

## SUPPLEMENTAL WATER ACQUISITION PROJECT COST SHARE AGREEMENT

This Supplemental Water Acquisition Project Cost Share Agreement (“Agreement”) is made and entered into this 12 day of December, 2007, by and among the following parties:

- 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 proportional share of 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

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 (SWRCB) 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 fiscal year’s budgeted amounts and at such times as EDWPA determines necessary to enable it to perform its duties as the Designated Representative to pursue Supplemental Water rights. For the purposes of the contributions toward Costs, as described in this Section 1.2, July 1, 2007 through June 30, 2008 shall be considered FY 2007-2008. Each consecutive FY thereafter, from July 1 through June 30, shall be considered a Fiscal Year for the purpose of subsequent contributions to Costs.

**1.2.1. El Dorado County.** \$400,000 in Fiscal Year (“FY”) 2007-2008, and up to \$200,000 per year in each FY thereafter, dependent on the approved budget of EDWPA for water rights purposes.

**1.2.2. El Dorado County Water Agency.** \$500,000 in FY 2007-2008, and up to \$200,000 per year in each FY thereafter, dependent on the approved budget of EDWPA for water rights purposes.

**1.2.3. El Dorado Irrigation District.** \$1,200,000 in FY 2007-2008, and up to \$225,000 per year in each FY thereafter, dependent on the approved budget of EDWPA for water rights purposes.

**1.2.4. Georgetown Divide Public Utility District.** \$400,000 in FY 2007-2008, and up to \$75,000 per year in each FY thereafter dependent on the approved budget of EDWPA for water rights purposes.

**1.3. Duration of Contributions.** The Parties’ contributions toward Costs shall continue until such time as any SWRCB order granting the Parties the right to Supplemental Water is no longer subject to legal challenge.

**1.4. 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” arising during the existence of this Agreement shall be in the same proportion that the Parties have agreed to as

to each FY after FY 2007-2008 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 Between GDPUD and EID.** EID's and GDPUD's contributions toward Costs are predicated on a 75% and 25%, respectively, projected allocation of the Supplemental Water. In the event the 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 after the SWRCB's order granting the Parties the right to Supplemental Water is no longer subject to legal challenge.

**1.5.2. 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.

In the event GDPUD makes such irrevocable determination, within 6 months of GDPUD's provision of notice to all of the other Parties of such determination, the County, EDCWA and EID shall make a payment to GDPUD equal to all contributions GDPUD has made under Section 1 of this Agreement. The calculation of GDPUD's contributions subject to the repayment obligation shall not be adjusted for inflation, interest, the time value of money, or any other factor. The County, EDCWA and EID shall contribute to the payment in proportion to their total contributions under Section 1.2 of this Agreement as of the date of such payment.

**1.5.3. Between the County and EID or GDPUD.** In the event that a portion of the Supplemental Water is later allocated for use within a portion of El Dorado County 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..

**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.

**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.

**5. General Provisions**

**5.1. Recitals.** The recitals stated at the beginning of this Agreement of any matters or facts shall be conclusive proof of the truthfulness thereof and the terms and conditions of the recitals, if any, shall be deemed a part of this Agreement.

**5.2. Notices.** All notices, approvals, acceptances, requests, demands and other communications required or permitted, to be effective, shall be in writing and shall be delivered, either in person or by mailing the same by United States mail (postage prepaid, registered, or certified, return receipt requested) or by Federal Express or other similar overnight delivery service, to the party to whom the notice is directed at the address of such party as follows:

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 GDPUD: Georgetown Divide Public Utility District  
P.O. Box 4240  
6425 Main Street  
Georgetown, CA 95634

Phone: (530) 333-4356

Fax: (530) 333-9442

Any communication given by mail shall be deemed delivered two (2) business days after such mailing date, and any written communication given by overnight service shall be deemed delivered one (1) business day after the dispatch date. 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.

**5.3. Successors and Assigns.** This Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, successors and assigns. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties or their respective heirs, successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

**5.4. Assignability.** This Agreement shall not be assigned without the prior written consent of each of the other Parties, who shall have the sole discretion to consent or not to consent to any proposed assignment. Any attempted assignment without the approval of each of the other Parties shall be void.

**5.5. Waiver.** No waiver by any Party of any of the provisions shall be effective unless explicitly stated in writing and executed by the Party so waiving. Except as provided in the preceding sentence, no action taken pursuant to this Agreement, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants, or agreements contained in this Agreement, and in any documents delivered or to be delivered pursuant to this Agreement. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

**5.6. Headings.** The section headings contained in this Agreement are for convenience and reference only and shall not affect the meaning or interpretation of this Agreement.

**5.7. Severability.** If any term, provision, covenant or condition of this Agreement shall be or become illegal, null, void or against public policy, or shall be held by any court of competent jurisdiction to be illegal, null, void or against policy, the remaining provisions of this Agreement shall remain in full force and effect, and shall not be affected, impaired or invalidated. The term, provision, covenant or condition that is so invalidated, voided or held to be unenforceable, shall be modified or changed by the parties to the extent possible to carry out the intentions and directives set forth in this Agreement.

**5.8. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

**5.9. Governing Law.** This Agreement shall be governed by and interpreted in accordance with, the laws of the State of California, with venue proper only in the County of El Dorado, State of California.

**5.10. Parties in Interest.** Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action against any party to this Agreement.

**5.11. Attorney Fees.** If any legal proceeding (lawsuit, arbitration, etc.), including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover actual attorneys' fees and costs, which may be determined by the court in the same action or in a separate action brought for that purpose. The attorneys' fees award shall be made so as to fully reimburse for all attorneys' fees, paralegal fees, costs and expenses actually incurred in good faith, regardless of the size of the judgment, it being the intention of the parties to fully compensate for all attorneys' fees, paralegal fees, costs and expenses paid or incurred by such prevailing party in good faith.

**5.12. Construction.** The provisions of this Agreement should be liberally construed to effectuate its purposes. The language of all parts of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any Party, as each Party has participated in the drafting of this document and has had the opportunity to have its counsel review it. Whenever the context and construction so requires, all words used in the singular shall be deemed to be used in the plural, all masculine shall include the feminine and neuter, and vice versa.

**5.13. Several Obligations.** Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either party. Each party shall be individually and severally liable for its own obligations under this Agreement.

**5.14 Authority.** The individuals executing this Agreement represent and warrant that all consents or approvals required to legally bind each Party to the terms and conditions of this Agreement have been obtained and that they have the authority to enter into this Agreement and to perform all acts required by this Agreement, and that upon execution of this Agreement, it is and shall be legally enforceable according to its terms against each and all of the Parties, and further that the consent, approval or execution of or by any third party is not required to legally bind the party to the terms and conditions of this Agreement.

**5.15. Entire Agreement and Enforceability.** This Agreement contains the entire understanding and agreement of the Parties, and supersedes all prior agreements and

understandings, oral and written, between the Parties. There have been no binding promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature, except as stated 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 future right to claim, contest or assert that this Agreement was modified, canceled, superseded or changed by any oral agreement, course of conduct, discussion, waiver or estoppel.

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:

\_\_\_\_\_

El Dorado Irrigation District

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

Georgetown Divide Public Utility District

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

APPROVED AS TO FORM

By \_\_\_\_\_ By \_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_

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County of El Dorado

By: [Signature] 2/12/08

Attest:

[Signature: Marcie MacLeland]

El Dorado County Water Agency

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

El Dorado Irrigation District

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

Georgetown Divide Public Utility District

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

APPROVED AS TO FORM

By [Signature]

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



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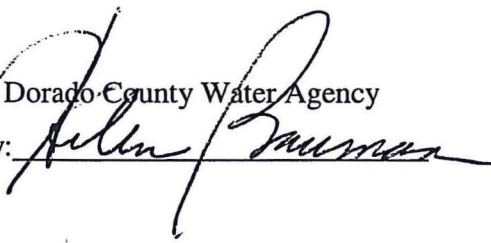
County of El Dorado

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

El Dorado County Water Agency

By: 

Attest:



El Dorado Irrigation District

By: \_\_\_\_\_

Attest:

\_\_\_\_\_


Georgetown Divide Public Utility District

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

APPROVED AS TO FORM

By 

By \_\_\_\_\_

By \_\_\_\_\_

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County of El Dorado

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

El Dorado County Water Agency

By: \_\_\_\_\_

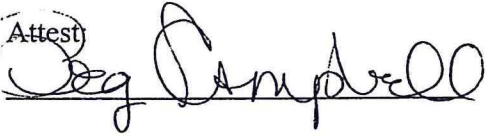
Attest:

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El Dorado Irrigation District

By:  \_\_\_\_\_

Attest

 \_\_\_\_\_

Georgetown Divide Public Utility District

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

APPROVED AS TO FORM

By \_\_\_\_\_

By  E.D. General Counsel

By \_\_\_\_\_

By \_\_\_\_\_

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County of El Dorado

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

El Dorado County Water Agency

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

El Dorado Irrigation District

By: \_\_\_\_\_

Attest:

\_\_\_\_\_

Georgetown Divide Public Utility District

By: Norman A. 77

Attest:

H. Gal. W. [Signature] 1/10/08

APPROVED AS TO FORM

By Wm M. Wright By \_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_