

Memo

To: Board of Supervisors
From: Supervisor Jack Sweeney
Date: 11/26/2007
Re: BOS Meeting 11-27-07, Item 62 – EDWPA Funding Agreement

The proposed EDWPA funding agreement, item 27, from the June 19, 2007, Board of Supervisors Meeting has been proposed to be amended by the attached document. The amendment was unanimously approved by those present at the EDWPA meeting on November 7, 2007.

The differences in the two documents are found in the Contribution Schedule, Section 1.4.1 as to when payment is made and in Reconciliation of Payments, Section 1.5.1 which allows GDPUD to irrevocably opt out. Also, Section 4, Intent was added to the document.

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**SUPPLEMENTAL WATER ACQUISITION PROJECT
COST SHARE AGREEMENT**

This Supplemental Water Acquisition Project Cost Share Agreement ("Agreement") is made and entered into this _____ day of December, 2007, by and among the following parties:

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- The County of El Dorado;
- The El Dorado County Water Agency;
- The El Dorado Irrigation District; and
- The Georgetown Divide Public Utility District.

WHEREAS, the County of El Dorado ("County"), the El Dorado County Water Agency (EDCWA), the El Dorado Irrigation District (EID) and the Georgetown Divide Public Utility District (GDPUD)(each individually a "Party" and collectively "the Parties") formed the El Dorado Water & Power Authority (EDWPA) for the purposes of protecting, preserving and enhancing the water and power interests of, and acquiring storage of and water rights for, El Dorado County; and

WHEREAS, on November 22, 2005, the Parties entered into the El Dorado-SMUD Cooperation Agreement with the Sacramento Municipal Utility District (the "Cooperation Agreement") that sets forth the Parties' agreed rights, conditions and obligations regarding the use of the Upper American River Project (UARP) facilities for the diversion and storage of water; and

WHEREAS, concurrent with their entrance into the Cooperation Agreement, the Parties also entered into an El Dorado Intra-County Coordination Agreement (the "Coordination Agreement") which allocates the benefits, burdens, rights and obligations obtained through the Cooperation Agreement among the Parties; and

WHEREAS, it is the intent of the Parties to obtain a water supply that may be developed through use of the UARP facilities pursuant to the terms of the Cooperation Agreement and Coordination Agreement; and

WHEREAS, Coordination Agreement section 2.3.5 provides that the costs and expenses of acquiring such a water supply will be shared among the Parties as they may determine; and

WHEREAS, the Parties desire by this Agreement to identify the costs and expenses, the percentage share and time of payment by each party of the costs and expenses of acquiring such a water supply.

NOW THEREFORE, the Parties agree as follows:

1. Sharing of Costs. The Parties agree that they shall share among themselves all costs and expenses ("Costs") of acquiring water supply that may be diverted through and stored

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within the UARP facilities pursuant to the terms of the Cooperation Agreement and the Intra-County Coordination Agreement ("Supplemental Water") as provided in this Agreement.

1.1 Cost Components. The Costs shall include all costs of legal services (including the preparation and prosecution of the application, expert witnesses, discovery, and representation of the Parties and their interests in all phases of litigation, if any arising from it), environmental review, miscellaneous studies, California State Water Resources Control Board filing or other fees, as well as any other reasonable and necessary costs and expenses associated with the acquisition of Supplemental Water. The Parties agree that Costs include the costs and expenses to fully comply with Cooperation Agreement sections 5.2.2.4, 11.2.5 and section 2(e) of Exhibit "G."

1.2 Allocation of Costs. The Parties agree that each shall contribute toward the Costs in the following not to exceed amounts, the actual contribution amounts payable shall be based on each EDWPA's fiscal year's budgeted amounts for pursuit of Supplemental Water rights:

1.2.1 El Dorado County. \$400,000 in Agreement Year 1, and up to \$200,000 per year in Subsequent Years dependent on the approved budget of EDWPA for water rights purposes.

1.2.2 El Dorado County Water Agency. \$500,000 in Agreement Year 1, and up to \$200,000 per year in Subsequent Years dependent on the approved budget of EDWPA for water rights purposes.

1.2.3 El Dorado Irrigation District. \$1,200,000 in Agreement Year 1, and up to \$225,000 per year in Subsequent Years dependent on the approved budget of EDWPA for water rights purposes.

1.2.4 Georgetown Divide Public Utility District. \$400,000 in Agreement Year 1, and up to \$75,000 per year in Subsequent Years dependent on the approved budget of EDWPA for water rights purposes.

1.3 Duration of Contributions. For the purposes of the contributions toward Costs, as described in Section 1.2, above, July 1, 2007 through June 30, 2008 shall be considered Agreement Year 1. Each succeeding year, from July 1 through June 30 of the following year, shall be considered a Subsequent Year for the purpose of Subsequent Year contributions to Costs. The Parties' Subsequent Year contributions toward Costs shall continue until this Agreement is amended or terminated.

1.4 Contribution Schedule. Each Party's contribution toward Costs, as provided for in this Article 1, shall be paid in Agreement Year 1 and Subsequent Years as described in this Article 1.4.

1.4.1 Agreement Year 1. In Agreement Year 1 40% of each Party's contribution toward Costs shall be due on January 1, 2008. The remainder of each Party's

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contribution shall be due in five equal installments on the first day of each month of February 2008 through June 2008.

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1.4.2 Subsequent Years. Each Party's contribution toward Costs in Subsequent Years will be due in 12 equal installments on the first day of each month, July 1st through June 1st of each year for the fiscal years 2008/2009 and 2009/2010. The parties agree to fund all Costs that extend beyond fiscal year 2009/2010 on the same basis, expressed as a percentage, and payment schedule as their agreed contributions during Subsequent Years described in Section 1.2 of this Agreement.

1.4.3 Additional Contributions. Additional funds reasonably necessary or required, as estimated or budgeted by EDWPA, for the timely performance of the covenants and obligations of the Cooperation Agreement sections 5.2.2.4 and 2(e) of Exhibit "G" that arise during the existence of this Agreement shall be in the same percentage and payment schedule that the Parties have agreed during Subsequent Years in section 1.2 of this Agreement. The Parties shall pay such funds in full on determination of the estimate or budget.

1.5 Reconciliation of Contributions.

1.5.1 GDPUD Surrender of Water Use Rights. At any time after the SWRCB's order granting the Parties the right to Supplemental Water is no longer subject to legal challenge, GDPUD may determine, in its sole discretion, to make the irrevocable determination to surrender any right to use, as such term is employed in the California Water Code and title 23 of the California Code of Regulations, water pursuant to water rights obtained by the Parties pursuant to the Cooperation Agreement, the Intra-County Coordination Agreement, and this Agreement.

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- Deleted: EID's and GDPUD's contributions toward Costs are predicated on a 75% and 25% projected allocation of the Supplemental Water.

In the event GDPUD makes such irrevocable determination, within 6 months of such determination the County, EDCWA and EID shall make a payment to GDPUD equal to all Contributions, in nominal dollars, GDPUD has made under Section 1 of this Agreement.

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1.5.2 Between the County and EID or GDPUD. In the event that a portion of the Supplemental Water is later allocated for use outside of the presently existing EID and GDPUD service territories, no contribution, fee, assessment, annexation or connection charge shall be required from those areas, as the contribution of the County and EDCWA, as set forth in sections 1.2.1 and 1.2.2 above, shall be considered to have satisfied all such future charges that may otherwise have been due from all of those areas irrespective of when they, or any of them, access or enjoy such Supplemental Water, provided, however, that this provision does not create an ownership interest in any of such areas subject to sale, transfer or exchange.

- Deleted: final allocations are different, EID's and GDPUD's actual percentages of allocation expressed as a percentage of the total shall be extended to the respective contributions of each and adjusted as credits or debits due one another, payable within 30 days of such determination. ¶
The determination as to whether any reconciliation is required shall be made within 12 months

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2. Environmental Review of Alternative Diversion Points. The Parties have agreed, pursuant to Cooperation Agreement section 11.2.5, to cooperate with each other in good faith to conduct a thorough and legally sufficient environmental review, pursuant to the California Environmental Quality Act, of the Parties' acquisition of Supplemental Water. The Parties agree that a thorough and legally sufficient review shall consider as an alternative the "take" of water, as such is defined in the Cooperation Agreement, for use in the GDPUD service area, from the UARP facilities at the Gerle Creek Canal.

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3. Reaffirmation of Good Faith Obligations. The Parties hereby reaffirm that, pursuant to Coordination Agreement sections 2.3 and 2.3.4, they will exercise good faith and their best efforts to coordinate their actions to acquire Supplemental Water.

4. Intent, no Amendment. This Agreement is made in furtherance of section 2.3.5, and its execution is authorized by section 7.7, both of the Intra-County Coordination Agreement. This Agreement expressly does not alter, amend or modify any of the terms or provisions, or the entire agreements, of the Cooperation Agreement or Intra-County Coordination Agreement,

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