

## SECTION FOUR: OTHER IMPORTANT AGREEMENTS

### I. ASSURANCES AND CAVEATS

#### A. Intent

The *Water Forum Agreement* will allow the region to meet its needs in a balanced way through implementation of all seven elements of the *Agreement*: Increased Surface Water Diversions; Actions to Meet Customers' Needs While Reducing Diversion Impacts in Drier Years; Support for Improved Pattern of Fishery Flow Releases; Lower American River Habitat Management; Water Conservation; Groundwater Management; and Water Forum Successor Effort.

Each signatory needs to be assured that as it fulfills its responsibilities under the *Agreement*, the other signatories will be also honoring their commitments. Adequate assurances allow each signatory to expend the energy and resources necessary for it to uphold its part of the *Agreement* with confidence that others signatories will be doing likewise.

For instance for environmentalists to support purveyors' increased water diversions, they need assurances that purveyors will support all seven elements of the *Water Forum Agreement* over the entire term of the *Agreement*. This will provide them assurances that agreed upon actions to preserve the Lower American River will be continued.

Conversely for water purveyors to participate in all seven elements of the *Agreement*, including those which will preserve the Lower American River, they will need to have assurances that the other signatories will support the purveyor's increased diversions over the term of the *Agreement*.

#### B. Assurances

The *Water Forum Agreement* is based on nine assurances:

- 7 Signing the *Water Forum Agreement*;
- 7 Implementation of the Central Valley Project Improvement Act;
- 7 An Updated Lower American River flow standard and related assurances;
- 7 Assurances of support for increased diversions;
- 7 Assurances for the Lower American River Habitat Management Element;
- 7 Assurances for the Water Conservation Element;
- 7 Assurances for the Groundwater Management Element;
- 7 Assurances for the Water Forum Successor Element; and
- 7 Assurances for response to changed conditions.

##### 1. Signing the *Water Forum Agreement*.

All signatories agree that by signing the *Water Forum Agreement*, which is a Memorandum of Understanding (MOU) among all signatories, they commit to carrying out all the actions specified for them in the *Agreement*. This MOU is supplemented by additional assurances which are described below.

Timing of this assurance: The *Water Forum Agreement* will be effective upon signing.

## 2. Implementation of the Central Valley Project Improvement Act

Under the Central Valley Project Improvement Act (CVPIA), the Department of Interior is responsible for carrying out two programs that provide significant assurances that fishery, wildlife, recreational, and aesthetic values of the Lower American River will be protected.

- a. The Anadromous Fish Restoration Program (AFRP) provisions of the CVPIA require the U.S. Bureau of Reclamation (Bureau) to release water from Central Valley Project (CVP) facilities including Folsom Dam on a schedule that better matches the lifecycles of anadromous fish. The draft AFRP flow objectives for the American River as set forth in the November 20, 1997 "Department of the Interior Final Administrative Proposal on the Management of Section 3406 (b) (2) Water" are essentially the same as the *Water Forum Agreement's* Improved Pattern of Fishery Flow Releases.
- b. In addition, the CVPIA Restoration Fund collects money from CVP contractors to finance improvements to habitat affected by the CVP, including the ecosystem of the Lower American River. These funds are expected to provide cost-sharing for the Multi-Agency Lower American River Habitat Management Program.

Timing of this assurance: The CVPIA was enacted as federal law in 1992. Since 1996 the Bureau, in conjunction with the U.S. Fish and Wildlife Service and the California Department of Fish and Game, has attempted to release water from project facilities in a manner consistent with the flow objectives for the Lower American River set forth in the draft Anadromous Fish Restoration Plan to the extent Bureau's available water supply has permitted it to do so. The AFRP flow objectives will not become final until after the CVPIA Programmatic Environmental Impact Statement is complete.

## 3. Updated Lower American River Flow Standard and Related Assurances.

The Anadromous Fish Restoration Plan (AFRP) flow targets for the Lower American River are an important assurance. However they have not been finalized as of the signing of the *Water Forum Agreement*. In addition they do not address how much water will be diverted from the American River under various hydrologic conditions. In the process of updating the Lower American River standard, it will be necessary to make some corrections to the AFRP flow objectives for the Lower American River. These include some typographic corrections as well as inclusion of target carryover storage amounts for Folsom Reservoir.

An additional assurance will be in the form of an updated Lower American River flow standard. All signatories agree they will recommend to the State Water Resources Control Board an updated Lower American River flow standard and updated Declaration of Full Appropriation. This recommended standard will incorporate the *Water Forum Agreement* provisions on water diversions under varying hydrologic conditions, optimize the release of available water for the fisheries and include other provisions as follows:

a. Updated Lower American River Flow Standard for Folsom and Nimbus Dams. All signatories agree they will recommend to the State Water Resources Control Board an updated American River flow standard and updated Declaration of Full Appropriation to protect the fishery, wildlife, recreational and aesthetic values of the Lower American River. The recommendation will include requirements for U.S. Bureau of Reclamation releases to the Lower American River. In addition, the City of Sacramento's Fairbairn diversion will be required to comply with the diversion limitations of the City's Purveyor Specific Agreement. The *Water Forum Agreement* also includes agreed upon dry year reductions by purveyors upstream of Nimbus Dam. The recommendation for an updated Lower American River standard will be consistent with:

*Water Forum Agreement* provisions on water diversions including dry year diversions,  
and  
Implementation of the Improved Pattern of Fishery Flow Releases which optimizes the release of water for the fisheries.

Timing of this assurance: The City of Sacramento, with support from other signatories to the Water Forum Agreement, has already requested the State Water Resources Control Board to expedite updating of the Lower American River flow standard. In the spring of 2000, after consultation with other American River water rights holders, the City of Sacramento will present a recommended flow standard to the State Water Resources Control Board on behalf of the Water Forum.

b. Upstream Diversion Agreements. The recommended updated Lower American River flow standard will incorporate rules on how much water purveyors would divert upstream of Nimbus Dam under varying hydrologic conditions. Therefore the Bureau and Water Forum signatories need some form of assurance as to how much those purveyors would divert under those conditions.

Purveyors signatory to the *Water Forum Agreement* who divert from upstream of Nimbus Dam agree they will enter into contracts with the Bureau that will provide assurances that the upstream diverters will divert only the agreed upon amounts, which include provisions for diversion reductions in dry year and/or other equivalent actions. (See "Model Diversion Agreement with USBR" included as Appendix F.)

Timing of this assurance: These contracts need to be entered into before the updated Lower American River flow standard becomes effective.

c. City of Sacramento Diversion Conditions. There needs to be some form of assurance that the City of Sacramento's diversions from the American River will be consistent with the *Water Forum Agreement*. Because it diverts from downstream of Nimbus Dam it would be inappropriate of the City to enter into a diversion agreement with the Bureau.

Therefore the City of Sacramento agrees to include the provisions of its purveyor specific agreement concerning its diversion conditions in its request for State Water Resources Control Board approval needed to expand the E.A. Fairbairn Water Treatment Plant diversion.

Timing of this assurance: These diversion conditions will be included when the SWRCB grants the City its needed approval.

d. Flexibility in the Standard with Regard to Implementation of the Improved Pattern of Fishery Flow Releases. The updated Lower American River flow standard recommended by signatories will also address the tension between certainty and flexibility in how water is released from Folsom Reservoir. A flow standard that incorporated the Improved Pattern of Fishery Flow Releases with no flexibility in its implementation would make it impossible to use Adaptive Management to respond to real time conditions. Conversely, absolute flexibility would not provide parties the assurance that releases from Folsom Reservoir will be timed to meet the objectives of the Improved Pattern of Fishery Flow Releases. In addition implementation of the standard must recognize that the Bureau operates Folsom Dam as an integrated part of the CVP.

A technical group of parties with operations expertise including members of the Water Forum Successor Effort, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the California Department of Fish and Game will prepare recommendations on how to reconcile these issues. Provisions they will consider recommending in the updated flow standard include:

- (1) Acceptable tolerance for variation in flow releases. The pattern of releases would be based on the November 20, 1997 "Department of the Interior Final Administrative Proposal on the Management of Section 3406 (b) (2) Water." However there is also a need to allow some variation to respond to real time conditions. The tolerance could vary by type of water year. It could be an absolute number or a percentage.
- (2) Formalization of the existing ad hoc Lower American River Operations Group that would meet as needed. This is an existing group of resource experts that provides input to the Bureau on its operations under real time conditions. The operations group would agree on actual flow releases within the previously approved range. It will have to be coordinated with other operations groups. This group should also take advantage of the experience of the CALFED Operations Group.
- (3) A provision to allow greater variations in flows in response to significant, unforeseeable events. For instance if a gate at Folsom Reservoir were to fail in July, there might not be enough water remaining to meet fall flow standards. Or there could be a never before experienced pattern of inflow or flood release.

Another example of the need for variation could be to allow repairs to be made on the fish diversion structure at Nimbus Fish Hatchery.

(4) A recognition of the State Water Resources Control Board's continuing authority to amend the standard to protect instream resources of the Lower American River.

(5) The approach to flexibility will also be coordinated with the Bureau's new Operations Criteria and Plan (OCAP).

Timing of this assurance: The recommendation for appropriate flexibility will be developed in time for inclusion in the updated Lower American River flow standard.

e. Conference Year Principles. The recommended flow standard for the Lower American River incorporates agreement on water diversions and optimizes the release of available water for the fisheries for all types of water years through implementation of the Improved Pattern of Fishery Flow Releases. This recognizes the wide variation in runoff which has ranged from over 6 million acre feet in one year to less than 400,000 acre feet in the driest year on record. It is during times of low runoff that pressures on the available water supply are greatest. Therefore signatories agree that the updated Lower American River flow standard that they recommend will have the following provisions for the extremely dry years:

(1) Diversions and River Flows. The amount each purveyor could divert is set forth in its Purveyor Specific Agreement and is reflected in the recommended Lower American River flow standard.

(Note that the annual quantity of water diverted from the American River and the amount available to flow all the way down the River from March to November may total more than 400,000 acre feet. That is because the amount available may include releases from storage of water carried over from previous years.)

The recommended updated flow standard will also include a provision for adaptive management. This will allow resource managers to allocate the total quantity of water available to the fishery for maximum benefit to the fishery.

(2) Conferencing. During years when the projected March to November inflow to Folsom Reservoir is less than 400,000 acre feet (referred to as "Conference Years") there is insufficient water to meet Lower American River instream needs and provide the quantities of diversions specified in Purveyor Specific Agreements. Special provisions are necessary to deal with water management in those extremely dry years. Therefore all stakeholders agree to meet in those years to confer on how the available water supply should be managed to preserve as much as possible both of the Water Forum's two coequal

objectives. The guiding principle will be to "share the pain" so that both instream and consumptive users bear an equitable burden.

(3) Minimum Flow Standard. The updated flow standard recommended by the Water Forum for inclusion in the Bureau's water rights permits for operation of Folsom and Nimbus dams will include a minimum flow requirement of 190 cubic feet per second at the mouth of the American River.<sup>8</sup> The Water Forum will also recommend that the City of Sacramento's water rights require the E. A. Fairbairn Water Treatment Plant diversion to bypass the flow that the U.S. Bureau of Reclamation releases or maintains below Nimbus dam to meet that minimum flow requirement at the mouth of the American River. Nothing in this *Water Forum Agreement* is intended to affect the Bureau's obligation to make water available to the City of Sacramento under the City's 1957 Bureau contract.

This does not however imply signatories agree that 190 cubic feet per second is adequate for fish screen bypass flows for the expanded Fairbairn diversion or a new diversion near the mouth of the American River. Those fish screen bypass flows will be identified in project specific EIR's for those diversions.

In extraordinary circumstances, the 190 cubic feet per second minimum could be relaxed if reallocating that volume of water to another time in the year would be more beneficial for the fishery.

(4) Extraordinary Conservation Efforts. In conference years water purveyors agree to implement the highest level of conservation/rationing in their drought contingency plans.

(5) Conferencing in Other Years. The Lower American River Operations Group (the group that recommends real time adaptive management operations for the Lower American River) can recommend that the Water Forum Successor Effort meet and confer on operations in any year if called for by extraordinary circumstances.

These Conference Year Principles will be included in the diversion agreements between the Bureau and purveyors signatory to the *Water Forum Agreement* that divert upstream of Nimbus Dam.

Timing of this assurance: The concept of conferencing in the years with a projected March to November unimpaired inflow of less than 400,000 acre feet will be included in

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<sup>8</sup> Decision 893 established a variable minimum requirement for flows at the mouth of the American River. Under D-893 in 1977, the driest year on record, the minimum flow requirement was presumed to be between 185 and 190 cubic feet per second. D-893 also conditioned the City of Sacramento's water rights to require the City of Sacramento's E. A. Fairbairn Water Treatment Plant diversions to bypass the flow that the Bureau releases or maintains below Nimbus dam to meet D-893's minimum flow requirement.

the recommendation for the updated Lower American River flow standard when it is presented to the State Water Resources Control Board.

f. Declaration of Full Appropriation. The State Water Resources Control Board has already declared the American River to be fully appropriated during certain times of the year. In recognition of the additional diversions and fishery flows agreed to in the *Water Forum Agreement*, the Declaration of Full Appropriation needs to be amended. Because there are significant remaining issues including area of origin protections, this will require additional negotiation.

Signatories agree to negotiate with all affected stakeholders and the Water Forum Successor Effort will recommend an amendment to the Declaration of Full Appropriation for the American River consistent with the *Water Forum Agreement*.

Timing of this assurance: A recommended amendment to the Declaration of Full Appropriation for the Lower American River will be developed so that the amended Declaration can be recommended as soon as the Lower American River flow standard is updated.

g. How To Develop an Updated Lower American River Flow Standard If All Upstream Diverters Are Not in the Initial *Water Forum Agreement*. Not all purveyors that divert upstream of Nimbus Dam are in the initial *Water Forum Agreement*. This section describes how an updated flow standard for the Bureau's operation of Folsom and Nimbus Dams can be adopted when there is uncertainty as to increased diversions by some upstream purveyors.

The updated flow standard will reflect those increased diversions, including dry year reductions and/or other equivalent actions, upon which there is agreement as reflected in the initial *Water Forum Agreement*.

Signatories agree that the recommended updated flow standard will also contain a reserved jurisdiction clause specifying that whatever the SWRCB decides in the future regarding diversions upstream of Nimbus Dam will automatically result in a corresponding revision to the Bureau's water rights permit for the operation of Folsom and Nimbus dams.

That will preserve the opportunity for those not yet in the *Agreement* to come to agreement with other Water Forum stakeholders when the issues are ripe for decision. It will also preserve the option for parties to support or oppose those increased diversions if an agreement with the Water Forum signatories cannot be reached in the future.

Timing of this assurance: This provision will be included in the updated Lower American River flow standard when it is presented to the State Water Resources Control Board for its approval.

4. Assurances of Support for Increased Diversions

a. All signatories to the *Water Forum Agreement* will endorse all water entitlements needed for the diversions specified in each Purveyor Specific Agreement.

b. All signatories will endorse construction of facilities to divert, treat and distribute water consistent with this Purveyor Specific Agreement and the *Water Forum Agreement* including diversion structures, treatment plants, pumping stations, wells, storage facilities, and major transmission piping. Endorsement is also to be provided for necessary rights-of-ways, permits, and other endorsements which may be needed, in the context of the five points described below.

(1) All signatories agree that implementation of the *Water Forum Agreement* including an Improved Pattern of Fishery Flow Releases, the Updated Lower American River flow standard, the Lower American River Habitat Management Element, Actions to Meet Customers' Needs While Reducing Diversion Impacts in Drier Years, and the Water Conservation Element constitute reasonable and feasible mitigation for any cumulative impacts on the Lower American River caused by diversions included in the *Water Forum Agreement*.

(2) Environmental impacts of facilities to divert, treat and distribute water will be subject to site-specific environmental review. It is understood that signatories may provide comments on site specific impacts. All signatories will work in good faith to agree on reasonable and feasible mitigation for any site-specific impacts.

(3) To the extent that the water facilities are consistent with the *Water Forum Agreement*, signatories agree that they will not object to those water facilities based on the cumulative impacts to the Lower American River. Nor will signatories object to water facilities consistent with the *Water Forum Agreement* based on the planned growth to be served by those water facilities. (See Section Four, IV, Relationship of the *Water Forum Agreement* to Land Use Decision making).

(4) In the planning for new water diversion, treatment, and distribution facilities identified in the *Water Forum Agreement*, water purveyors signatory to the *Agreement* will either provide for a public participation process, such as meeting with already established citizen advisory committees, or other appropriate means to help design and implement these projects.

(5) All signatories retain their existing ability to provide input on specific details of facility design, financing, and construction.

c. Endorsement of the water entitlements and related facilities in the *Water Forum Agreement* means that organizations signatory to the *Water Forum Agreement* will expend reasonable efforts to:

- (1) Speak before stakeholder boards and regulatory bodies,
- (2) Provide letters of endorsement,
- (3) Provide supportive comments to the media,
- (4) Advocate the *Water Forum Agreement* to other organizations, including environmental organizations that are not signatory to the *Water Forum Agreement*, and
- (5) Otherwise respond to requests from other signatories to make public their endorsement of the *Water Forum Agreement*.

Timing of this assurance: Support for increased diversions will be provided whenever requested by the water purveyors signatory to the *Water Forum Agreement*.

5. Assurances for the Lower American River Habitat Management Element

- a. Signatories commit in the signed Water Forum MOU to implement the Habitat Management Element as specified in the *Water Forum Agreement*.
- b. In certifying the Water Forum Programmatic EIR and approving findings, the City of Sacramento and the County of Sacramento agree to include the commitments of purveyors participating in the Habitat Management Element in the adopted Mitigation Monitoring and Reporting Plan.
- c. In approving project specific EIR's and EIS's, purveyors agree to include language in their adopted environmental documentation which commits them to participate in the Habitat Management Element as specified in the *Water Forum Agreement*.
- d. The City of Sacramento, the County of Sacramento and those other purveyors outside of Sacramento County's Zone 13 that divert American River water agree to enter into a contract with the City of Sacramento (as fiscal agent for the Water Forum) to provide funding for the Habitat Management Element as specified in this *Agreement*. Parties entering into the contract agree to include a provision whereby other signatories to the *Water Forum Agreement* will be designated as third party beneficiaries. That will enable those other signatories to have standing to enforce the contractual commitments.

Timing of assurance: Habitat assurances are included in the Water Forum EIR. They will also be included in purveyors' project-specific EIR's when they are adopted. The contract for funding and implementing the Habitat Management Element will be entered into within one hundred twenty days of the effective date of the *Water Forum Agreement*.

6. Assurances for the Water Conservation Element

- a. Each purveyor agrees as part of the Water Forum MOU to implement its water conservation plan which is included in the *Water Forum Agreement* as Appendix J a separately bound appendix.
- b. In certifying the Water Forum Programmatic EIR and approving findings, the City of Sacramento and the County of Sacramento agree to include in the adopted Mitigation Monitoring and Reporting Plan all purveyors' commitments to their Water Forum conservation plans.
- c. In approving project specific EIR's and EIS's, purveyors agree to include language in their adopted environmental documentation which commits them to carry out their water conservation plans as included in the *Water Forum Agreement* as Appendix J, a separately bound appendix.
- d. All signatories recognize that the Central Valley Project Improvement Act includes water conservation requirements to be implemented by CVP contractors.
- e. All signatories agree to actively support the California Public Utilities Commission allowing investor owned utilities to recover all costs of meter retrofit through rates.
- f. All signatories agree to work in the Water Forum Successor Effort to negotiate a conservation program for agricultural water use. Water Forum signatories' support for new or increased surface water diversions to serve agricultural uses is dependent on acceptable assurances that those diverters will implement mutually agreed upon agricultural water conservation programs.

Timing of this assurance: Water conservation assurances are included in the Water Forum EIR. They will also be included in purveyors' project-specific EIR's when they are adopted. Central Valley Project Improvement Act water conservation requirements are already enacted.

7. Assurances for the Groundwater Management Element

- a. Signatories who pump groundwater from the subarea of the basin in the North area of Sacramento County agree to participate in the Sacramento North Area Groundwater Management Authority established under the Joint Powers Agreement in August 1998.
- b. The Sacramento North Area Groundwater Management Authority may enter into a MOU with entities in adjacent counties to coordinate the management of the groundwater basin that is shared by those counties.

c. In Sacramento county, land use agencies' determination of groundwater available for new development will be consistent with the estimated average annual sustainable yields identified in the *Water Forum Agreement*.

d. Signatories to the *Water Forum Agreement* agree to negotiate arrangements for groundwater management for the Galt Area and the South Area within Sacramento county appropriate to their individual needs. Signatories agree that the North Area groundwater management program is not a template for programs in the South Area or the Galt Area within Sacramento county.

Water Forum signatories' support for new or increased surface water diversions for use in the South Area or the Galt Areas within Sacramento county is linked to those signatories' participation in the development of groundwater management programs for the South Area and the Galt Area.

Timing of this assurance: In July 2000, the Water Forum Successor Effort will review progress in implementing groundwater management programs in the South Area and Galt Area to confirm that sufficient progress has been made to allow continued Water Forum support for new or increased surface water diversions.

8. Assurances for the Water Forum Successor Effort

a. Upon signing the *Water Forum Agreement*, all signatories will immediately become members of the Water Forum Successor Effort.

b. In certifying the Water Forum Programmatic EIR and approving findings, the City of Sacramento and the County of Sacramento agree to include in the adopted Mitigation Monitoring and Reporting Plan all purveyors' commitments to the Water Forum Successor Effort.

c. In approving project specific EIR's and EIS's, purveyors agree to include language in their adopted environmental documentation which commits them to participate in the Water Forum Successor Effort as included in the *Water Forum Agreement*.

d. The City of Sacramento, the County of Sacramento and those other purveyors outside of Sacramento County's Zone 13 agree to enter into a contract with the City of Sacramento (as fiscal agent for the Water Forum) to provide funding for the Water Forum Successor Element as specified in this *Agreement*. Parties entering into the contract agree to include a provision whereby other signatories to the *Water Forum Agreement* will be designated as third party beneficiaries. That will enable those other signatories to have standing to enforce the contractual commitments.

Timing of the assurance: The contract for funding and implementing the Water Forum Successor Effort will be entered into within one hundred twenty days of the effective date of the *Water Forum Agreement*.

9. Assurances for Response to Changed Conditions.

It is recognized that over time there will be changed circumstances that are not currently foreseen. The changed conditions could significantly affect attainment of either or both of the Water Forum's two coequal objectives.

For instance groundwater contamination could affect water purveyors' ability to rely on conjunctive use in drier years. Conversely, the fishery might not do as well as was projected when the *Water Forum Agreement* was signed.

Therefore all signatories agree that if changed circumstances affect the ability to attain either of the two coequal objectives, the Water Forum Successor Effort will recommend changes to relevant portions of the *Water Forum Agreement*. Amending the *Water Forum Agreement* requires express approval by those signatories that would be affected by the amendment.

Timing of the assurance: This will be an ongoing activity over the life of the *Water Forum Agreement*.

**C. Caveats**

The *Water Forum Agreement* includes linked actions based on many “quid pro quos” (i.e., something given for something received.) Some of the actions will require future approvals or implementation by local, state and federal agencies.

In addition some things cannot be known with certainty at this time. For instance, results of Endangered Species Act consultations for specific projects will not be available for some time.

Therefore, in order to have a durable *Agreement* it is necessary to include the following caveats. These are statements describing actions or conditions that must exist for the *Agreement* to be operative.

1. Each purveyor's commitment to implementing all provisions of the *Water Forum Agreement* is contingent on it successfully obtaining its water supply entitlements and facilities.

a. If a purveyor receives support from the other signatories to the *Water Forum Agreement* for all of its facilities and entitlements as shown on the chart “*Major Water Supply Projects That Will Receive Water Forum Support Upon Signing the Water Forum Agreement*,” and if it receives all necessary approvals for some or all of those facilities and entitlements, then the purveyor will fully support and participate in the following provisions of the *Water Forum Agreement*:

- (1) Support for the Improved Pattern of Fishery Flow Releases
- (2) Water Forum Successor Effort
- (3) Water Conservation Element
- (4) Lower American River Habitat Management Element

- (5) Support for the Updated Lower American River flow standard
- (6) Diversion restrictions or implementation of other actions to reduce diversion impacts in drier years as specified in its Purveyor Specific Agreement.

and,

- b. If a purveyor is not successful in obtaining all necessary approvals for all of its facilities and entitlements as shown on the chart “*Major Water Supply Projects That Will Receive Water Forum Support Upon Signing the Water Forum Agreement,*” that would constitute a changed condition that would be considered by the Water Forum Successor Effort.
- 2. All signatories agree that business, citizens, and environmental signatories’ obligation to support, and where specified, implement all provisions of the *Water Forum Agreement* is contingent on implementation of those provisions of the *Agreement* that meet their interests.
  - 3. A stakeholder’s support for water supply entitlements and facilities is contingent on adequate assurances, including:
    - a. Project-specific compliance with the California Environmental Quality Act, and where applicable, the National Environmental Policy Act, federal Endangered Species Act and California Endangered Species Act.
    - b. Purveyors’ commitment in their project-specific EIR’s and CEQA findings to: all seven elements of the *Water Forum Agreement*; support for updating the Lower American River flow standard; commitment by those purveyors that divert from upstream of Nimbus Dam to entering into signed diversion agreements with the U.S. Bureau of Reclamation; commitment by the City of Sacramento to inclusion of the terms of the diversion provisions of its Purveyor Specific Agreement into its water rights.
    - c. Signed diversion agreements between purveyors that divert upstream of Nimbus Dam and the U.S. Bureau of Reclamation. Other signatories to the *Water Forum Agreement* shall be third party beneficiaries to the diversion agreements solely for the purpose of seeking specific performance of the diversion agreements relating to reductions in surface water deliveries and/or diversions if Reclamation fails to enforce any of those provisions. The status of a signatory to the *Water Forum Agreement* as a third party beneficiary to the diversion agreements is dependent on that signatory complying with all the terms of the *Water Forum Agreement*, including support for the purveyor specific agreement for the purveyor’s project. This is not to intend to create any other third party beneficiaries to the diversion agreements, and expressly denies the creation of any third party beneficiary rights hereunder for any other person or entity.
    - d. Adequate progress on the updated Lower American River standard. (See the “Schedule for Updating the Lower American River Flow Standard” at the end of this section.)

- e. Adequate progress in construction of the Temperature Control Device.
- f. Adequate progress in addressing the Sacramento River and Bay-Delta conditions associated with implementation of the *Water Forum Agreement*.

4. Environmental stakeholders' support for facilities and entitlements is dependent upon the future environmental conditions in the Lower American River being substantially equivalent to or better than the conditions projected in the Water Forum EIR. If the future environmental conditions in the Lower American River environment are significantly worse than the conditions projected in the EIR, this would constitute a changed condition that would be considered by the Water Forum Successor Effort. Significant new information on the needs of the Lower American River fisheries, which was not known at the time of execution of the *Water Forum Agreement*, would also constitute a changed condition that would be considered by the Water Forum Successor Effort.

**D. Specific Agreement on Assurances and Caveats.**

All signatories agree that the assurances described in this section are needed to ensure that specified future actions will occur. All signatories also acknowledge the caveats included in this section that describe actions or conditions that must exist for the *Agreement* to be operative.

## **SCHEDULE FOR UPDATING THE LOWER AMERICAN RIVER FLOW STANDARD**

The following schedule reflects the Water Forum's need to have the Lower American River flow standard updated as soon as possible. Signatories to the *Water Forum Agreement* will do everything they can to expedite approval by the State Water Resources Control Board. This includes the City of Sacramento providing supplemental financial assistance to the SWRCB for priority processing if that is agreed to by the SWRCB.

**October, 1999** City of Sacramento, with support from the Water Forum, requests the State Water Resources Control Board to update the Lower American River flow standard consistent with:

*Water Forum Agreement* provisions on water diversions including dry year diversions,  
and  
Implementation of the Improved Pattern of Fishery Flow Releases with optimizes the release of water for fisheries.

**November, 1999** State Water Resources Control Board holds a workshop and hearing on the City Of Sacramento's request to expedite processing of the updated Lower American River flow standard.

**Spring, 2000** After consultation with other American River water rights holders, Water Forum stakeholders agree on detailed recommendations for the updated Lower American River flow standard.

**Spring, 2000** After Water Forum stakeholders agree on detailed recommendations for the updated Lower American River flow standard, the City of Sacramento will present it to the State Water Resources Control Board.

**Spring, 2000** Initiate State Water Resources Control Board review including environmental review for the proposed updated LAR flow standard.

As soon as all requirements have been met, the State Water Resources Control Board will hold a hearing on the proposed updated LAR flow standard. Thereafter the State Water Resources Control Board will issue its decision.

## II. WATER RIGHTS

### A. Surface Water Rights

It is recognized that some purveyors that will sign the *Water Forum Agreement* have long-term surface water entitlements in excess of demands projected for the term of the *Water Forum Agreement*. Nothing in the *Agreement* is intended to call for the reduction or forfeiture of existing surface water entitlements. Signatories to the *Agreement* will honor this principle in state and federal entitlement proceedings directly related to the *Water Forum Agreement* as shown in the chart in Section Three, I, "*Major Water Supply Projects That Will Receive Water Forum Support*."

It is also recognized that there may be broader state and federal entitlement proceedings where signatories may have different interests, such as the State Water Resources Control Board water rights proceeding for the Bay-Delta.

Signatories agree to work in good faith through the Water Forum Successor Effort with the objective being to develop a consensus recommendation for how state and federal entitlement proceedings should affect those agencies that store and divert American River water. All signatories will make good faith efforts so that recommendations will be consistent with both coequal objectives of the *Water Forum Agreement*:

Provide a reliable and safe water supply for the region's economic health and planned development through to the year 2030;

and

Preserve the fishery, wildlife, recreational, and aesthetic values of the Lower American River.

### B. Groundwater Rights.

It is recognized that groundwater rights holders have valuable rights that must be protected. Groundwater rights holders must not have their rights threatened either by their participation in the Water Forum process or by the groundwater management arrangements called for in the *Water Forum Agreement*. Consistent with the Groundwater Management Element, nothing in this *Agreement* is intended to call for the reduction or diminution of any exercised or unexercised groundwater rights. Accordingly, the signatories agree that the *Water Forum Agreement* shall not impair the vested groundwater rights of any person or entity regardless of whether those rights are currently exercised or unexercised.

Signatories retain their ability to assert their groundwater rights by participating in the public process of creating rules, regulations, policies and procedures associated with the Sacramento North Area Groundwater Management Authority and other groundwater management arrangements called for by the *Water Forum Agreement*.

### **III. SACRAMENTO RIVER SUPPLY FOR NORTH SACRAMENTO COUNTY AND PLACER COUNTY**

#### **A. Intent**

All signatories recognize there would be benefits from a Sacramento River diversion to serve the north area of Sacramento County and Placer County. This could be an additional source of water for conjunctive use in the North Area groundwater subarea of the basin. It could also provide a surface water supply to help meet a portion of some purveyors' needs in all years. This would contribute to a reliable supply for the area. It would also reduce the need for some purveyors to divert from the American River in drier years.

#### **B. Sacramento River Supply for North Sacramento County and Placer County**

Several purveyors in the north Sacramento county area have already taken the lead in constructing a pipeline to take American River water from Folsom Reservoir west across the north part of Sacramento County. This major pipeline could provide surface water for the North Area conjunctive use program.

In addition, the *Water Forum Agreement* includes support for an upgrade to Natomas Central Mutual Water Company's diversion structure on the Sacramento River. This upgrade would provide state-of-the-art fish screening. This could be a joint facility to also serve water to Placer County.

In the future it would be beneficial to interconnect the north area pipeline with a Sacramento River diversion. The north area pipeline was constructed large enough to deliver water from either the American or Sacramento Rivers.

Such an interconnection would have several benefits. First, it would provide purveyors with an alternative source of water should there be any problem with their American River supply. Second, it would allow purveyors access to water transfers from the Sacramento or Feather Rivers.

The Lower American River could also benefit because a Sacramento River diversion would reduce the need for diversions from the American River in driest years. This could be an option for purveyors needing alternative water supplies to meet customers' needs in drier years while reducing impacts of diversions from the American River.

This option would be available to purveyors with direct access to the Sacramento River. It could also be an option for purveyors further upstream that could participate through an exchange. They could continue to make diversions from the American River in drier and driest years if other purveyors switched from their American River supplies to the Sacramento River supply.

It is also recognized that winter-run salmon have been listed as endangered under the Endangered Species Act, and steelhead have been listed as threatened. Any diversion would have to fully comply with the Endangered Species Act.

**C. Specific Agreements on Sacramento River Water Supply for North Sacramento County and Placer County**

1. All signatories to the *Water Forum Agreement* agree that an environmentally upgraded Sacramento River diversion to serve the north Sacramento county area and Placer County as described above would provide important benefits to the region.
2. All signatories to the *Water Forum Agreement* agree to work in good faith to develop a project consistent with their interests that would:
  - a. Consolidate several of Natomas Central Mutual Water Company's diversions;
  - b. Upgrade fish screens at the consolidated diversion;
  - c. Accommodate the diversion of 35,000 AF of water by Placer County Water Agency consistent with its Purveyor Specific Agreement;
  - d. Accommodate the diversion of 29,000 AF of water for delivery to Northridge Water District consistent with its Purveyor Specific Agreement;
  - e. Subject to additional negotiations among Water Forum signatories, potentially accommodate other diversions (e.g. City of Sacramento diversions);
  - f. Interconnect that consolidated diversion with the north area pipeline which delivers water from the American River. This interconnection will help meet water needs in northern Sacramento County and Placer County.
  - g. Support for this diversion is also subject to all elements of the *Water Forum Agreement* including the Caveats in Section Four, I, including:
    1. Caveat 3.a., Project-specific compliance with the California Environmental Quality Act, and where applicable, the National Environmental Policy Act, federal Endangered Species Act and California Endangered Species Act.
    2. Caveat 3.f., Adequate progress in addressing the Sacramento River and Bay-Delta conditions associated with implementation of the *Water Forum Agreement*.

#### IV. RELATIONSHIP OF *WATER FORUM AGREEMENT* TO LAND USE DECISION-MAKING

##### A. Background

Water Forum signatories include cities and counties that have land use planning responsibility and purveyors that have water supply planning responsibility. Water Forum signatories recognize there needs to be coordination among land use decision-making and water planning. Land use decisions should be based on reliable information on water supply availability. Conversely, water planning should be informed by land use decisions.

This section describes the agreement among Water Forum signatories on how information on water supply availability will be coordinated with the land use decision-making process in the context of Chapter 881 of the Statutes of 1995, also referred to as SB 901. This information exchange is to better inform both the water and land use planning efforts.

SB 901 applies to city or county approval of significant development projects (specified in the law as residential development of over 500 units, business development with over 500,000 square feet of office space, commercial building having more than 250,000 square feet, etc.) that would require amendments to general or specific plans, or the adoption of a specific plan.

Under SB 901 cities and counties are required to identify water systems that would provide water supplies for the proposed project. The law requires the city or county to request the identified public water systems to make an assessment regarding water supplies, as prescribed. The law requires the public water system to approve its assessment and submit the assessment to the city or county not later than 30 days after the date on which the request was received, with a provision for a time extension, if necessary and requested by the water system. Public water systems include investor-owned utilities.

Under SB 901 the land use agency then determines, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the proposed project, in addition to existing and planned future uses. If the land use agency determines that water supplies will not be sufficient, it can still approve the project but must include a statement of overriding considerations in its findings.

**This section of the agreement does not provide water purveyors, the Water Forum or the Water Forum Successor Effort with any land use authority.**

##### B. Intent

It is the intent of signatories to the *Water Forum Agreement* that land use decisions dependent on water supply from the American River or the three groundwater sub-basins in Sacramento county be consistent with the limits on water supply from the American River and the estimated average annual sustainable yields for those three groundwater sub-basins as negotiated for the *Water Forum Agreement*.

### C. Specific Agreements

1. All signatories recognize that land use decision making remains the responsibility of land use agencies and neither the Water Forum nor the Water Forum Successor Effort has any authority to make land use decisions.
2. Signatories agree to use Chapter 881 of the Statutes of 1995 (SB 901) to coordinate land and water use decision-making. If that law is substantially amended, the Water Forum Successor will revisit this issue.
3. Signatories to the *Water Forum Agreement* will reference the *Water Forum Agreement*, including agreed upon estimated average annual sustainable yields of each of the three sub-areas of the groundwater basin in Sacramento County<sup>9</sup> and limits to diversions from the American River in their water master plans and urban water management plans, which are used in providing information to cities and counties as required under Chapter 881 of the Statutes of 1995.
4. The *Water Forum Agreement* includes surface water and groundwater to meet the region's projected water needs for growth planned to the year 2030. Included in Appendix B is a description of the methodology and assumptions used by the Water Forum for assessing the demand to the year 2030. Also included in Appendix B is a map that delineates geographic boundaries that were used in projecting demand in Sacramento County.
5. In Sacramento County only, signatories retain the ability to support or oppose water facilities that would serve new development outside the Urban Services Boundary that was defined in the Sacramento County General Plan, December 1993. All parties also retain the right to support or oppose the sizing of water distribution facilities that would allow service to new development outside of the Urban Services Boundary. (See Map in Appendix B.)
6. In assessing the availability of water for new uses and development in Sacramento County, land use agencies shall take into account reasonable estimates of water demand for the following:
  - a. Existing uses;
  - b. Anticipated use of currently unexercised water rights;
  - c. Unmet water demand within the Urban Policy Area; and
  - d. Water demand for new uses between the Urban Policy Area and the Urban Services Boundary.
7. Procedures will be developed by the Water Forum Successor Effort to advise land use agencies as they assess the consistency of proposed land use decisions with the estimated average

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<sup>9</sup> North Area: 131,000 acre feet; South Area: 273,000 acre feet; Galt Area: 115,000 acre feet.

annual sustainable yields of the three sub-basins in Sacramento county and the diversions from the American River negotiated as part of the *Water Forum Agreement*.

8. The *Water Forum Agreement* contains estimated average annual yields for each of the three sub-areas of the groundwater basin in Sacramento county and limits to diversions from the American River. Beyond these agreements, limits on water from other sources have not been negotiated as part of the *Water Forum Agreement*. Signatories retain the right to support or oppose water projects that would use water from sources that have not been negotiated as part of the *Water Forum Agreement*.

9. There is a need for greater information exchange than just having water purveyors provide project-by-project assessments of water supply availability. Therefore, purveyors agree to participate in a proactive program to educate all land use authorities in the region about the provisions of the *Water Forum Agreement*.

10. It is recognized that the *Water Forum Agreement* focuses on providing a reliable and safe water supply and protecting the Lower American River. As such it is not an agreement on land use planning. Therefore all signatories retain the ability to support or oppose land use decisions on any basis except water supply availability insofar as these water supply decisions are consistent with the *Water Forum Agreement*.

## **V. FOLSOM RESERVOIR RECREATION**

### **A. Intent**

In the future, Folsom Reservoir levels will be influenced by many factors including U.S. Bureau of Reclamation operations, flood control operations and water diversions. Even with implementation of the Water Conservation Element and the Actions to Reduce Diversion Impacts in Drier Years, there will be times when Folsom Reservoir will be lower, thereby affecting the opportunities for reservoir recreation.<sup>10</sup>

Because Folsom Reservoir is recognized as an important resource, the Water Forum has consulted closely with the California Department of Parks and Recreation (CDPR) which manages recreation at the reservoir. After extensive discussions and negotiations among Water Forum purveyors and with CDPR, a program to improve recreation facilities at Folsom Reservoir has been developed.

### **B. Specific Agreement on Folsom Reservoir Recreation**

Water Forum signatories will work with their elected officials, California Department of Park and Recreation (CDPR) and other agencies that have an interest in reservoir levels, such as Congress, USBR, California Department of Boating and Waterways and the Sacramento Area Flood Control Agency, to obtain at least \$3,000,000 of new funding for improvements to Folsom Reservoir recreation facilities.<sup>11</sup>

The CDPR will develop a list of potential recreation improvement projects as part of the funding request. One type of project could be "mini-dikes" i.e., sculpted embankments within the lake bed to impound water for swimming use when reservoir levels are low. Design of the improvements in the lake would also include consideration of features for improving warm water fishery habitat, such as structural complexity for fish on the lake side of the mini-dike embankment, which would also support recreation fishing. Other projects could include but are not limited to those identified in the Water Forum EIR. The improvements are intended to help mitigate the anticipated loss of visitor days.

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<sup>10</sup> Historically, many Water Forum purveyors secured water rights prior to the construction of the Folsom Reservoir. After construction of the reservoir, U.S. Bureau of Reclamation assumed responsibility for operating the reservoir to store and manage water for the operation of the Central Valley Project (CVP), among other purposes. The reservoir has historically held and released to CVP customers water that Water Forum purveyors were entitled to but had not diverted. Some purveyors signatory to the *Water Forum Agreement* believe that reservoir declines are properly viewed as being caused by the lack of replacement water supplies for the Central Valley Project as senior water rights are exercised and CVP yield is required to be used for environmental purposes. Accordingly, these purveyors believe that CEQA mitigation for reservoir impacts is not a legally required purveyor responsibility. Nonetheless they have agreed to measures that will tend to lessen the effect of the reduction in Folsom Reservoir levels that will occur in the future.

<sup>11</sup> New funding means funding that Water Forum signatories are instrumental in obtaining that was not authorized, appropriated or required as of January 1, 2000.

The CDPR is the agency responsible for managing the recreational resources at Folsom Reservoir. Therefore it is the appropriate agency to receive these funds and manage the recreation improvement projects.

Although previous cooperative efforts between Water Forum stakeholders and other agencies have been successful (such as the securing federal authorization and appropriation for the Temperature Control Device) it is not certain that the \$3 million in funding for Folsom Reservoir recreation improvements will be secured.

It is also recognized that it will take purveyors several years to obtain all necessary approvals for the facilities needed to divert the additional water projected in the *Water Forum Agreement*. It will take additional time for them to construct the facilities necessary to increase their diversions. Later, after their facilities are actually constructed, the diversions will increase gradually over the thirty-year period of the *Agreement*.

Therefore, purveyors signing the *Water Forum Agreement* that plan to increase their diversions of American River water commit that if less than \$3,000,000 of new funds are secured by the year 2008, they would provide a lump sum payment of any amount of the \$3 million not obtained up to a maximum of \$1,000,000 to California Department of Parks and Recreation no later than June 30, 2009 for projects to improve Folsom Reservoir recreation. This is to provide certainty that some projects can be implemented.

Purveyors in the *Water Forum Agreement* will enter into a contract among themselves committing to share the cost of the \$1 million payment to CDPR if additional new funds are not secured. Costs would be apportioned among purveyors based on their anticipated share of total year 2030 increased diversions of American River water.

## **VI. PROCEDURAL AGREEMENTS FOR THOSE NOT IN THE INITIAL *WATER FORUM AGREEMENT***

### **A. Background**

The initial *Water Forum Agreement* records those agreements among stakeholder organizations that could be entered into as the effective date of this initial *Water Forum Agreement*. However, it is recognized that there are some stakeholder organizations that have remaining issues that could not be resolved by that time.

Therefore this section of the *Water Forum Agreement* describes the process by which those remaining issues will be addressed and how the *Water Forum Agreement* will be amended to include those agreements as soon as they are complete.

### **B. Specific Agreements**

1. All signatories to the *Water Forum Agreement* commit to work in good faith with organizations whose issues were not fully resolved by the effective date of this initial *Water Forum Agreement*. Their goal will be to negotiate mutually acceptable agreements to resolve remaining issues. As soon as these issues are agreed to, the *Water Forum Agreement* will be amended to include them.
2. Mutually agreed upon Water Forum Successor Effort expenses related solely to converting that purveyor's procedural agreement into a Specific Agreement will be reimbursed by that purveyor. As soon as the purveyor has negotiated a Specific Agreement and it signs the *Water Forum Agreement*, it will contribute to the Water Forum Successor Effort on the same basis as other purveyors that have Specific Agreements.
3. Purveyors having Procedural Agreements will participate in the Water Forum Successor Effort, except on these three issues:
  - a. Amending the *Water Forum Agreement*;
  - b. Decisions regarding any litigation associated with the *Water Forum Agreement* or the Water Forum EIR; and
  - c. Decisions regarding expenditures of Habitat Management Funds.
4. Purveyors having Procedural Agreements with the Water Forum agree that if disputes arise over the Water Forum EIR or implementation of the *Water Forum Agreement* they will first attempt to resolve the dispute through mediation in the Successor Effort.
5. Either the purveyor with a Procedural Agreement or the Water Forum Successor Effort may cancel the Procedural Agreement upon sixty days notice to the other party.