construction and the affected road segments.

b) Business Impacts: Mitigation Measured Post-Construction

Business impacts will be measured as the change in sales revenue experienced by a defined set of potentially affected businesses in El Dorado County resulting from construction of the Iowa Hill project. Potentially affected businesses are defined as those a) in existence at the commencement of construction of the Iowa Hill project and b) within the Apple Hill Agricultural Area (AHAA) as described in Attachment B (TBD).

SMUD's payment for business impacts will be calculated as the difference in cumulative annual sales over the period of construction that is most likely attributable to construction of Iowa Hill.

In determining the effect of Iowa Hill construction on AHAA sales revenues, the panel will consider the following, non-exclusive set of parameters:

- Relevant average actual sales revenue data (based on the county sales tax receipts and other sources) from the AHAA for (a) the 5 years prior to the commencement of Iowa Hill Project construction and (b) the actual period of construction.
- The typical percentage of business allocated for weekdays vs. weekend and harvest vs. non-harvest seasons, and the frequency of construction-related road congestion during these periods.
- Road usage by construction crews and input suppliers that are coincidental to the typical business hours of the AHAA.
- Sales trends for comparable businesses in other similar areas of California.
- Trends in bearing acreage of wine grapes, apples and other crops in the AHAA.

If necessary, business impacts will also be measured five years after completion of the Iowa Hill project. This second round of analysis may be needed to assess lingering effects on AHHA businesses caused by changes in consumer habits or other intertemporal factors.

c) Aesthetic Impacts: Mitigation Measured Post-Construction

Aesthetic impacts may result from construction of Iowa Hill. While owners of real property in areas with a view of the Iowa Hill Reservoir may experience these losses, the potential realized financial loss would be deemed to have occurred if an affected home is actually sold during the actual construction period. These potentially affected homes are identified in Attachment C (TBD).

Aesthetic losses will be measured as the change in actual property sales values resulting from construction of the Iowa Hill project. In estimating the change in actual property sales values, the panel will determine the ratios of average home sales prices of the affected Iowa Hill Area vs. the average home sales prices of similar areas in El Dorado County for (a) the 5 years prior to the commencement of Iowa Hill Project construction, (b) the actual construction period and (c) the 5-year period after completion of construction.

SMUD's liability for aesthetic impacts is sum of the loss in value for each home sold during the period of construction and a period of 5 years after completion of construction.

5. Mitigation Fund Payment Cap and Payment Schedule. SMUD will pay to the El Dorado Parties an amount equal to the measured socioeconomic losses determined in Section 4 as calculated by the panel ("Iowa Hill Measured Impacts Payments"), but not to exceed \$2 million cap. Such payment shall be paid by SMUD to the El Dorado Parties no later than 90 days after the issuance of the final report by the panel.

If SMUD's payment is less than the \$2 million, then SMUD will pay to the El Dorado Parties the lesser of (a) an amount equal to the additional business and aesthetic impact for the 5-year period after completion of construction of the Iowa Hill project and (b) the difference between \$2 million and the SMUD payment previously made. Such payment under this paragraph will be

paid by SMUD to the El Dorado Parties no later than 90 days after the issuance of the additional report by the Panel.

In no event will SMUD's total payment for this Mitigation Fund, including those panel fees paid under Section 2 in excess of \$50,000, exceed a \$2 million cap.

6. Additional Mitigation and Measures Undertaken to Avoid Socioeconomic Impacts

SMUD's cost of undertaking mitigation identified in this section is in addition to the \$2 million cap set forth in Section 5 above.

SMUD will agree to repair any road segment damaged by construction related traffic. All roads and road segments identified in Attachment A will be videotaped before and after construction to determine the scope of repair required.

SMUD will undertake measures to mitigate or minimize the visual impact of the Iowa Hill reservoir and accompanying facilities. Such measures generally include minimization of the introduction of new landscape features, relocation of facilities to minimize visual impacts, elimination of the need for new landscape features, reduction of color contrasts of the upper reservoir berm and transmission lines, limitation of the visible features of the Iowa Hill project to four primary features: the upper reservoir berm, the generation tie line, the switchyard, and the portal entrance to the powerhouse tunnel.