

STATE OF CALIFORNIA
CALIFORNIA NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

MULTI-YEAR AGREEMENT AMONG
THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
PALMDALE WATER DISTRICT,
AND
COUNTY OF BUTTE
FOR
THE DELIVERY OF A PORTION OF
COUNTY OF BUTTE'S
STATE WATER PROJECT ALLOCATED TABLE A WATER

SWPAO #13013

THIS AGREEMENT is made this 5th day of August, 2014,
pursuant to the provisions of the California Water Resources Development Bond Act and
other applicable laws of the State of California, among the Department of Water
Resources of the State of California (DWR), Palmdale Water District (PWD), and County
of Butte (Butte County). DWR, PWD, and Butte County may be referred to individually by
name as "Party" or collectively as "Parties." This Agreement may be referred to as
SWPAO #13013.

RECITALS

- A. DWR and PWD have entered into a water supply contract, dated February 2, 1963, as amended, providing that DWR shall supply certain quantities of water to PWD, and providing that PWD shall make certain payments to DWR, and setting forth the terms and conditions of such water deliveries and payments (hereinafter the "PWD Water Supply Contract").
- B. DWR and Butte County have entered into a water supply contract, dated December 26, 1963, as amended, providing that DWR shall supply certain quantities of water to Butte County, and providing that Butte County shall make certain payments to DWR, and setting forth the terms and conditions of such water deliveries and payments (hereinafter the "Butte County Water Supply Contract").
- C. Under the Butte County Water Supply Contract, Butte County has a maximum annual Table A Amount of 27,500 acre-feet of State Water Project (SWP) Table A water. Butte County has determined that 24,000 acre-feet per year of its Table A Amount is not needed to meet its in-County demands for years 2012 through 2021, and it desires to transfer this water to other SWP contractors, including PWD.
- D. Butte County wishes to transfer and PWD intends to acquire up to 10,000 acre-feet of Butte County's allocated Table A water for years 2012 through 2021 that is not needed for its in-County demands to supplement PWD's water supply to meet existing water supply needs.
- E. On or about July 17, 2008, four Plaintiffs, including Butte County, filed a civil action against DWR in the Superior Court of California, entitled *Solano County Water Agency et al., v. Department of Water Resources* (Sacramento County Superior Court Case No. 34-2008-00016338 CU-BC-GDS), and on or about March 2, 2009, the Court granted PWD's motion to intervene in the action, as well as the motion to intervene by certain other SWP contractors. The Plaintiffs' claims in the action related to disputes over the meaning of the long-term SWP water supply contracts (SWP Contracts) regarding Plaintiffs' rights to water under their SWP Contracts pursuant to Water Code section 11460, *et seq.*, and section 10505, commonly referred to as the "area of origin statutes." The Plaintiffs, DWR, and Intervenors entered mediation discussions and reached a tentative settlement set forth in four Agreements in Principle (AIP), including an AIP for Butte County (Butte County AIP), which contained the key material terms of the proposed settlement reached among the Plaintiffs, DWR, and Intervenors. The Butte County AIP formed the basis for settling the case for that particular Plaintiff.

- F. On July 31, 2012, PWD and Butte County entered into a two-year agreement entitled "Agreement between Palmdale Water District and the County of Butte for Lease of a Portion of the County of Butte's State Water Project Table A Amount for 2012 and 2013." The PWD/Butte County two-year agreement contained provisions governing the basic terms, conditions and price of a proposed transfer, or lease, of a portion of Butte County's allocated Table A water to PWD in 2012 and 2013. The PWD/Butte County two-year agreement also contained provisions concerning PWD's first right of refusal to all or a portion of at least 42% of Butte County's allocated Table A water available in excess of its in-County needs for 2012 and 2013.
- G. On August 3, 2012, DWR, PWD and Butte County entered into a two-year agreement entitled "Agreement among the Department of Water Resources of the State of California, Palmdale Water District, and County of Butte for the Delivery of a Portion of County of Butte's State Water Project Allocated Table A Water (SWPAO #12015)." SWPAO #12015 contained provisions governing the terms and conditions for DWR to deliver a portion of Butte County's allocated Table A water acquired by PWD to PWD's service area in 2012 and 2013.
- H. On January 6, 2014, Butte County, DWR and Intervenors entered into an agreement entitled "Settlement Agreement and Release Regarding Butte County." This Settlement Agreement comprised, resolved, settled, and terminated any and all of the disputes or claims in the civil action as described in Recital E. On January 30, 2014, Sacramento County Superior Court Judge Robert C. Hight signed a Stipulation for Entry of Order and Order Approving Settlement Agreements and for Dismissal of the Action with Prejudice.
- I. As a part of the Settlement Agreement, on December 31, 2013, DWR and Butte County entered into a water supply contract amendment entitled "Amendment No. 21 to Water Supply Contract between the State of California Department of Water Resources and Butte County" to incorporate the provisions in the Settlement Agreement.
- J. On October 23, 2013, PWD and Butte County entered into a long-term agreement entitled "Agreement between Palmdale Water District and County of Butte for Long-Term Lease of a Portion of the County's State Water Project Table A" (hereafter the "PWD/Butte County Long-Term Agreement"). The PWD/Butte County Long-Term Agreement contains provisions governing the basic terms, conditions and price of a proposed transfer, or lease, of a portion of Butte County's allocated Table A water to PWD for years 2014 through 2021. The PWD/Butte County Long-Term Agreement also contains provisions concerning PWD's first right of refusal to all or a portion of 41.667% of Butte County's remaining allocated Table A water available in excess of its in-County needs for years 2014 through 2021 (Butte County's Additional Water).

- K. PWD has requested DWR's approval for the annual delivery of up to 10,000 acre-feet of Butte County's allocated Table A water plus PWD's share of Butte County's Additional Water when it becomes available to PWD for years 2014 through 2021. DWR intends to deliver a portion of Butte County's allocated Table A water, including Butte County's Additional Water, acquired by PWD to PWD's turnout in Reach 20B of the California Aqueduct.
- L. In compliance with the California Environmental Quality Act (CEQA), PWD, as lead agency, prepared an Initial Study/Negative Declaration in May, 2012 for the proposed multi-year transfer of Table A water from Butte County to PWD and filed a Notice of Determination (NOD) with the State Office of Planning and Research (OPR) on May 23, 2012 (SCH #2012051063).
- M. DWR and Butte County, as responsible agencies, intend to file NODs with the State Office of Planning and Research after executing this Agreement.

AGREEMENT

DWR is willing to approve the delivery of a portion of Butte County's allocated Table A water to PWD, subject to the following terms and conditions:

1. PURPOSE

The purpose of this Agreement is to set forth provisions governing the annual delivery to PWD of up to 10,000 acre-feet of Butte County's allocated Table A water as well as PWD's share of Butte County's Additional Water, to PWD's service area in years 2014 through 2021.

2. TERM

This Agreement shall become effective upon execution by all Parties. This Agreement shall terminate on December 31, 2021, or upon final payments to DWR of all costs attributable to this Agreement, whichever occurs later. However, the liability, hold harmless, and indemnification obligations in this Agreement shall remain in effect until December 31, 2025, or until any claim or litigation concerning this Agreement asserted to DWR, PWD, and Butte County as of December 31, 2025 is finally resolved, whichever occurs later.

3. UNIQUENESS OF AGREEMENT

DWR's approval for the delivery of a portion of Butte County's allocated Table A water, including Butte County's Additional Water, to PWD under this Agreement is unique and shall not be considered as a precedent for any future agreements or DWR activities.

4. USE OF TABLE A WATER

Table A water delivered by DWR to PWD under this Agreement shall not be sold, used, or otherwise disposed of outside of PWD's service area. If any such water is sold, used, or otherwise disposed of outside of PWD's service area, upon notification from DWR, Butte County or DWR may seek an injunction or other appropriate remedy to halt any such deliveries and DWR may reclassify deliveries of Table A water to Butte County up to the amount that was delivered outside of PWD's service area.

5. APPROVAL

The delivery of water under this Agreement shall be contingent on, and subject to, any necessary approvals, including any PWD and Butte County board approvals, and shall be governed by the terms and conditions of such approval(s) and any other applicable regulation in effect at the time of delivery. PWD and Butte County

shall be responsible for complying with all applicable laws and regulations and for securing any required consent, permit, or order. PWD and Butte County shall furnish to DWR copies of all approvals and agreements required for the delivery of water under this Agreement.

6. WATER DELIVERED FROM BUTTE COUNTY TO PWD

- a. The water delivered under this Agreement shall be limited to 10,000 acre-feet multiplied by PWD's annual Table A allocation percentage, and PWD's share of Butte County's Additional Water when it becomes available to PWD for use within PWD's service area. Butte County's Additional Water transferred to PWD shall also be subject to PWD's annual Table A allocation percentage. The delivery of Butte County's allocated Table A water to PWD under this Agreement shall be in accordance with Amendment No. 21 to the Butte County Water Supply Contract. Both the 10,000 acre-feet and Butte County's Additional Water shall also be limited as follows:
 - (1). DWR will deliver a portion of Butte County's allocated Table A water from the Delta to PWD's turnout in Reach 20B of the California Aqueduct.
 - (2). The delivery of a portion of Butte County's allocated Table A water to PWD under this Agreement shall be in accordance with a schedule which has been reviewed and approved by DWR. DWR's approval is dependent upon the times and amounts of the delivery and the overall delivery capability of the SWP. DWR shall not be obligated to deliver the water at times when such delivery would adversely impact SWP operations, facilities, or other SWP contractors.
- b. In any given year, the sum of deliveries scheduled to PWD under this Agreement, plus additional scheduled PWD Table A deliveries, plus deliveries to PWD under any other agreement, shall not exceed the quantities on which the Proportionate Use-of-Facilities factors are based under PWD's Water Supply Contract, unless DWR determines that these deliveries will not adversely impact SWP operations, facilities, or other SWP contractors.

7. WATER DELIVERY SCHEDULES

- a. All water delivery schedules and revisions will be in accordance with Article 12 of PWD's Water Supply Contract.
- b. PWD shall be responsible for coordinating and scheduling the water delivery with DWR as described in this Agreement. After all approvals have been obtained and before water is delivered under this Agreement, PWD shall

submit for DWR's approval a revised water delivery schedule showing the anticipated change to the monthly delivery pattern to accommodate the water delivery under this Agreement.

- c. PWD shall submit revised monthly water delivery schedules for approval to the State Water Project Water Analysis Office (SWPAO), Water Deliveries Section, indicating timing and point of delivery requested with reference to SWPAO #13013. Revised schedules shall be sent by electronic mail to SWPDeliveries@water.ca.gov or by FAX to (916) 653-9628, Attention: Chief, Water Deliveries Section.
- d. PWD shall submit weekly water schedules for the delivery of water to the Southern Field Division, Water Operations Section, indication timing and point of delivery requested with reference to SWPAO #13013. Schedules shall be sent by electronic mail to SFDwaterschedule@water.ca.gov or by FAX to (661) 294-3651, Attention: Chief, Water Operations Section.
- e. All weekly water delivery schedules described above shall be submitted by 10:00 a.m. Wednesday for the following week, Monday through Sunday, to the appropriate field division Water Operation Section for the SWP contractors.
- f. Weekly water delivery schedules shall also be concurrently sent by electronic mail or faxed to the State Water Project Operations Control Office:
 - (1). Water Management Branch
Water_deliv_sched@water.ca.gov
FAX (916) 574-2785
Attention: Chief, Water Management Branch
 - (2). Power Management and Optimization Branch
Water_deliv_sched@water.ca.gov
FAX (916) 574-2785
Attention: Chief, Power Management and Optimization Branch
 - (3). Pre-Scheduling Section
Presched@water.ca.gov
FAX (916) 574-2782
Attention: Chief, Pre-Scheduling Section

8. SWP ALLOCATION

Water delivered to PWD under this Agreement shall not be considered by DWR in the determination of approved annual Table A deliveries or allocation of other SWP water to PWD under Article 18 of PWD's Water Supply Contract.

9. NO IMPACT

This Agreement shall not be administered or interpreted in any way that would cause adverse impacts to SWP approved Table A water or to any other SWP approved water allocations, water deliveries, or SWP operations or facilities. PWD and Butte County shall be responsible, jointly and severally, as determined by DWR, for any adverse impacts that may result from the delivery of water under this Agreement.

10. WATER DELIVERY RECORDS

DWR will maintain records documenting the delivery of a portion of Butte County's allocated Table A water to PWD under this Agreement. Butte County and PWD shall certify to the State Water Project Analysis Office (Attn: Chief, Water Contracts Branch, Fax (916) 653-9628) by January 31st of each year the amount of water that is delivered to PWD for the previous calendar year under this Agreement.

11. CHARGES

PWD shall pay the following charges for water delivered under this Agreement to DWR, including all future adjustments, which shall be calculated in the same manner as charges are calculated for SWP Table A deliveries, and shall be in accordance with the provisions of PWD's Water Supply Contract. Charges shall be determined for the year the water is delivered.

- a. When a portion of Butte County's allocated Table A water, including Butte County's Additional Water, is delivered to PWD's turnout, PWD shall pay to DWR the charges associated with the delivery of the water from the Delta to PWD's turnout in Reach 20B of the California Aqueduct. PWD shall pay the Variable Operation, Maintenance, Power, and Replacement Components of the Transportation Charge and the Off-Aqueduct Power Facilities cost for each acre-foot of water delivered to PWD.
- b. In addition to the charges identified above, PWD agrees to pay to DWR any additional identified demonstrable increase in costs that would otherwise be borne by the SWP contractors not signatory to this Agreement or by DWR, as a result of activities under this Agreement.

- c. Payment terms in this Agreement shall be in accordance with PWD's Water Supply Contract, or as amended.

12. ARTICLE 56(D) WAIVER

- a. Notwithstanding Butte County's Water Supply Contract, Butte County shall not buy or sell water in the Turnback Pool under Article 56(d) of Butte County's Water Supply Contract with DWR in the years when water is delivered to PWD under this Agreement. Butte County hereby agrees to explicitly waive any rights under Article 56(d) of Butte County's Water Supply Contract.
- b. Notwithstanding PWD's Water Supply Contract, PWD shall not sell water in the Turnback Pool under Article 56(d) of PWD's Water Supply Contract with DWR in the years when water is delivered to PWD under this Agreement. PWD hereby waives its rights to file any claims under Article 56(d) of PWD's Water Supply Contract against DWR or any other SWP contractors who participate in the Turnback Pool under Article 56(d) of their respective Water Supply Contract with DWR in the years when water is delivered to PWD under this Agreement.

13. LIABILITY

- a. Responsibility for water delivered under this Agreement shall be governed by Article 13 of PWD's Water Supply Contract, with responsibilities for liabilities under the terms of that article shifting from DWR to PWD when the water passes through its designated delivery points.
- b. PWD and Butte County agree to defend and hold DWR, its officers and employees, jointly and severally, harmless from any direct or indirect loss, liability, lawsuit, cause of action, judgment or claim, and shall indemnify DWR, its officers and employees, jointly and severally, for all lawsuits, costs, damages, judgments, attorney fees, and liabilities that DWR, its officers and employees incur as a result of DWR providing services under this Agreement, except to the extent resulting from the sole negligence or willful misconduct of DWR.
- c. If uncontrollable forces preclude DWR from delivering water under this Agreement, either partially or completely, then DWR is relieved from the obligation to deliver the water under this Agreement to the extent that DWR is reasonably unable to complete the obligation due to the uncontrollable force. Uncontrollable forces shall include, but are not limited to earthquakes,

fires, tornadoes, floods, and other natural or human caused disasters. PWD and Butte County shall not be entitled to recover any administrative costs or other costs incurred under this Agreement if uncontrollable forces preclude DWR from delivering the water.

14. NO MODIFICATION OF WATER SUPPLY CONTRACTS

Unless expressly provided herein, this Agreement shall not be interpreted to modify the terms or conditions of PWD's Water Supply Contract, as amended, or Butte County's Water Supply Contract, as amended.

15. DISPUTE RESOLUTION

In the event of any dispute regarding interpretation or implementation of this Agreement, the Director of DWR, general manager of PWD, and a Board appointed representative of Butte County, or their authorized representatives shall endeavor to resolve the dispute by meeting within 30 days after the request of a Party. If the dispute is unresolved, the Parties shall use the services of a mutually acceptable consultant in an effort to resolve the dispute. Parties involved in the dispute shall share the fees and expenses of the consultant equally. If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy including, but not limited to, injunctive and other equitable relief.

16. ASSIGNMENT OF AGREEMENT

Without the written consent of DWR, PWD and Butte County, this Agreement shall not be assignable by PWD or Butte County in whole or in part.

17. MODIFICATION OF AGREEMENT

No modification of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties to this Agreement.

18. PARAGRAPH HEADINGS

The paragraph headings of this Agreement are for the convenience of the Parties and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

19. TERMS TO BE REASONABLE

Where the terms of this Agreement provide for actions to be based upon the opinion, judgment, approval, review, or determination of any party, such terms are to be construed as providing that such opinion, judgment, approval, review, or determination be reasonable.

20. SIGNATURE CLAUSE

The signatories represent that they have been appropriately authorized to enter into this Agreement on behalf of the Party for whom they sign.

21. EXECUTION IN COUNTERPART

This Agreement may be executed in counterpart. The parties agree to accept facsimile or electronically scanned signatures as original signatures. The agreement shall take effect as soon as all parties have signed. Immediately after execution, PWD and Butte County shall transmit a copy of the executed Agreement by facsimile or electronic file to Robert B. Cooke, Chief, State Water Project Analysis Office at (916) 653-9628 or cooke@water.ca.gov and to each other at:

PWD: (661) 947-8604 or dlamoreaux@palmdalewater.org
Butte County: (530) 538-3807 or vnewlin@buttecounty.net

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

Approved as to Legal Form
and Sufficiency

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

for 

Chief Counsel
Department of Water Resources
8/1/14

Date



Deputy Director
8/5/14

Date

PALMDALE WATER DISTRICT

COUNTY OF BUTTE

Name

Title

Date

Name

Title

Date

cc: Mr. Terry Erlewine, General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

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Approved as to Legal Form
and Sufficiency

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Chief Counsel
Department of Water Resources

Deputy Director

Date

Date

PALMDALE WATER DISTRICT

COUNTY OF BUTTE

Quis D. LaMurray
Name

Name

GENERAL MANAGER
Title

Title

7/10/14
Date

Date

cc: Mr. Terry Erlewine, General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement.

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STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

Chief Counsel
Department of Water Resources

Deputy Director

Date

Date

PALMDALE WATER DISTRICT

COUNTY OF BUTTE

Name

Name

Title

Title

Date

Date

cc: Mr. Terry Erlewine, General Manager
State Water Contractors
1121 L Street, Suite 1050
Sacramento, California 95814

Approved for fiscal control, subject
to budget appropriation
Auditor's Office

By _____

APPROVED AS TO FORM
Butte County Counsel

By _____