AMENDED HABITAT EXPANSION AGREEMENT

FOR

CENTRAL VALLEY SPRING-RUN CHINOOK SALMON AND CALIFORNIA CENTRAL VALLEY STEELHEAD

FERC PROJECT NOS. 1962, 2100, 2105, AND 2107

March 2011

Parties to this Agreement:

American Rivers
California Department of Fish and Game
California Department of Water Resources
Pacific Gas & Electric Company
State Water Contractors, Inc.
United State Department of Agriculture Forest Service
United States Department of Commerce National Marine Fisheries Service
United States Fish and Wildlife Service

Amended Habitat Expansion Agreement For Central Valley Spring-Run Chinook Salmon and California Central Valley Steelhead

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Amended Habitat Expansion Agreement for Central Valley Spring-Run Chinook Salmon and California Central Valley Steelhead

This Amended Habitat Expansion Agreement for Central Valley Spring-Run Chinook Salmon and California Central Valley Steelhead ("Agreement") is entered into by and among Pacific Gas and Electric Company ("PG&E"); California Department of Water Resources ("DWR"); U.S. Department of Commerce National Marine Fisheries Service ("NMFS"); U.S. Department of the Interior Fish and Wildlife Service ("USFWS"); California Department of Fish and Game ("CDFG"); U.S. Department of Agriculture Forest Service ("USFS"); American Rivers; and State Water Contractors, Inc., each referred to individually as "Party" and collectively as "Parties."

Recitals

WHEREAS,

A. DWR constructed and operates the Oroville Facilities, Federal Energy Regulatory Commission ("FERC") Project No. 2100 ("Oroville"). Oroville was developed as part of the California State Water Project, a water storage and delivery system of reservoirs, aqueducts, power plants, and pumping plants. The State Water Project makes deliveries of supplemental water to two-thirds of California's population and over 750,000 acres of agricultural lands. Oroville also is operated to provide power generation, improve water quality in the Sacramento and San Joaquin Delta, manage Feather River floodwaters, provide recreation, and enhance fish and wildlife;

B. Oroville operates under a license originally issued by the Federal Power Commission ("FPC") on February 11, 1957, for a term of 50 years. The current license for Oroville will expire on January 31, 2007. Under requirements of the Federal Power Act ("FPA") and FERC regulations, DWR filed a timely application for a new license for Oroville on January 26, 2005, which application currently is pending before FERC;

C. PG&E owns and operates the Poe Hydroelectric Project No. 2107 ("Poe") under a license issued by the FPC on October 26, 1953, for a term of 50 years. Under the requirements of the FPA and FERC regulations, PG&E filed an application for a new license for Poe on October 2, 2001, which application currently is pending before FERC. The original license for Poe expired on September 30, 2003, and the project since that time has been operating under annual licenses pursuant to Section 15 of the FPA;

D. PG&E owns and operates the Upper North Fork Feather River Hydroelectric Project No. 2105 ("Upper North Fork Feather River") under a license issued by the FPC on January 24, 1955, for a term of 50 years. Under the requirements of the FPA and FERC regulations, PG&E filed an application for a new license for Upper North Fork Feather River on October 23, 2002, which

application currently is pending before FERC. The original license for Upper North Fork Feather River expired on October 31, 2004, and the project since that time has been operating under annual licenses pursuant to Section 15 of the FPA;

E. PG&E owns and operates the Rock Creek-Cresta Hydroelectric Project No. 1962 ("Rock Creek-Cresta") under a license issued by FERC on October 24, 2001, which expires on September 30, 2034;

F. An issue raised in the relicensings of Oroville, Poe and Upper North Fork Feather River has been the potential for expansion of the amount of spawning, rearing and adult holding habitat available for Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) ("Spring-Run") and California Central Valley steelhead (*O. mykiss*) ("Steelhead");

G. The Parties negotiated the original Habitat Expansion Agreement, which was adopted in August 2007, to establish an approach for identifying, evaluating, selecting and implementing the most promising and cost-effective action(s) to expand such spawning, rearing and adult holding habitat in the Sacramento River Basin as an alternative to the Resource Agencies or other Parties seeking Fish Passage on the Feather River or its tributaries in the relicensing of Oroville, Poe, and Upper North Fork Feather River, or through the amendment of the license for Rock Creek-Cresta;

H. On December 15, 2010, the California State Water Resources Control Board (Board) adopted a Water Quality Certification (Certification) for Oroville which included Condition S9, requiring DWR to implement the HEA. The inclusion of Condition S9 in the WQC creates a new regulatory framework which necessitates amending the August 2007 Agreement to account for this new regulatory framework; and

I. This Agreement establishes the entirety of the Parties' rights, obligations and responsibilities for the blockage or passage of fish by the Feather River Hydroelectric Projects for the term of this Agreement.

Terms of Agreement

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1 General Provisions

1.1 Definitions

ADR shall mean alternative dispute resolution.

Agreement shall mean this Habitat Expansion Agreement for Central Valley Spring-Run Chinook Salmon and California Central Valley Steelhead.

Approved Habitat Expansion Plan shall mean the habitat expansion plan approved by NMFS pursuant to Sections 4.2, 11.4.3.3, or 11.5 of this Agreement.

Consultation, except as provided in Section 13 of this Agreement, shall mean the act of conferring and is distinct from the term "Consultation" under the ESA.

Disputing Party or **Disputing Parties** shall have the meaning as provided in Section 14.1.3 of this Agreement.

Effective Date shall mean the date set forth in Section 1.3 of this Agreement.

ESA shall mean the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*

Evaluation Criteria shall mean the set of non-exclusive and non-prioritized criteria enumerated in Section 4.1.1 of this Agreement.

Existing Requirements and Commitments shall mean the non-exclusive list of actions set forth in Section 3.2 of this Agreement.

Feather River Hydroelectric Projects shall mean the Oroville, Poe, Rock Creek-Cresta, and Upper North Fork Feather River hydroelectric projects.

FERC shall mean the Federal Energy Regulatory Commission.

Final Mandatory Terms and Conditions shall mean conditions required pursuant to Section 4(e) or Section 18 of the Federal Power Act.

Fish Passage shall mean upstream or downstream movement of fish past any or all facilities of the Feather River Hydroelectric Projects, except as provided in Section 12.7 of this Agreement.

FPA shall mean the Federal Power Act, 16 U.S.C. §§ 791a *et seq.*

Habitat Expansion Threshold shall mean the expansion of spawning, rearing and adult holding habitat as set forth in Section 2.2 of this Agreement.

Licensees shall mean DWR and PG&E.

Material New Information shall mean significant and relevant new information which for the purpose of Sections 1.6, 1.7 and 12.4 of this Agreement: (a) was not in the administrative record in any of the Feather River Hydroelectric Project relicensing proceedings as of the Effective Date; and (b) was not otherwise known to the Party who seeks to use the Material New Information as of the Effective Date.

New Project License shall mean each of the new licenses issued by FERC to the Licensees pursuant to Section 15 of the FPA for the Feather River Hydroelectric Projects, as follows:

(a) For Oroville, the New Project License shall mean the new license issued by FERC in response to DWR's application for new license filed January 26, 2005, which new license will take effect after expiration of the original license issued by the FPC on February 1, 1957.

(b) For Poe, the New Project License shall mean the new license issued by FERC in response to PG&E's application for new license filed October 2, 2001.

(c) For Upper North Fork Feather River, the New Project License shall mean the new license issued by FERC in response to PG&E's application for new license filed on October 23, 2002.

(d) For Rock Creek-Cresta, the New Project License shall mean the new 33-year license issued by FERC by order dated October 24, 2001, and effective October 1, 2001. *See Pac. Gas & Elec. Co.*, 97 FERC ¶ 61,084 (2001).

Notice shall mean a written communication sent in accordance with Section 16.11 of this Agreement.

Oroville shall mean the Oroville Facilities, FERC Project No. 2100.

Oroville Settlement shall mean the Settlement Agreement for Licensing of the Oroville Facilities, filed with FERC on March 24, 2006.

Party or **Parties** shall, in context, mean the signatories to this Agreement.

Poe shall mean the Poe Hydroelectric Project, FERC Project No. 2107.

Public Agency shall mean DWR, NMFS, USFWS, CDFG, or USFS.

Resource Agencies shall mean NMFS, USFWS, CDFG, and USFS.

Rock Creek-Cresta shall mean the Rock Creek-Cresta Hydroelectric Project, FERC Project No. 1962.

Selection Criteria shall mean the criteria enumerated in Section 4.1.2 of this Agreement.

Spring-Run shall mean Central Valley spring-run Chinook salmon (*O. tshawytscha*).

Steelhead shall mean California Central Valley steelhead (*O. mykiss*).

SWRCB shall mean the California State Water Resources Control Board.

Upper North Fork Feather River shall mean the Upper North Fork Feather River Hydroelectric Project, FERC Project No. 2105.

Withdrawing Party shall have the meaning as provided in Section 11.3.1 of this Agreement.

1.2 Purpose of Agreement

The Parties have entered into this Agreement for the purpose of establishing an approach for identifying, evaluating, selecting and implementing the most promising and cost-effective action(s) to expand spawning, rearing and adult holding habitat for Spring-Run and Steelhead in the Sacramento River Basin as an alternative to the Resource Agencies or other Parties seeking project specific Fish Passage prescriptions or license conditions in the New Project Licenses for the Licensees' Feather River Hydroelectric Projects. Except as specifically provided, this Agreement: (a) fully mitigates for any presently unmitigated impacts due to the blockage of Fish Passage of all fish species caused by the Feather River Hydroelectric Projects; and (b) resolves among the Parties during the term of this Agreement issues related to regulatory conditions for Fish Passage associated with or related to any of the Feather River Hydroelectric Projects in excess of the action(s) contemplated under this Agreement, including, but not limited to, issues (related to Fish Passage) arising under exercise of authority under the ESA (subject to Section 13 of this Agreement), California Endangered Species Act (subject to Section 13 of this Agreement), Sections 18, 4(e), 10(a) and 10(j) of the FPA, and Section 401 of the Clean Water Act, provided the Licensees are complying with their obligations under this Agreement.

1.3 Effective Date of Agreement

The Agreement shall become effective upon execution by all Parties.

1.4 Term of Agreement

Unless terminated as provided herein, the term of this Agreement shall commence on the Effective Date and shall continue through the term of

the last expiring New Project License including any annual license(s) that may be issued after the New Project Licenses have expired. However, this Agreement does not preclude a Party from imposing or seeking new license conditions with respect to Fish Passage at the end of each New Project License, provided such conditions do not become effective until the end of the term of this Agreement.

1.5 No Precedent for Other Proceedings

This Agreement is made with the understanding that it constitutes a negotiated resolution of issues relating to the blockage of Fish Passage at the Feather River Hydroelectric Projects under their respective New Project Licenses. Accordingly, no Party shall be deemed to have approved, admitted, accepted, or otherwise consented to any operation, management, valuation, or other principle underlying any of the matters covered by this Agreement, except as expressly provided herein. With respect to any mediation, arbitration, litigation or other administrative or legal proceedings involving or relating to this Agreement, the Parties' rights and responsibilities shall be as set forth in this Agreement.

1.6 Agreement Not Predecisional; Continued Participation in Pending Relicensing Proceedings

Nothing in this Agreement is intended or shall be construed to be an irrevocable commitment of resources or a pre-decisional determination by a Resource Agency. After the Effective Date of this Agreement but prior to FERC's issuance of the New Project Licenses, each Party may participate in the pending relicensing proceedings for the Feather River Hydroelectric Projects, including environmental review and consideration of public comments, as required by applicable law. Each Resource Agency may give due consideration to any Material New Information arising in the relicensing proceeding for any of the Feather River Hydroelectric Projects, as permitted by applicable law.

1.7 Compliance with Legal Responsibilities

By entering into this Agreement, each Party represents that it believes and expects that except as to Material New Information arising in the relicensing proceeding for any of the Feather River Hydroelectric Projects: (a) this Agreement satisfies the statutory, regulatory, or other legal requirements for Fish Passage under the New Project Licenses; and (b) the Resource Agencies' statutory, regulatory, or other legal responsibilities with respect to Fish Passage are, or can be, met through (i) FERC's adoption of reservation(s) of authority in accordance with Section 12.5 herein and (ii) the implementation of this Agreement. With regard to a Party that is a Public Agency, this representation applies only to those requirements that the Public Agency administers.

1.8 Reservation of Rights

Nothing in this Agreement is intended or shall be construed to affect any constitutional, statutory, or regulatory authority of any Party; *provided however*, that this Agreement is intended to affect the exercise of such authorities as provided herein. Nothing in this Agreement is intended or shall be construed to affect or limit the authority or obligation of any Party to comply with any judicial decision or order. Nothing in this Agreement is intended or shall be construed to affect or limit the authority of USFWS and NMFS in the relicensing of the Feather River Hydroelectric Projects, the implementation of the New Project Licenses, or implementation of habitat expansion action(s), to include in any ESA Section 7 Biological Opinions the issuing agency's criteria for reinitiation of Section 7 consultation pursuant to 50 C.F.R. § 402.16.

1.9 Non-License Measures

Except as provided in Sections 9, 11.2.2, 12.5, and 12.6 herein, this Agreement is not subject to FERC's jurisdiction and shall not be included as any article, condition or term of any New Project License for the Feather River Hydroelectric Projects. Accordingly, and except as specifically provided herein, this Agreement shall not be the subject of any FERC proceeding, and the Parties' performances under this Agreement shall not be the basis for expanding FERC's jurisdiction over the Licensees, including without limitation the enlargement of project boundaries or extension of the Area of Potential Effect for the purposes of the National Historic Preservation Act. Notwithstanding, the Licensees shall make available to FERC and the general public, for information only, certain documents and information prepared pursuant to this Agreement, as set forth in Sections 4.2.8 and 6.2 herein.

2 Goal of Agreement; Habitat Expansion Threshold

2.1 Goal of Agreement

The overall goal of this Agreement is to expand the amount of habitat with physical characteristics necessary to support spawning, rearing and adult holding of Spring-Run and Steelhead in the Sacramento River Basin as a contribution to the conservation and recovery of these species. The expansion shall be accomplished through enhancements to existing accessible habitat, improving access to habitat, or other action(s) and, as stated in Section 1.2(a), is intended to fully mitigate for any presently unmitigated impacts due to the blockage of Fish Passage of all fish species caused by the Feather River Hydroelectric Projects.

2.2 Habitat Expansion Threshold

The specific goal of the Agreement is to expand spawning, rearing and adult holding habitat sufficiently to accommodate an estimated net increase of 2,000 to 3,000 Spring-Run for spawning ("Habitat Expansion Threshold") in the Sacramento River Basin, as compared to the habitat available under any relevant Existing Requirements or Commitments. The Habitat Expansion Threshold is focused on Spring-Run as the priority species, as expansion of habitat for Spring-Run typically accommodates Steelhead as well.

3 Eligible Habitat Expansion Actions

3.1 Scope of Eligible Habitat Expansion Actions

Potential actions to expand Spring-Run and Steelhead spawning, rearing and adult holding habitat will be identified, evaluated, selected and implemented according to Section 4 of this Agreement. Habitat expansion action(s) may include, among other things, dam removals, dam re-operation, creation or enhancement of fishways, water temperature/flow improvements or other physical habitat enhancements, and shall ensure future operation and maintenance if such operation and maintenance is needed after initial implementation. Habitat expansion action(s) shall also include functional start-up testing, if needed, for technical validation of the action's design (*e.g.,* that a fish ladder operates as designed), but not long-term monitoring of species utilization or benefit. Actions identified in other venues, including unfunded actions, are acceptable for consideration, provided that implementation of this Agreement results in a net expansion of habitat over any Existing Requirements and Commitments, whether by the Licensees or others.

3.2 Existing Requirements and Commitments

For purposes of this Agreement, the term "Existing Requirements and Commitments" is intended to encompass actions expected to occur in a timeframe comparable to implementation of habitat expansion action(s) under this Agreement. Existing Requirements and Commitments may include but are not limited to:

(a) legal or regulatory requirements that are the subject of any form of binding order issued by a regulatory agency or court of competent jurisdiction, at the time NMFS approves the habitat expansion action(s);

(b) legal or regulatory requirements that are the subject of ongoing or imminent administrative or judicial action by an agency or court of competent jurisdiction at the time NMFS approves the habitat expansion action(s);

(c) obligations or commitments set forth in a draft license application, final license application, settlement agreement, or agreement-in-principle in a pending hydroelectric relicensing proceeding at the time NMFS approves the habitat expansion action(s); and

(d) reasonable and prudent alternatives, reasonable and prudent measures, and terms and conditions of any final Biological Opinion that has been issued at the time NMFS approves the habitat expansion action(s).

By recommending, approving, and implementing habitat expansion action(s) under this Agreement, the Parties do not intend to encourage non-compliance by third parties with applicable laws and regulations or preclude appropriate enforcement actions.

4 Planning and Implementation of Habitat Expansion Action(s)

4.1 Identification, Evaluation and Recommendation of Habitat Expansion Action(s)

Within two (2) years of the Effective Date of this Agreement, the Licensees shall complete identification, evaluation and recommendation of habitat expansion action(s), in consultation with the other Parties and directly affected and responsive third parties, and prepare and distribute the Draft Habitat Expansion Plan as described in Section 4.1.3.

4.1.1 Evaluation Criteria

The Licensees shall use the following non-exclusive and non-prioritized Evaluation Criteria to screen potential habitat expansion action(s) and develop a preliminary list of viable actions:

(a) favorable feasibility (technically feasible; supported by accepted science; low potential for disease and other risks; proven actions are favored over experimental actions);

(b) adequate scale of expansion of spawning, rearing and adult holding habitat (one or more larger contiguous gains is favored over numerous smaller gains; increased habitat is favored over enhanced habitat);

(c) favorable sustainability of action;

(d) favorable cost-effectiveness and economic feasibility (including consideration of costs necessary to operate and maintain the expansion);

(e) minimal human intervention needed to achieve access to expanded spawning, rearing and adult

holding habitat (volitional access is favored over that which requires a high degree of human intervention);

(f) favorable spatial separation from other populations or runs to maintain genetic diversity by minimizing interbreeding;

(g) favorable spatial separation from other spawning streams to minimize population impacts of a stream-specific adverse event (geographic distribution is favored over centralization);

(h) acceptable length of time to implement (earlier gains are favored over later gains);

(i) favorable local/political support;

(j) consistency with NMFS Viable Salmonid Population guidance, ESA recovery goals and recovery plan (as available), and expected contribution to species recovery (higher consistency and greater contributions are favored);

(k) balance of benefits to Spring-Run and Steelhead (actions that provide a balance of benefits to both Spring-Run and Steelhead are favored over actions that primarily benefit one species; if multiple actions are undertaken, a combination of actions that provides a balance of benefits to both Spring-run and Steelhead is favored);

(l) consistency with other resource uses such as water supply, public safety, flood control, recreation, and power production;

(m) favorable relative availability of appropriate stocks of Spring-Run and Steelhead for reintroduction;

(n) low expectation for the action to be undertaken by the Licensees or others in the near future;

(o) favorable potential to benefit other anadromous, catadromous and resident fisheries affected by the Feather River Hydroelectric Projects;

(p) low expectation for adverse impact on listed species and destruction or adverse modification of critical habitat under the ESA (actions with low or no impact are favored); and

(q) low potential for an adverse impact on historic or cultural resources.

4.1.2 Selection Criteria

After developing a preliminary list of viable habitat expansion action(s) using the Evaluation Criteria set forth in Section 4.1.1 above, the Licensees shall use the following non-prioritized

Selection Criteria to select recommended habitat expansion action(s) for implementation:

(a) Contribution to achieving the Habitat Expansion Threshold;
(b) Most cost-effective compared to other potential habitat expansion actions;
(c) Feasibility (action(s) can reasonably be accomplished); and
(d) Timing (action(s) can be accomplished in a reasonable period of time).

4.1.3 Draft Habitat Expansion Plan

After selecting recommended habitat expansion action(s) for implementation as provided in Section 4.1.2, the Licensees shall prepare and distribute a Draft Habitat Expansion Plan to the other Parties and directly affected third parties for a 90-day review and comment period. The Draft Habitat Expansion Plan shall include a description of:

(a) the recommended action(s), including any functional start-up testing and future operation and maintenance;
(b) the rationale for their selection based on the Evaluation Criteria and the Selection Criteria;
(c) a preliminary schedule for each of the remaining phases in this Section 4, including provisions for anticipated schedule uncertainties;
(d) the responsibilities of each Licensee for implementing the action(s);
(e) the estimated contribution of the action(s) to the Habitat Expansion Threshold; and
(f) a pre-feasibility-level cost estimate for implementing the action(s).

4.2 Final Habitat Expansion Plan

Within 90 days after the close of the review and comment period on the Draft Habitat Expansion Plan, the Licensees shall prepare and submit a Final Habitat Expansion Plan to NMFS for approval. The Licensees also shall distribute the Final Habitat Expansion Plan to the other Parties and directly affected and responsive third parties, for information only. The Licensees and NMFS may extend the time periods set forth below by mutual agreement to accommodate the approval process.

4.2.1 Contents of Final Habitat Expansion Plan

The Final Habitat Expansion Plan shall address all comments received during the 90-day review and comment period, and shall include an explanation of why any such comment was not adopted. The Final Habitat Expansion Plan also shall include all elements required by Section 4.1.3 of this Agreement.

4.2.2 Pre-Approval Consultation

Prior to approving the Final Habitat Expansion Plan, NMFS shall commence a 60-day consultation process with all Parties, SWRCB, and directly affected and responsive third parties. During such consultation, NMFS shall give due consideration to any comment received and shall specifically address any comment by a Party or other commenter alleging that the habitat expansion action(s) recommended by the Licensees are Existing Requirements and Commitments. In addition, NMFS shall specifically consult with USFWS and CDFG to consider the recommended habitat expansion action(s)' potential benefits and impacts on resident fish at the location of the action(s).

4.2.3 NMFS Approval Criteria

In determining whether to approve the Final Habitat Expansion Plan, NMFS shall review information submitted by the Licensees, comments by other Parties and directly affected and responsive third parties, and any other relevant information, and consider the extent to which the habitat expansion action(s) recommended in the Plan meet the following Approval Criteria:

(a) estimated to meet the Habitat Expansion Threshold;
(b) assures necessary testing, operation and maintenance;
(c) supports establishing a geographically separate, self-sustaining population of Spring-Run;
(d) supports segregating Spring-Run habitat from Central Valley fall-run Chinook salmon;
(e) meets the requirements for eligible habitat expansion action(s) pursuant to Section 3 of this Agreement; and
(f) expected to be implemented within a reasonable period of time.

4.2.4 Limitation on Withholding Approval

NMFS shall not withhold approval for any recommended habitat expansion action(s) determined by NMFS to meet all six Approval Criteria set forth in Section 4.2.3 of this Agreement. In addition,

NMFS may approve recommended habitat expansion action(s) that meet at least the following four Approval Criteria: Criterion (a) (as may be modified pursuant to Section 4.2.6 of this Agreement); Criterion (b); Criterion (e); and Criterion (f).

4.2.5 Independent Estimate

If the Licensees and NMFS disagree that the habitat expansion action(s) recommended in the Final Habitat Expansion Plan are estimated to meet the Habitat Expansion Threshold, the Licensees and NMFS shall select a neutral third party with appropriate expertise to make an independent estimate. The cost of retaining the neutral third party shall be borne by the Licensees. NMFS shall give due consideration to the independent estimate before making its final decision on approval of the recommended habitat expansion action(s) for the purposes of this Agreement.

4.2.6 Determination that Final Habitat Expansion Plan Does Not Meet Habitat Expansion Threshold

If NMFS determines that the habitat expansion action(s) recommended in the Final Habitat Expansion Plan are estimated not to meet the Habitat Expansion Threshold, NMFS shall consult with the Licensees to consider the acceptability of the recommended habitat expansion action(s) and, at NMFS' discretion, either:

(a) accept the recommended habitat expansion action(s) as meeting the overall goal of the Agreement as stated in Section 2.1, and substantially meeting the Habitat Expansion Threshold, within a reasonable margin of estimating error;
(b) identify other habitat expansion action(s) mutually acceptable to NMFS and the Licensees that may be approved in accordance with Section 4.2.4 of this Agreement, in which case NMFS may approve the Final Habitat Expansion Plan (as modified to incorporate the mutually acceptable habitat expansion action(s)) after consulting with the other Parties and any directly affected and responsive third parties as described in Section 4.2.2 above; or
(c) deny approval of the Final Habitat Expansion Plan.

4.2.7 Notice of NMFS Approval; Curing Deficiencies

After completing its review of the Final Habitat Expansion Plan, NMFS shall provide the Parties with written Notice of its approval

decision. If NMFS does not approve the Final Habitat Expansion Plan, the written Notice shall identify the specific reasons the Plan was not approved. In such case, the Licensees shall have a reasonable opportunity to assess and cure the deficiencies identified by NMFS and submit a modified Plan for review and approval by NMFS. The Licensees also shall distribute the modified Plan to the other Parties and directly affected and responsive third parties, for information only. Upon its approval of any cured Final Habitat Expansion Plan, NMFS shall provide the Parties with written Notice of its decision.

If NMFS does not approve the Final Habitat Expansion Plan, NMFS shall provide Notice if (1) the Licensees do not submit a modified Plan for review and approval by NMFS within a reasonable period agreed upon by the Licensees and NMFS; or (2) NMFS does not approve the modified Plan based on the Approval Criteria in section 4.2.3 and the Limitation on Withholding Approval in section 4.2.4. This Agreement shall be terminated upon the date such Notice is effective, pursuant to Section 16.11 of this Agreement, and the provisions of Section 11.6 of this Agreement shall apply.

4.2.8 Distribution of Approved Habitat Expansion Plan

Within 90 days after the date NMFS' Notice approving the Final Habitat Expansion Plan is effective, pursuant to Section 16.11 of this Agreement, the Licensees shall distribute to the other Parties, directly affected and responsive third parties, and FERC, for information only: (a) the Approved Habitat Expansion Plan reflecting any modifications made during the NMFS approval process; and (b) an updated schedule for each of the remaining process phases in this Section 4.

4.2.9 ESA Requirements

ESA permits or approvals related to implementation of any Approved Habitat Expansion Plan shall be handled separately in accordance with Section 13 of this Agreement. By approving the Final Habitat Expansion Plan under this Section 4, or by approving an Alternative Habitat Expansion Plan under Section 11.4.3.3 or 11.5 of this Agreement, NMFS does not represent that it is an action agency or that it has authority to provide any other permits or approvals necessary to implement the approved habitat expansion action(s).

4.3 Preparation of Preliminary Design Report

After the Licensees have distributed an Approved Habitat Expansion Plan in accordance with Section 4.2.8 of this Agreement, they shall begin the Preliminary Design phase. During the Preliminary Design phase, the Licensees shall prepare feasibility-level designs and cost estimates of habitat expansion action(s) in the Approved Habitat Expansion Plan. Where such habitat expansion action(s) involve engineered fishway designs, fishway systems, or major engineered components, the Licensees shall consult with the NMFS-Southwest Region Fisheries Engineering Team. During this Preliminary Design phase, the Licensees shall prepare and distribute semi-annual status reports to the other Parties and directly affected and responsive third parties, for information only. This Preliminary Design phase shall conclude with the Licensees' preparation of a Preliminary Design Report, which shall consist of: (1) a preliminary design of the approved habitat expansion action(s); (2) updated cost estimates; and (3) a schedule for each of the remaining process phases in this Section 4.

4.4 Determination of Consistency of Preliminary Design Report

After completing the Preliminary Design Report required under Section 4.3 of this Agreement, the Licensees shall submit the Preliminary Design Report to NMFS for its determination of whether the Preliminary Design Report is materially consistent with the Approved Habitat Expansion Plan. The Licensees also shall distribute the Preliminary Design Report to the other Parties and directly affected and responsive third parties, for information only.

After receiving the Preliminary Design Report, NMFS shall have 90 days to provide the Parties with written Notice of its consistency determination. Such 90-day period shall be reasonably extended for good cause or if NMFS solicits additional information from the Licensees that is necessary and appropriate for NMFS to determine whether the Preliminary Design Report is materially consistent with the Approved Habitat Expansion Plan.

After receiving any additional information necessary and appropriate for it to issue its determination under this Section 4.4, NMFS shall have 90 days to provide the Parties with written Notice of its consistency determination. If NMFS' determination concludes that the Preliminary Design Report is not materially consistent with the Approved Habitat Expansion Plan, the written Notice shall identify the specific elements of the Preliminary Design Report that are not materially consistent. In such case, the Licensees shall have a reasonable opportunity to assess and cure the inconsistencies identified by NMFS and prepare a modified Preliminary Design Report, to be submitted to NMFS for its consistency determination, pursuant to the procedures of this Section 4.4.

If NMFS does not meet any of the deadlines established under this Section 4.4 or seek an extension of time prior to the expiration thereof, the Licensees shall provide Notice to NMFS, which Notice shall indicate that the Preliminary Design Report shall be deemed to be consistent with the Approved Habitat Expansion Plan unless NMFS issues its consistency determination, requests additional information, or seeks an extension of time, as appropriate, within 30 days after the date the Licensees' Notice is effective, pursuant to Section 16.11 of this Agreement.

If NMFS concludes the Preliminary Design Report is not materially consistent with the Approved Habitat Expansion Plan, NMFS shall provide Notice if (1) the Licensees do not submit a modified Preliminary Design Report for a consistency determination by NMFS within a reasonable period agreed upon by the Licensees and NMFS; or (2) NMFS determines the modified Preliminary Design Report is not materially consistent with the Approved Habitat Expansion Plan. This Agreement shall be terminated upon the date such Notice is effective, pursuant to Section 16.11 of this Agreement, and the provisions of Section 11.6 of this Agreement shall apply.

4.5 Preparation of Final Design and Permitting Report

Following NMFS' determination of consistency in Section 4.4 of this Agreement, and following the Licensees' acceptance of each of the New Project Licenses for Oroville, Poe, and Upper North Fork Feather River, the Licensees shall begin the Final Design and Permitting phase. During the Final Design and Permitting phase, the Licensees shall prepare bid-level designs and cost estimates, and apply for all permits, approvals, and rights necessary to implement the Approved Habitat Expansion Plan. Where approved habitat expansion action(s) involve engineered fishway designs, fishway systems, or major engineered components, the Licensees shall consult with the NMFS-Southwest Region Fisheries Engineering Team. During this Final Design and Permitting phase, the Licensees shall prepare and distribute semi-annual status reports to the other Parties and directly affected and responsive third parties, for information only. This Final Design and Permitting phase shall conclude with the Licensees' preparation of a Final Design and Permitting Report, which shall consist of: (1) final designs and permit status of the approved habitat expansion action(s); (2) updated cost estimates; and (3) a schedule for each of the remaining process phases in this Section 4.

4.6 Determination of Consistency of Final Design and Permitting Report

After completing the Final Design and Permitting Report required under Section 4.5 of this Agreement, the Licensees shall submit the Final Design

and Permitting Report to NMFS for its determination of whether the Final Design and Permitting Report is materially consistent with the Approved Habitat Expansion Plan. The Licensees also shall distribute the Final Design and Permitting Report to the other Parties and directly affected and responsive third parties, for information only.

After receiving the Final Design and Permitting Report, NMFS shall have 90 days to provide the Parties with written Notice of its consistency determination. Such 90-day period shall be reasonably extended for good cause or if NMFS solicits additional information from the Licensees that is necessary and appropriate for NMFS to determine whether the Final Design and Permitting Report is materially consistent with the Approved Habitat Expansion Plan.

After receiving any additional information necessary and appropriate for it to issue its determination under this Section 4.6, NMFS shall have 90 days to provide the Parties with written Notice of its consistency determination. If NMFS' determination concludes that the Final Design and Permitting Report is not materially consistent with the Approved Habitat Expansion Plan, the written Notice shall identify the specific elements of the Final Design and Permitting Report that are not materially consistent. In such case, the Licensees shall have a reasonable opportunity to assess and cure the inconsistencies identified by NMFS and prepare a modified Final Design and Permitting Report to be submitted to NMFS for its consistency determination, pursuant to the procedures of this Section 4.6.

If NMFS does not meet any of the deadlines established under this Section 4.6 or seek an extension of time prior to the expiration thereof, the Licensees shall provide Notice to NMFS, which Notice shall indicate that the Final Design and Permitting Report shall be deemed to be consistent with the Approved Habitat Expansion Plan unless NMFS issues its consistency determination, requests additional information, or seeks an extension of time, as appropriate, within 30 days after the date the Licensees' Notice is effective, pursuant to Section 16.11 of this Agreement.

If NMFS concludes the Final Design and Permitting Report is not materially consistent with the Approved Habitat Expansion Plan, NMFS shall provide Notice if (1) the Licensees do not submit a modified Final Design and Permitting Report for a consistency determination by NMFS within a reasonable period agreed upon by the Licensees and NMFS; or (2) NMFS determines the modified Final Design and Permitting Report is not materially consistent with the Approved Habitat Expansion Plan. This Agreement shall be terminated upon the date such Notice is effective, pursuant to Section 16.11 of this Agreement, and the provisions of Section 11.6 of this Agreement shall apply.

4.7 Implementation of Action(s)

Following NMFS' determination of consistency in Section 4.6 of this Agreement, the Licensees shall implement the Approved Habitat Expansion Plan; *provided, however,* that in the event that any final permit, approval or right applied for during the Final Design and Permitting phase contains a condition that is materially inconsistent with the Approved Habitat Expansion Plan, the Licensees shall resolve the inconsistency in a manner acceptable to NMFS, after Notice to and consultation with the other Parties and directly affected and responsive third parties. Implementation may be by the Licensees individually or jointly, or through cooperative efforts with others. Implementation and any subsequent operation and maintenance actions shall not be required to extend beyond the term of this Agreement as set forth in Section 1.4 herein. The Licensees shall prepare and distribute semi-annual status reports to the other Parties and directly affected and responsive third parties, for information only. At the completion of implementation, the Licensees shall distribute to the other Parties and directly affected and responsive third parties, for information only, a Final Report with updated cost information and schedule for each of the remaining phases in this Section 4.

4.8 Preparation of Final Test Report

Upon completion of implementation of the habitat expansion action(s) pursuant to the Approved Habitat Expansion Plan, the Licensees shall perform functional start-up testing for technical validation of the specified designs for the action(s), as may be required by the Approved Habitat Expansion Plan and as may be further described in or modified by the Final Design and Permitting Report. During this Final Test phase, the Licensees shall prepare and distribute, as necessary, semi-annual status reports to the other Parties and directly affected and responsive third parties, for information only. This Final Test phase shall conclude with the Licensees' preparation of a Final Test Report, which shall contain test results and conclusions.

4.9 Determination of Functionality

After completing any Final Test Report required under Section 4.8 of this Agreement, the Licensees shall submit the Final Test Report to NMFS for its determination of whether any functional start-up testing required by the Approved Habitat Expansion Plan, as may be further described in or modified by the Final Design and Permitting Report, has been performed and whether such testing demonstrates that all element(s) of the habitat expansion action(s) relevant to the functional start-up testing are functional. The Licensees also shall distribute the Final Test Report to the other Parties and directly affected and responsive third parties, for information only.

After receiving the Final Test Report, NMFS shall have 90 days to provide the Parties with written Notice of its functionality determination. Such 90-day period shall be reasonably extended for good cause or if NMFS solicits additional information from the Licensees that is necessary and appropriate for NMFS to determine whether all element(s) of the habitat expansion action(s) relevant to the functional start-up testing are functional.

After receiving any additional information necessary and appropriate for it to issue its determination under this Section 4.9, NMFS shall have 90 days to provide the Parties with written Notice of its functionality determination. If NMFS' determination concludes that any element(s) of the habitat expansion action(s) relevant to the functional start-up testing are not functional, the written Notice shall specifically identify such non-functional element(s). In such case, the Licensees shall have a reasonable opportunity to assess all elements associated with the habitat expansion action(s), complete any repairs or replacement, as necessary, and prepare a modified Final Test Report to be submitted to NMFS for its functionality determination, pursuant to the procedures of this Section 4.9.

If NMFS does not meet any of the deadlines established under this Section 4.9 or seek an extension of time prior to the expiration thereof, the Licensees shall provide Notice to NMFS, which Notice shall indicate that the element(s) of the habitat expansion action(s) relevant to the functional start-up testing shall be deemed to be functional unless NMFS issues its functional determination, requests additional information, or seeks an extension of time, as appropriate, within 30 days after the date the Licensees' Notice is effective, pursuant to Section 16.11 of this Agreement.

If NMFS concludes based on its review of the final Test Report that any material element(s) of the habitat expansion action(s) relevant to the functional start-up testing are not functional so that the habitat expansion threshold cannot be achieved, NMFS shall provide Notice if (1) the Licensees do not submit a modified final Test Report for a functionality determination by NMFS within a reasonable period agreed upon by the Licensees and NMFS; or (2) NMFS concludes based on the modified Final Test Report that any material element(s) of the habitat expansion actions(s) relevant to the functional start-up testing are not functional so that the habitat expansion threshold cannot be achieved. This Agreement shall terminate upon the date such Notice is effective, pursuant to Section 16.11 of this Agreement, and the provisions of Section 11.6 of this Agreement shall apply.

5 Timeframes

The Parties share a mutual interest in completing implementation of approved habitat expansion action(s) as early as reasonably feasible, consistent with the Licensees obtaining necessary approvals and permits. Appendix C graphically depicts the planning and implementation steps and deadlines required by Sections 4 and 11.1 of this Agreement. If it appears that the Licensees will not be able to achieve deadlines specified or approved pursuant to this Agreement, they may request an extension of time from NMFS, which extension NMFS shall grant if good cause exists. If it appears that NMFS will not be able to achieve deadlines specified or approved pursuant to this Agreement, it may request an extension of time from the Licensees, which extension the Licensees shall grant if good cause exists. For the purposes of this Section 5, good cause includes, but is not limited to, events or circumstances beyond the Licensees' or NMFS' reasonable control. Upon requesting an extension of time, the Licensees and NMFS shall provide Notice of such request to the other Parties. The Parties shall make best efforts to assure that the cumulative effect of such extensions does not significantly delay the Licensee(s)' determination whether to exercise the withdrawal option provided in Section 11.1 or the implementation of the habitat expansion action(s).

6 Licensee Obligations

6.1 Habitat Expansion Plan

The Licensees shall be responsible for identifying, evaluating, selecting, implementing, and, if included in the Approved Habitat Expansion Plan, testing, operating and maintaining the approved habitat expansion action(s) to be performed under this Agreement. The Licensees shall separately agree on a distribution of responsibility between them, with each being independently responsible for achieving its portion of the total responsibility. Timely and complete implementation of the Approved Habitat Expansion Plan fulfills the Licensees' obligations under this Agreement. The Licensees are not obligated to guarantee or verify fish production or utilization.

6.2 Reporting

Within 60 days following each anniversary of the Effective Date, the Licensees shall prepare an annual status report, which describes the milestones reached and progress achieved in implementing habitat expansion actions(s) contemplated under this Agreement. Such annual reporting requirement shall continue through NMFS' determination of functionality pursuant to Section 4.9 of this Agreement. After NMFS' determination of functionality, the Licensees shall prepare a status report every five years as long as they continue to have ongoing obligations under the Approved Habitat Expansion Plan.

The Licensees shall ensure that all status reports prepared under this Section 6.2 are maintained on a website (or other comparable electronic library) that is publicly available, free-of-charge, and commonly known to be a repository of information of one or more of the Feather River Hydroelectric Projects. Unless otherwise directed by FERC, the Licensees may elect to fulfill this obligation by submitting status reports to FERC's eLibrary system.

7 Resource Agency Obligations

7.1 Timely Consultation, Approval and Processing of Permits

The Resource Agencies shall be responsible for providing timely information and consultation as requested by the Licensees, and for diligent and timely processing of all permits, approvals, and rights necessary for implementation of this Agreement, subject to available agency resources and agency authority.

7.2 Agreement Not Predecisional for Authorizations Necessary to Implement the Approved Habitat Expansion Plan

This Agreement is not intended nor shall it be construed to be a predecisional determination by a Resource Agency as to whether permits, approvals, and rights necessary to implement any habitat expansion action(s) under an Approved Habitat Expansion Plan will be issued. Resource Agency procedures for processing permits or other approvals are not affected by this Agreement. Discretionary decisions related to requests for permits, approvals, and rights necessary to implement the approved habitat expansion action(s) are not subject to the provisions of this Agreement.

8 Uncontrollable Forces

8.1 General

No Party shall be in breach of its obligations under this Agreement if it is unable to perform or delays required performance due to any Uncontrollable Force reasonably beyond its control, unless otherwise provided by this Agreement. For this purpose, an "Uncontrollable Force" may include, but is not limited to, natural events, labor or civil disruption, action or non-action of a governmental agency (other than DWR), or breakdown or failure of facilities.

8.2 Notice of Delay or Inability to Perform

The Party whose performance of an obligation under this Agreement is affected by an Uncontrollable Force shall provide Notice as soon as

reasonably practicable. This Notice shall include: (1) a description of the Uncontrollable Force causing the delay, anticipated delay, or inability to perform; (2) an estimate of the anticipated length of the delay or inability to perform; (3) a description of the measures taken or to be taken to avoid or minimize, if possible, the delay or inability to perform; and (4) a proposed timetable for the performance of the obligation. The affected Party shall make all reasonable efforts to promptly resume performance of the obligation and shall provide Notice when it resumes performance of the obligation.

9 Consultation and Coordination

In implementing their obligations under this Agreement, including selection of habitat expansion action(s) under Section 4 herein, the Licensees shall confer with the other Parties and directly affected and responsive third parties, and shall diligently seek to obtain all necessary permits, approvals, and rights from agencies with jurisdiction. All habitat expansion action(s) within FERC's jurisdiction are subject to FERC approval. All submittals to FERC shall include the results of applicable consultation and coordination, including any comments or recommendations received by the Licensees and an explanation why any such comment was not adopted.

10 Cost Effectiveness

The Parties recognize that cost is a key consideration in the successful implementation of this Agreement, and agree to make a good faith effort to achieve the Habitat Expansion Threshold at the least cost to the Licensees.

11 Withdrawal or Material Breach

11.1 Licensee Withdrawal Options

If at any point prior to the Licensees' award of construction contracts for implementation of habitat expansion action(s) but no later than twelve (12) months after NMFS' determination of consistency of the Final Design and Permitting Report under Section 4.6 of this Agreement, the Licensees estimate that the net present value (January 2006 cost basis) of the life-cycle cost of all of the recommended or approved habitat expansion action(s) will exceed $15 million for the two Licensees combined, either or both of the Licensees may withdraw from the Agreement. The Licensees may also decide, in their sole discretion, to proceed with the recommended or approved habitat expansion action(s) with an estimated cost that exceeds $15 million or propose to NMFS an alternative as provided in Section 11.5 of this Agreement. The $15 million threshold is for the sole purpose of establishing a Licensee decision point, and the Licensees specifically reserve the right to establish, at their discretion, a threshold that exceeds $15 million. Therefore, any decision by the

Licensees not to withdraw from this Agreement once the $15 million threshold is reached shall not constitute a waiver of the Licensees' right of withdrawal under this Section 11.1, which right, however, shall end upon the Licensees' award of construction contracts for implementation of habitat expansion action(s) or twelve (12) months after NMFS' determination of consistency of the Final Design and Permitting Report under Section 4.6 of this Agreement, whichever occurs first. The Licensees are solely responsible for estimating the cost of the habitat expansion action(s) for purposes of this Section 11.1.

11.2 Withdrawal Options of All Parties

11.2.1 Materially Inconsistent New Project Licenses

If any of the New Project Licenses, as issued or later amended, is materially inconsistent with this Agreement, then any Party shall have the right to withdraw from this Agreement.

11.2.2 Materially Inconsistent Water Quality Certifications

In the event the SWRCB either: (a) issues a water quality certification pursuant to Section 401 of the Clean Water Act ("401 Certification") for inclusion in any of the New Project Licenses that is materially inconsistent with the terms of this Agreement; (b) fails to explicitly state in any such 401 Certification that the SWRCB will exercise any reserved authority relative to Fish Passage in such a manner that is consistent with the terms of this Agreement; or (c) denies 401 Certification for any of the Feather River Hydroelectric Projects, then any Party shall have the right to withdraw from this Agreement. The Parties agree that issuance of Condition S.9 of the water quality certification for the Oroville Facilities is not a basis for withdrawal from this Agreement.

11.2.3 Materially Inconsistent Events Related to Approved Final Habitat Expansion Plan

Any Party may withdraw from the Agreement if, following NMFS' approval of the Final Habitat Expansion Plan, Preliminary Design Report, Final Design and Permitting Report, or the Final Test Report, the SWRCB, FERC or court does not provide a decision or authorization necessary to timely implement the approved plan or imposes conditions materially inconsistent with the approval and its timely implementation. For this purpose "timely" refers to the schedule in the approved plan or report, as applicable. A Party may exercise this right notwithstanding whether that Party may have had an opportunity to exercise its right to withdraw under Sections 11.2.1 or 11.2.2.

11.3 Withdrawal Procedures

11.3.1 Pre-Withdrawal Notice

A Party seeking to withdraw from this Agreement (the "Withdrawing Party") shall provide Notice to all other Parties of its intent to withdraw from this Agreement, which Notice shall explain in detail the Party's basis for withdrawal. A Party seeking to withdraw under Section 11.2 of this Agreement shall provide such Notice within 10 days of the action giving rise to such withdrawal.

11.3.2 Meet and Confer

Within 10 days after the date the pre-withdrawal Notice under Section 11.3.1 is effective, pursuant to Section 16.11 of this Agreement, the Withdrawing Party shall offer to meet with the other Parties to discuss options for alleviating the Withdrawing Party's concern, including but not limited to: (1) amending this Agreement to remove any material inconsistency with a New Project License or 401 Certification; (2) delaying withdrawal until the conclusion of administrative or judicial processes, as appropriate; or (3) seeking less-costly alternatives to the implementation of the recommended or approved habitat expansion action(s); *provided, however*, that nothing in this Section 11.3.2 is intended or shall be construed as compelling the Withdrawing Party to accept any alternative approach discussed during this pre-withdrawal meeting.

11.3.3 Obligations Pending Administrative Appeals or Judicial Review

Should the Withdrawing Party, in its sole discretion, decide to delay its withdrawal until the conclusion of any administrative or judicial process, all other Parties shall: (1) support any request by the Licensees to extend any deadline or stay any New Project License, as necessary or appropriate to preserve the issues subject to such administrative or judicial processes; and (2) suspend any and all deadlines in this Agreement, as necessary or appropriate to preserve the issues subject to such administrative or judicial processes.

11.3.4 Withdrawal Notice

If the pre-withdrawal meeting under Section 11.3.2 of this Agreement does not result in a compromise or other arrangement that alleviates the Withdrawing Party's concern, the Withdrawing

Party may withdraw from this Agreement by providing Notice to all other Parties of its withdrawal.

11.3.5 Concurrent Administrative or Judicial Relief

The withdrawal procedures in this Section 11.3 do not preclude any Party from timely filing and pursuing an action for administrative or judicial relief of any FERC order or other regulatory or judicial action. The initiation of the withdrawal procedures of this Section 11.3 shall have no effect on filing deadlines or applicable statutes of limitations before FERC, other regulatory agency, or court of competent jurisdiction.

11.4 Effect of Withdrawal

11.4.1 Generally

Except as provided in Section 11.4.2 of this Agreement, a Party's proper exercise of its right to withdraw under this Section 11 shall not terminate this Agreement and shall not affect the enforceability of this Agreement. Except as provided in Section 11.4.3.2, such withdrawal by a Withdrawing Party shall, however, amend this Agreement to omit the terms applicable to said Party, and the Withdrawing Party shall have no rights and receive no benefits under this Agreement, except that the Withdrawing Party shall continue to be bound by Sections 1.5, 15 and 16.7 of this Agreement.

11.4.2 Withdrawal by Both Licensees, NMFS or USFWS

In the event that both Licensees, NMFS or USFWS properly exercise their right to withdraw under this Section 11, such withdrawal(s) shall terminate this Agreement, and the provisions of Section 11.6 of this Agreement shall apply.

11.4.3 Withdrawal or Material Breach by One Licensee

11.4.3.1 General

If one Licensee properly exercises its right to withdraw from this Agreement or materially breaches, the remaining Licensee shall have the option to:

(a) proceed with the full scope of the Approved Habitat Expansion Plan, or
(b) propose to NMFS an Alternative Habitat Expansion Plan which the remaining Licensee

would perform estimated to meet one-half of the Habitat Expansion Threshold.

11.4.3.2 Option (a): Full Scope of Approved Habitat Expansion Plan

If the remaining Licensee chooses to proceed with the full scope of the Approved Habitat Expansion Plan, the remaining Licensee's compliance with the Approved Habitat Expansion Plan shall satisfy both Licensees' obligations under this Agreement.

11.4.3.3 Option (b): Alternative Habitat Expansion Plan

If the remaining Licensee proposes to NMFS an Alternative Habitat Expansion Plan estimated to meet one-half of the Habitat Expansion Threshold, NMFS shall have the discretion to approve the remaining Licensee's alternative plan. The procedures set forth in Section 4.2 of this Agreement shall apply to the preparation and approval of such Alternative Habitat Expansion Plan; *provided however,* that all applicable criteria, estimates, and determinations may be based upon one-half of the Habitat Expansion Threshold.

(a) If NMFS approves the remaining Licensee's Alternative Habitat Expansion Plan, then the remaining Licensee shall comply with Sections 4.3 through 4.9 of this Agreement, to the extent the obligations set forth in these Sections have not already been met. The remaining Licensee's compliance with the approved Alternative Habitat Expansion Plan shall satisfy the remaining Licensee's obligations under this Agreement.

(b) If NMFS does not approve the remaining Licensee's Alternative Habitat Expansion Plan, NMFS shall provide the Parties with Notice of its decision as set forth in Section 4.2.7 of this Agreement, including a reasonable opportunity for the remaining Licensee to assess and cure any deficiencies identified by NMFS and resubmit a revised Alternative Habitat Expansion Plan for review and approval by NMFS. If NMFS does not approve the revised Alternative Habitat Expansion Plan and determines that no revisions will result in an

acceptable alternative, it shall provide the Parties with Notice of its final decision. This Agreement shall be terminated upon the date such Notice is effective, pursuant to Section 16.11 of this Agreement, and the provisions of Section 11.6 of this Agreement shall apply.

11.5 Determination By Both Licensees of Cost Exceeding $15 Million.

If both Licensees determine, as provided in Section 11.1 of this Agreement, that the estimated life-cycle cost of all of the recommended or approved habitat expansion action(s) exceeds $15 million, the Licensees, before withdrawing from this Agreement as set forth in Section 11.3 herein, shall have the option of proposing to NMFS an Alternative Habitat Expansion Plan for approval by NMFS pursuant to the following procedures.

11.5.1 Submittal of Alternative Habitat Expansion Plan

Within a reasonable time following the Licensees' determination that the estimated life-cycle cost of all of the recommended or approved habitat expansion action(s) exceeds $15 million, the Licensees shall prepare an Alternative Habitat Expansion Plan, which shall include all elements required by Section 4.1.3 of this Agreement. The Licensees may propose under this Section 11.5, an Alternative Habitat Expansion Plan that is estimated to provide less than the Habitat Expansion Threshold.

11.5.2 Procedures for Submitting and Approving Alternative Habitat Expansion Plan

The procedures set forth in Section 4.2 of this Agreement shall apply to the submittal and approval of the Alternative Habitat Expansion Plan; *provided however,* that NMFS may approve an Alternative Habitat Expansion Plan that is estimated to provide less than the Habitat Expansion Threshold where NMFS finds that the Alternative Habitat Expansion Plan is expected to provide a satisfactory contribution to the conservation and recovery of Spring-Run that meets the overall goal of the Agreement as stated in Section 2.1.

11.5.3 NMFS Approval of Alternative Habitat Expansion Plan

If NMFS approves the Licensees' Alternative Habitat Expansion Plan, then the Licensees shall comply with Sections 4.3 through 4.9

of this Agreement to the extent the obligations set forth in these Sections have not already been met.

11.5.4 NMFS Non-Approval of Alternative Habitat Expansion Plan

If NMFS does not approve the Licensees' Alternative Habitat Expansion Plan, NMFS shall provide the Parties with written Notice of its decision as set forth in Section 4.2.7 of this Agreement. The Licensees shall have a reasonable opportunity to assess and cure any deficiencies identified by NMFS and resubmit a revised Alternative Habitat Expansion Plan for review and approval by NMFS. If NMFS does not approve the cured Alternative Habitat Expansion Plan and determines that no revisions will result in an acceptable alternative, it shall provide the Parties with written Notice of its decision. This Agreement shall be terminated upon the date such non-approval Notice is effective, pursuant to Section 16.11 of this Agreement, and the provisions of Section 11.6 of this Agreement shall apply.

11.6 Termination of Agreement

In the event that this Agreement is terminated, as provided in Sections 4.2.7, 4.4, 4.6, 4.9,11.4.2, 11.4.3.3, and 11.5.4 herein, no Party shall have any rights or obligations under this Agreement, nor shall any Party receive any benefits under this Agreement, except that all Parties shall continue to be bound by Sections 1.5, 15 and 16.7 of this Agreement, which Sections shall survive termination.

12 Support and Relationship to Relicensing

12.1 Full Mitigation of Impacts Due to Blockage of Fish Passage

Implementation of this Agreement shall fully mitigate for any presently unmitigated impacts due to the blockage of Fish Passage of all fish species caused by the Feather River Hydroelectric Projects for the term of this Agreement, as set forth in Section 1.4. This Agreement is separate from settlement agreements which have been, or may be, reached for the Licensees' respective Feather River Hydroelectric Projects, and shall not be incorporated as a condition in any New Project License except as specifically provided in such settlement agreements.

12.2 Support of Agreement in Applicable Proceedings

12.2.1 FERC Licensing Proceedings

The Parties shall support this Agreement in all Feather River Hydroelectric Project license proceedings. The Parties understand

and acknowledge that PG&E will not sign a settlement agreement for Oroville, and that DWR will not sign a settlement agreement for Poe, Rock Creek-Cresta, or Upper North Fork Feather River.

12.2.2 Support Before the SWRCB

To the extent permitted by applicable law, the Parties shall support or advocate through appropriate written communications to the SWRCB that the SWRCB exercise its authority to issue 401 Certifications for the New Project Licenses in a manner that is consistent with the terms of this Agreement. The Parties shall not object to the Licensees' advocacy efforts before the SWRCB to obtain reservations of authority in such 401 Certifications that explicitly state that the SWRCB will exercise its reserved authority relative to Fish Passage in a manner that is consistent with the terms of this Agreement.

12.3 No Imposition of Fish Passage Conditions in New Project Licenses

Throughout the term of this Agreement, the Parties shall not directly impose or indirectly seek through other agencies (including, but not limited to, through exercise of authority under the ESA subject to Section 13 of this Agreement, California Endangered Species Act subject to Section 13 of this Agreement, Sections 18, 4(e), 10(a) and 10(j) of the FPA, and Section 401 of the Clean Water Act) conditions for Fish Passage associated with or related to any of the Licensees' Feather River Hydroelectric Projects in excess of the habitat expansion action(s) contemplated under this Agreement, provided the Licensees are complying with their obligations under this Agreement.

12.4 Recommendations, Prescriptions and Conditions

Within 120 days of the Effective Date of this Agreement, all Parties shall file with FERC a modification of any comments, recommendations, terms, prescriptions, and license conditions relating to Fish Passage they filed prior to the Effective Date of this Agreement in the relicensing proceedings for Oroville, Poe and Upper North Fork Feather River, if necessary to remove any material inconsistencies between this Agreement and such comments, recommendations, terms, prescriptions and license conditions. Except as to Material New Information, any Final Mandatory Terms and Conditions and other recommendations regarding Fish Passage filed by the Parties in the relicensing proceedings for Oroville, Poe and Upper North Fork Feather River shall be consistent with this Agreement.

12.5 Reservation of Authority in New Project Licenses

12.5.1 Upper North Fork Feather River and Poe

12.5.1.1 Submittal of Reservation of Authority to FERC

Within 120 days of the Effective Date of this Agreement, USFWS and NMFS shall file with FERC in the relicensing proceedings for Poe and Upper North Fork Feather River reservations of authority under Section 18 of the FPA, which reservations of authority shall be in conformance with the proposed article set forth in Appendix B of this Agreement.

12.5.1.2 FERC Failure to Adopt Conforming Reservation of Authority

In the event that FERC, in the relicensing proceeding for Poe or Upper North Fork Feather River, does not include in the New Project License a reservation of authority in conformance with the proposed article set forth in Appendix B of this Agreement, such exclusion by FERC shall not be a basis for a Party to declare a material inconsistency or withdraw from this Agreement under Section 11.2.1 herein; *provided, however,* that FERC includes in the New Project Licenses for Poe and Upper North Fork Feather River the reservations of authority under Section 18 of the FPA previously filed by USFWS and NMFS in those relicensing proceedings.

12.5.1.3 FERC Failure to Adopt Any Reservation of Authority

FERC's failure to include in the New Project Licenses for Poe and Upper North Fork Feather River either the reservation of authority set forth in Appendix B of this Agreement or the reservations of authority previously filed by USFWS and NMFS in the Poe and Upper North Fork Feather River relicensing proceedings shall be a basis for any Party to assert a material inconsistency under Section 11.2.1 of this Agreement.

12.5.2 Oroville

With respect to Oroville, the Oroville Settlement shall govern USFWS' and NMFS' submittal of a reservation of authority under Section 18 of the FPA, together with FERC's adoption thereof or failure to adopt into the Oroville New Project License.

12.5.3 Rock Creek-Cresta

USFWS and NMFS shall not be required to file a modification to any reservation of authority under Section 18 of the FPA in the New Project License for Rock Creek-Cresta.

12.5.4 USFWS and NMFS Interpretation of Reservation of Authority

For all of the New Project Licenses, USFWS and NMFS shall interpret any reservation of authority under Section 18 of the FPA adopted by FERC as though it is in conformance with Appendix B of this Agreement and contains a specific reference to this Agreement.

12.6 Exercise of Reserved Authority in New Project Licenses

A Party may exercise any of its reserved authority under a Licensee's New Project License to impose or seek conditions for Fish Passage if that Licensee withdraws from or materially breaches this Agreement, provided the exercise of such reserved authority is otherwise consistent with the terms of this Agreement including, without limitation, a Licensee's satisfaction of a withdrawing or breaching Licensee's obligations under this Agreement, pursuant to Section 11.4.3.2. Other Parties may seek, support, or contest such exercise of reserved authority as provided by applicable law and regulations.

12.6.1 Exercise of Reserved Authority Not to Affect Obligations of Non-Withdrawing, Non-Breaching Licensee

If NMFS approves an Alternative Habitat Expansion Plan estimated to meet one-half of the Habitat Expansion Threshold as proposed by one Licensee after the other Licensee has withdrawn or materially breached as set forth in Section 11.4.3 of this Agreement, the Parties may seek conditions to mitigate for Fish Passage only in the New Project License(s) of the withdrawing or breaching Licensee's Feather River Hydroelectric Project(s); *provided, however,* they do so in a manner that does not result in additional operational constraints or mitigation requirements in the non-withdrawing, non-breaching Licensee's Feather River Hydroelectric Project(s).

12.6.2 Notification and Dispute Resolution Prior to Exercise of Reserved Authority

Prior to a Party imposing or seeking conditions for Fish Passage, the Party shall provide written Notice to the affected Licensee(s). The Notice shall include the specific obligations under this Agreement with which the Notifying Party asserts the Licensee(s) has materially breached. The affected Licensee(s) shall have 30

days from the Notice to initiate the ADR procedures set forth in Section 14 of this Agreement. If the affected Licensee(s) initiates the ADR procedures, the Notifying Party shall comply with the procedures set forth in Section 14 before imposing or seeking conditions for Fish Passage in the affected Licensee's Feather River Hydroelectric Project. The Notice and ADR obligations in this Section 12.6.2 shall not apply to: (1) a Licensee that withdraws from this Agreement pursuant to Section 11; or (2) a final decision by NMFS pursuant to Section 11.4.3.3(b) or 11.5.4 not to approve an Alternative Habitat Expansion Plan or revised Alternative Habitat Expansion Plan that does not meet the Habitat Expansion Threshold.

12.7 Mitigation of Impacts Other than Blockage of Fish Passage

This Agreement does not limit the right of the Parties to seek mitigation for Feather River Hydroelectric Project impacts other than blockage of Fish Passage in any of the New Project Licenses. This Agreement does not address mitigation for passage of fish through turbines, availability and quality of aquatic habitat above or below such facilities, or fish access to tributaries between the PG&E facilities. This Agreement also does not address planting of fish in Lake Oroville from the Feather River Fish Hatchery. Nothing in this Agreement is intended to limit the right of the Parties to seek appropriate protection, mitigation, or enhancement measures for amphibian species in the New Project Licenses for the Feather River Hydroelectric Projects.

13 Endangered Species Act

In selecting recommended habitat expansion action(s) under Section 4.1 of this Agreement, the Licensees shall consider the potential of the action(s) to cause incidental take of listed species or the destruction or adverse modification of critical habitat under the ESA and shall favor action(s) with the least or no adverse effect on listed species. In the event, however, that a habitat expansion action(s) is recommended and approved that has the potential to adversely affect listed species and/or critical habitat, compliance with the ESA shall be achieved as set forth in this Section 13.

13.1 Identification of Potential Impacts in Approved Habitat Expansion Plan; Incidental Take Under ESA

With respect to listed species potentially affected by implementation of the approved habitat expansion action(s), the Licensees intend that any necessary measures to address potential impacts would be identified and incorporated into the Approved Habitat Expansion Plan, and that any necessary authorization for incidental take of listed species would be obtained from USFWS and/or NMFS, as applicable, through an

appropriate ESA mechanism, such as Section 7 or Section 10(a)(1) of the ESA.

13.2 Appropriate ESA Mechanisms

The Parties agree to utilize appropriate ESA mechanisms to provide authorization for incidental take of a listed species related to: (1) any actions taken to implement the Approved Habitat Expansion Plan; and (2) potential impacts to anadromous fish if the approved habitat expansion action(s) result in the introduction of these species into areas where they may be affected by existing Licensee facilities or operations.

13.3 ESA-Related Costs

The Parties intend that any costs related to ESA compliance shall be included in the estimated life-cycle cost of the recommended or approved habitat expansion action(s) as provided in Section 11.1 of this Agreement.

13.4 Record Support of Agreement; Agreement Not Predecisional; Reservation of Authority

NMFS, USFWS and CDFG represent that they are entering into this Agreement believing that the information in the record supports this Agreement. *Provided, however*, NMFS and USFWS are not making a predecisional determination of the outcome of any ESA Consultation or approval and expressly reserve the right to take such future action or to issue such terms and conditions and to include the issuing agency's criteria for reinitiation of ESA Section 7 Consultation pursuant to 50 C.F.R. § 402.16 in any Biological Opinions, Incidental Take Statements, or other approvals as necessary to meet their obligations under the ESA. *Provided further,* CDFG is not making any predecisional determination on the outcome of any California Endangered Species Act Consultation or approval and expressly reserves the right to take such future action or to issue such terms and conditions as required to meet its obligations under the California Endangered Species Act.

13.5 ESA Section 7 Consultation

In the event ESA Section 7 Consultation is properly reinitiated in one of the Feather River Hydroelectric Projects in accordance with 50 C.F.R. § 402.16, the USFWS and NMFS shall consider the habitat expansion action(s) implemented under the Approved Habitat Expansion Plan and potential modifications to such actions in determining whether, and to what degree, new measures on the Feather River are necessary.

14 Dispute Resolution

14.1 General

14.1.1 Choice of Law; No Consent of Jurisdiction

This Agreement is enforceable by any Party under Federal or California law, as applicable. By executing this Agreement, no Federal Resource Agency is consenting to the jurisdiction of a State court unless such jurisdiction otherwise exists. To the extent any approved action(s) under an Approved Habitat Expansion Plan are within FERC's jurisdiction, implementation of such habitat expansion action(s) shall be subject to FERC approval and oversight.

14.1.2 Mandatory Alternative Dispute Resolution

All disputes among the Parties regarding the Parties' performance or compliance with this Agreement shall be the subject of the non-binding ADR procedure among the Disputing Parties, as described in Section 14.2 below, except for: (1) a Party that withdraws from this Agreement pursuant to Section 11; or (2) a final decision by NMFS pursuant to Section 11.4.3.3(b) or 11.5.4 not to approve an Alternative Habitat Expansion Plan or revised Alternative Habitat Expansion Plan that does not meet the Habitat Expansion Threshold.

14.1.3 Good Faith Requirement

Each Party participating in an ADR procedure ("Disputing Party," or collectively, "Disputing Parties") shall cooperate in good faith to promptly schedule, attend and participate in the ADR.

14.1.4 Timely Completion of ADR

The Disputing Parties shall devote such time, resources and attention to the ADR as is needed and as can reasonably be provided to attempt to resolve the dispute at the earliest time possible.

14.1.5 Prompt Implementation of ADR Final Agreements

Each Disputing Party shall implement promptly all final agreements reached in the ADR procedure, consistent with its applicable statutory and regulatory responsibilities.

14.1.6 Concurrent Administrative or Judicial Relief

The ADR procedures in this Section 14 do not preclude any Party from timely filing and pursuing an action for administrative or judicial relief of any FERC order or other regulatory action when the dispute is within FERC's or another regulatory agency's jurisdiction; *provided however*, that such Party shall pursue the ADR procedures as soon as practicable after initiating such action for administrative or judicial relief. The initiation of the ADR procedures in this Section 14 shall have no effect on filing deadlines or applicable statutes of limitations before FERC or other regulatory agency of competent jurisdiction.

14.1.7 Notification to Jurisdictional Regulatory Agencies

If the dispute involves a matter within the jurisdiction of FERC or another regulatory agency, the Party initiating the dispute under this Section 14 shall notify the regulatory agency when it initiates the ADR procedures.

14.1.8 No Effect on Resource Agency Procedures

Nothing in the ADR procedures in this Section 14 is intended or shall be construed to affect or limit the authority of any of the Resource Agencies to resolve a dispute brought before them in accordance with their own procedures and applicable law.

14.2 ADR Procedures

14.2.1 Notice

A Party claiming a dispute shall provide Notice of the dispute within 30 days of the Party's actual knowledge of the act, event, or omission that gives rise to the dispute, unless this Agreement provides otherwise. Such Notice shall describe:

(a) the matter(s) in dispute;
(b) the identity of any other Party who is alleged to have materially breached this Agreement; and
(c) the specific relief sought.

14.2.2 Informal Meetings

At a minimum in any dispute subject to these ADR procedures, the Disputing Parties shall hold two informal meetings within 45 days after the date the Notice under Section 14.2.1 is effective, pursuant to Section 16.11 of this Agreement, to attempt to resolve the disputed issue(s).

14.2.3 Mediation

If the informal meetings fail to resolve the dispute, the Disputing Parties shall decide whether to attempt to resolve the dispute using a neutral mediator. The decision whether to pursue mediation shall be made within 20 days after conclusion of the informal meetings. Mediation shall not occur unless the Disputing Parties agree on the selection of the mediator and an allocation of mediation costs. The Disputing Parties shall select a mediator within 30 days of the decision to pursue mediation. The mediation process shall be completed within 90 days after selection of the mediator.

14.2.4 Time Periods

Any of the time periods set forth in these ADR procedures may be reasonably extended or shortened by agreement of the Disputing Parties, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute.

14.2.5 Dispute Resolution Notice

Within 15 days of conclusion of the ADR procedures, the Party that initiated the dispute shall provide Notice to all other Parties of the outcome achieved under these ADR procedures. The Notice shall:

(a) restate the disputed matter, as initially described in the dispute initiation Notice;
(b) state whether the resolution was achieved, in whole or part; and
(c) state the specific relief agreed to or sought.

15 Rights and Remedies After Dispute Resolution, Withdrawal, or Termination

After exhaustion of the ADR procedures set forth in Section 14 of this Agreement or withdrawal as provided under Section 11 herein, the Parties shall have the following rights and remedies.

15.1 30-Day Waiting Period

Unless otherwise prohibited by law, a Party shall wait at least 30 days before exercising its rights and remedies under this Section 15, which 30-day waiting period shall be calculated as follows:

(a) With regard to the ADR procedures under Section 14 of this Agreement, the 30-day waiting period shall commence upon the date the Disputing Party's dispute resolution Notice

described in Section 14.2.5 of this Agreement is effective, pursuant to Section 16.11 of this Agreement.

(b) With regard to withdrawal of a Party where such withdrawal does not terminate this Agreement, as set forth in Section 11.4.1 of this Agreement, the 30-day waiting period shall commence upon the date the Withdrawing Party's withdrawal Notice described in Section 11.3.4 of this Agreement is effective, pursuant to Section 16.11 of this Agreement.

(c) With regard to termination of this Agreement, as set forth in Section 11.6 of this Agreement, the 30-day waiting period shall commence upon the date that this Agreement is terminated.

15.2 No Damages

No Party shall be liable in damages for any breach of this Agreement, any withdrawal from this Agreement, termination of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

15.3 Remedy for Material Breach or Withdrawal by Licensees

The exclusive remedy for material breach of or withdrawal from this Agreement by one or both of the Licensees shall be the ability of a Party to impose or seek conditions for Fish Passage in the New Project License of the breaching or withdrawing Licensee's Feather River Hydroelectric Project(s), consistent with this Agreement, including without limitation Sections 11.4.3.2 and 12.6.1.

15.4 Remedy for Material Breach or Withdrawal by Non-Licensee Parties

The exclusive remedy for material breach of or withdrawal from this Agreement by a Party other than the Licensees shall be specific performance of the breaching or withdrawing Party's obligations under this Agreement or other equitable relief from a court or agency of competent jurisdiction. Obligations under this Agreement that are discretionary shall be reviewed under the arbitrary and capricious standard and shall be supported by substantial evidence in the record compiled in the consultation procedures required by this Agreement. Performance shall be reviewed exclusively for consistency with this Agreement.

Parties must seek their remedy under this Section 15.4 as follows:

(a) With regard to the ADR procedures under Section 14 of this Agreement, within 90 days after the date the dispute resolution Notice under Section 14.2.5 of this Agreement is effective, pursuant to Section 16.11 of this Agreement.

(b) With regard to withdrawal of a Party where such withdrawal does not terminate this Agreement, as set forth in Section 11.4.1 of this Agreement, within 90 days after the date the withdrawal Notice described in Section 11.3.4 of this Agreement is effective, pursuant to Section 16.11 of this Agreement.

(c) With regard to termination of this Agreement, as set forth in Section 11.6 of this Agreement, within 90 days after the date that this Agreement is terminated.

A final decision by NMFS under Section 11.4.3.3(b) or 11.5.4 of this Agreement not to approve an Alternative Habitat Expansion Plan or revised Alternative Habitat Expansion Plan that does not meet the Habitat Expansion Threshold is not subject to review under this Section 15.4. This Agreement is not intended to create jurisdiction to challenge a condition for Fish Passage pursuant to Sections 4, 18, 33 and 313 of the FPA (16 U.S.C. §§ 797, 811, 823d, and 825*l*), or other applicable statutory or regulatory law.

16 Miscellaneous

16.1 Entire Agreement

Except as provided in Sections 16.1.1 and 16.1.2 of this Agreement, this Agreement contains the complete and exclusive agreement of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, and writings prior to the Effective Date of this Agreement, with respect to its subject matter.

16.1.1 No Effect on Other Agreements

Nothing in this Agreement is intended to, or shall be construed to, modify in any manner the Oroville Settlement or any other settlement agreement in the relicensing of the Feather River Hydroelectric Projects that has been executed by one of the Licensees and filed with FERC.

16.1.2 Relationship to Settlement Agreement for Licensing of the Oroville Facilities

The Parties recognize that some of the Parties to this Agreement are also parties to the Oroville Settlement and that this Agreement

partially satisfies certain provisions of the Oroville Settlement. *Provided, however*, the Parties' obligations under this Agreement shall be interpreted without reference to, and independent of, the Oroville Settlement. *Provided further*, nothing in this Agreement is intended to, or shall be construed to, bind any Party to this Agreement as a party to the Oroville Settlement.

16.2 Non-Severable Terms of Agreement

The terms of this Agreement are not severable one from the other. This Agreement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the Agreement. If a court of competent jurisdiction rules that any provision of this Agreement is invalid, this Agreement is deemed modified to conform to such ruling, unless a Party provides Notice of its objection within 45 days of the ruling. If a Party objects, the other Parties agree to meet and confer regarding the continued viability of this Agreement.

16.3 No Third-Party Beneficiaries

This Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, and shall not authorize any third party to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

16.4 Costs

Except as provided in this Agreement, all Parties shall bear their own costs of participating in this Agreement. Any obligation under this Agreement of any Federal agency is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 *et seq.* Any obligation under this Agreement for a State agency other than DWR is subject to Article 16, Section 7 of the California Constitution.

16.5 Waiver

The failure of any Party to insist, on any occasion, upon strict performance of any provision of this Agreement shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such Party.

16.6 Successors and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties and their successors and approved assigns, unless otherwise specified in this Agreement.

16.6.1 Assignment by Non-Licensees

Any voluntary assignment by a Party other than a Licensee shall not be effective unless approved by the Licensees, which approval shall not be unreasonably withheld. A partial assignment is not permitted. After the Licensees' approval of the assignment, the assignee shall sign the Agreement and become a Party.

16.6.2 Assignment by the Licensees

(a) Nothing in this Agreement is intended or shall be construed as limiting or constraining in any manner the Licensees' unilateral right to seek a transfer of any New Project License or otherwise change ownership in any of the Feather River Hydroelectric Projects. *Provided, however*, that unless prohibited by applicable law, a Licensee shall require in any transaction for a change in ownership of a Feather River Hydroelectric Project or transfer of a New Project License, that such new owner and/or licensee shall be bound by, and shall assume all of the rights and obligations of the Licensee under this Agreement upon completion of the change of ownership and approval by FERC of the license transfer.

(b) When transferring a New Project License or changing ownership of a Feather River Hydroelectric Project pursuant to this Section 16.6.2, a Licensee shall provide Notice to the other Parties at least 30 days prior to the proposed effective date of such assignment or transfer.

(c) No change in ownership of the Feather River Hydroelectric Projects or transfer of a New Project License by either Licensee shall in any way modify or otherwise affect any other Party's rights or obligations under this Agreement.

16.6.3 Succession

In the event of succession between Public Agencies, whether by statute, executive order, or operation of law, the successor agency shall become a Party to and be bound by the terms of this Agreement, to the extent permitted by law.

16.6.4 Continuation of Certain Obligations

Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Agreement; *provided, however*, the initial Party shall continue to be bound by Sections 1.5, 12, 16.3, 16.6, and 16.7 and shall not take any action adverse to this Agreement.

16.7 Settlement Negotiations Privileged and Confidential

The Parties have entered into the negotiations and discussions leading to this Agreement with the understanding that all discussions, communications, drafts, work papers, and notes relating to this Agreement are privileged and confidential. However, the Parties acknowledge that a draft of this Agreement was filed at FERC on March 24, 2006, as part of the Oroville Settlement Agreement. This material shall not prejudice the position of any Party or participant taking part in such discussions and negotiations, and shall not be used by any entity in any manner, including, without limitation, admission into evidence, admission, or argument in any forum or proceeding for any purpose to the fullest extent allowed by applicable law.

16.8 Elected Officials Not to Benefit

No elected officials shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

16.9 Relationship of the Parties

Except as otherwise expressly set forth herein, nothing contained in this Agreement is intended or shall be construed to create an association, trust, partnership or joint venture, or impose any trust or partnership duty, obligation or liability on any Party, or create an agency relationship between or among the Parties or between any Party and any employee of another Party.

16.10 No Changes to Existing Contracts and Agreements

This Agreement is entirely separate from and independent of other contracts and agreements among the Parties. This Agreement does not and will not be deemed to change any rights or obligations under previously executed contracts or agreements between or among the Parties except as may be provided in this Agreement.

16.11 Notice

Except as otherwise provided in this Section 16.11, any Notice required by this Agreement shall be written. To the extent practicable, Notice shall be

sent to all Parties still in existence and by first-class U.S. mail, guaranteed overnight delivery, telefacsimile, electronic mail, or by other means. For the purpose of this Agreement and unless otherwise specified, a Notice shall be effective upon receipt, but if provided by U.S. mail, seven (7) days after the date on which it is mailed. Any Notice shall also meet any additional requirements specified in any section of this Agreement. For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix A. The Parties shall provide Notice of any change in the authorized representatives designated in Appendix A, and the Licensees shall maintain the current distribution list of such representatives. The Parties acknowledge that it is their responsibility to keep the Licensees informed of current address, telephone, facsimile and electronic mail information, and that failure to provide the Licensees with current contact information will result in a waiver of that Party's right to Notice under this Agreement.

16.12 Amendment of Agreement

This Agreement may be amended only by a written instrument duly executed by the Parties.

16.13 Amendment of New Project Licenses

The Parties shall not seek amendments or modifications to the New Project Licenses inconsistent with the provisions of this Agreement.

16.14 Reference to Regulations

Any reference in this Agreement to any federal or state regulation shall be deemed to be a reference to such regulation, or successor regulation, in existence as of the date of the action in question.

16.15 Titles for Convenience Only

The titles for the Sections of this Agreement are used only for convenience of reference and organization and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of the Parties. This Agreement has been jointly drafted by the Parties and therefore shall be construed according to its plain meaning and not for or against any Party.

17 Execution of Agreement

17.1 Signatory Authority

Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the Party he or she represents,

and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

17.2 Signing in Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

IN WITNESS THEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed through their duly authorized representatives.

American Rivers

by _____

Steve Rothert, California Regional Director

California Department of Fish and Game

by _____

Kent Smith, Regional Manager

California Department of Water Resources

by _____

Mark Cowin, Director

Pacific Gas & Electric Company

by _____

Michael L. Jones, Power Generation Lead
United States Department of Agriculture Forest Services

by _____

and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

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American Rivers

by _____

Rebecca Wodder, President

California Department of Fish and Game

by _____

Kent Smith, Regional Manager

California Department of Water Resources

by _____

Mark Cowin, Director

Pacific Gas & Electric Company

by _____

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Rebecca Wodder, President

California Department of Fish and Game

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California Department of Water Resources

by _____

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Pacific Gas & Electric Company

by _____

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United States Department of Agriculture Forest Services

by _____

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American Rivers

by _____

Rebecca Wodder, President

California Department of Fish and Game

by _____

Kent Smith, Regional Manager

California Department of Water Resources

by _____

Mark Cowin, Director

Pacific Gas and Electric Company

by Michael Jones 3/30/11

Michael L. Jones, Power Generation
for Randal S. Livingston, Vice President for Power Generation

United States Department of Agriculture Forest Services

by _____, DRF April 6, 2011

Daniel Jiron, Deputy Regional Forester

United States Department of Commerce National Marine Fisheries Service

by _____

Rodney R. McInnis, Regional Administrator, Southwest Region

United States Fish and Wildlife Service

by _____

Susan Moore, Field Supervisor, Sacramento Fish and Wildlife Office

State Water Contractors, Inc.

by _____

Terry Erlewine, General Manager

Daniel Jiron, Deputy Regional Forester

United States Department of Commerce National Marine Fisheries Service

by Rodney R McInnis

Rodney R. McInnis, Regional Administrator, Southwest Region

United States Fish and Wildlife Service

by _____

Susan Moore, Field Supervisor, Sacramento Fish and Wildlife Office

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by _____

Terry Erlewine, General Manager

Daniel Jiron, Deputy Regional Forester

United States Department of Commerce National Marine Fisheries Service

by _____

Rodney R. McInnis, Regional Administrator, Southwest Region

United States Fish and Wildlife Service

by Susan K. Moore

Susan Moore, Field Supervisor, Sacramento Fish and Wildlife Office

State Water Contractors, Inc.

by _____

Terry Erlewine, General Manager

Daniel Jiron, Deputy Regional Forester

United States Department of Commerce National Marine Fisheries Service

by _____

Rodney R. McInnis, Regional Administrator, Southwest Region

United States Fish and Wildlife Service

by _____

Susan Moore, Field Supervisor, Sacramento Fish and Wildlife Office

State Water Contractors, Inc.

by _____

Terry Erlewine, General Manager

APPENDIX A

Names and Contact Information of Parties

American Rivers
Rebecca Wodder
President
1101 14th St., NW, Suite 1400
Washington, DC 20005
Phone: (202) 347-7550
Fax: (202) 347-9240

California Department of Fish and Game
North Central Region
Kent Smith, Regional Manager
1701 Nimbus Road, Ste. A
Rancho Cordova, CA 95670
Phone: (916) 358-2921
Fax: (916) 358-2912

California Department of Water Resources
Mark Cowin
Director
P.O. Box 942836
Sacramento, CA 94236-0001
Phone: (916) 653-7007
Fax: (916) 653-5028

Pacific Gas & Electric Company
Randy Livingston
Vice President, Power Generation
245 Market Street, N11E
San Francisco, CA 94105
Phone: (415) 973-6950
Fax: (415) 973-3967

United States Department of Agriculture Forest Service
Daniel Jiron
Deputy Regional Forester
1323 Club Drive
Vallejo, CA 94592
Phone: (707) 562-9000
Fax: (707) 562-9049

United States Department of Commerce National Marine Fisheries Service
Rodney R. McInnis
Regional Administrator, Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802
Phone: (562) 980-4005
Fax: (562) 980-4018

United States Fish and Wildlife Service
Susan Moore
California and Nevada Operations Manager
2800 Cottage Way
Sacramento, CA 95825
Phone: (916) 414-6464
Fax: (916) 414-6486

State Water Contractors, Inc.
Terry Erlewine
General Manager
1121 L Street, Suite 1050
Sacramento, CA 95814
Phone: (916) 447-7347
Fax: (916) 447-2734

APPENDIX B

Reservation of Authority

Authority is reserved for the National Marine Fisheries Service and the Department of the Interior to prescribe the construction, operation, and maintenance of fishways at the project, including measures to determine, ensure, or improve the effectiveness of such prescribed fishways, pursuant to Section 18 of the Federal Power Act, as amended, during the term of the project license, as provided in the Habitat Expansion Agreement (2007).