APPENDIX C

Water Contracts and Agreements

CITY OF SACRAMENTO

A. INTRODUCTION

The City of Sacramento (City) purveys water within the City limits and a small area outside the City limits in the Fruitridge area. The City serves approximately 121,000 connections of which about 110,000 are residential customers.

The City of Sacramento has surface water entitlements on both the American and Sacramento Rivers and also uses groundwater. The City has a permanent agreement with the United States Bureau of Reclamation guaranteeing the accessibility of their entitlements. The authorized place of use under the City's water rights do not encompass the entire metropolitan area. The Sacramento River rights apply to the City limits; the American River rights cover an area of approximately 96,000 acres within and adjacent to the City.

The City has existing diversion, treatment, storage and pumping facilities on both of the rivers. The Sacramento River plant is located just downstream of the confluence with the American River. The American River plant known as the E. A. Fairbairn Water Treatment Plant (FWTP) is located near Howe Avenue approximately 16 miles downstream from Nimbus Dam.

B. SEVEN ELEMENTS OF THE *WATER FORUM AGREEMENT*: INTEGRATED PACKAGE

In order to achieve the Water Forum's two coequal objectives, providing a safe reliable water supply and preserving the values of the Lower American River, all signatories to the *Water Forum Agreement* need to endorse and, where appropriate, participate in each of seven complementary actions.

- Increased Surface Water Diversions
- Actions to Meet Customers' Needs While Reducing Diversion Impacts in Drier Years
- Support for an Improved Pattern of Fishery Flow Releases from Folsom Reservoir
- Lower American River Habitat Management Element
- Water Conservation Element
- Groundwater Management Element
- Water Forum Successor Effort

For each interest to get its needs met, it has to endorse all seven elements. Based on this linkage, signatories agree to endorse and, where appropriate, participate in all seven of these elements.

C. BASELINE DIVERSIONS

Baseline diversions represent the historic maximum amount of water diverted annually from the American River through the year 1995.

Although the City has the physical capacity to divert up to 112,000 AF, the baseline for the City's American River diversion is 50,000 AF. The rest of the City's surface water demand is met by Sacramento River diversion.

D. AGREEMENT FOR MEETING THE CITY OF SACRAMENTO'S WATER SUPPLY NEEDS TO THE YEAR 2030

TEXT OF CITY AGREEMENT:

1. Use of E. A. Fairbairn Water Treatment Plant (FWTP) Diversion Capacity

a. In extremely dry years (i.e., years in which the State of California Department of Water Resources [DWR] annual projected unimpaired inflow into Folsom Reservoir would be 550,000 Acre-Feet Annually (AFA) or less, also referenced as the March through November projected unimpaired flow into Folsom Reservoir being less than 400,000 acre feet) the City would limit its diversions of City Water[12] at the FWTP to not greater than 155 cubic feet per second (cfs) and not greater than 50,000 AFA. Any additional water needs would be met by diversions at other locations and/or other sources.

City water diverted at the FWTP in extremely dry years in accordance with the foregoing limitations could be used anywhere within the City's authorized Place of Use (POU) as it exists now and in the future[13].

b. In all other years, (i.e. when the DWR annual projected unimpaired runoff into Folsom Reservoir is greater than 550,000 AF, or the March through November projected unimpaired inflow into Folsom Reservoir is greater than 400,000 AF) the City may divert City Water at the FWTP in accordance with the following criteria.

(1) Diversion up to 310 cfs (200 mgd) so long as the flow bypassing the diversion at the FWTP is greater than the Hodge Flow Criteria[14].

(2) Whenever flow bypassing the diversion at the FWTP is less than the Hodge Flow Criteria, City diversions may not be greater than the following:

January through May	120 cfs
June through August	155 cfs
September	120 cfs
October through December	100 cfs

c. **Retail Water Service**. City Water diverted at FWTP in accordance with Article (b) of this section may be delivered anywhere: (1) within the City limits as they exist now

[12]The term "City Water" refers to water diverted pursuant to the City's water rights and entitlements.
[13]The City's POU, as it existed on January 1, 1997, is shown on Attachment I.
[14] The "Hodge Flow Criteria" is defined in Appendix C.

and in the future, and (2) within the City Retail Service Area[15] as it exists now and in the future but not including the area designated on Attachment II expected to be served by agencies other than the City.

d. **Wholesale Water Service - Above Hodge**. Whenever the flow bypassing the diversion at the FWTP is greater than the Hodge Flow Criteria the City may deliver City Water diverted or treated at the FWTP to public or private water purveyors on a wholesale basis, pursuant to wholesale agreements, anywhere within the POU as it existed on January 1, 1997. If it is proposed in the future to expand the POU this provision will be revisited by the Water Forum Successor Effort.

e. **Wholesale and Wheeling Water Service - Below Hodge.** Whenever flow bypassing the diversion at the FWTP is less than the Hodge Flow Criteria, any water diverted or treated at the FWTP may be delivered on a wholesale (City Water) or wheeling (non-City water) basis to any public or private water purveyors provided the rate of pumpback[16] is equal to or exceeds the rate of delivery for these purposes on a daily basis.

f. **Wholesale Delivery to Arcade and Citizens Utilities - Interim Period.** During the interim period prior to expansion of the FWTP and construction of a pumpback facility, delivery of City water may be provided to Arcade Water District and Citizens Utilities service areas within the City's POU whenever the flow bypassing the diversion at the FWTP is greater than the Hodge Flow Criteria. Such wholesale deliveries may also be made if it can be demonstrated[17] that such delivery does not originate from diversion at the FWTP. Citizens Utilities Southgate Service Area is exempt from this specific restriction.

g. **Environmental Signatories Support.** Environmental signatories' support for wholesale water deliveries from the City under articles d, e, and f of this section is contingent on those purveyors signing and implementing the *Water Forum Agreement*. Citizens Utilities Southgate Service Area is exempt from this contingency.

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[15] The "City Retail Service Area" refers to the area where the City provides retail water service.

[16] This Agreement uses the term "pumpback" which assumes the existence of a metered raw water conveyance facility delivering water from near the confluence of the Sacramento and American rivers to the FWTP.

[17] Demonstration would consist of either the FWTP being out of service and/or the water quality of the water delivered having characteristics (i.e. electrical conductivity, total dissolved solids, hardness, etc..) of Sacramento River water.

2. Divert and Treat an Additional 155 cubic feet per second at the Fairbairn Water Treatment Plant.

a. Currently the 310 cubic feet per second diversion capacity at the Fairbairn Water Treatment Plant is constrained to 155 cubic feet per second by the City's ability to treat the water.

The City may rehabilitate its FWTP diversion facility and expand its FWTP treatment capacity by another 100 million gallons per day. This will allow the City to divert and treat an additional 155 cubic feet per second consistent with the terms of Section 1 above.

b. Concurrent with the expansion of the FWTP the City will also construct other facilities such as expansion/rehabilitation of the Sacramento River Water Treatment Plant and river intake to assure that a reliable alternative supply (groundwater, pumpback and/or diversion from the Sacramento River) is available whenever it is needed.

3. Continuing studies of the Lower American River

a. Upon receipt by the City of all necessary regulatory approvals to construct the additional capacity referred to in Section 2(a), above, completion of the City's environmental review for the project, and construction of said additional capacity, the City will commence a study program to monitor and evaluate the impacts of using the additional diversion capacity, in accordance with the diversion limits described in Section 1, upon the public trust values of the American River below the FWTP.

b. Not later than five years after the study program has commenced the results will be evaluated as follows:

(1) If the City and the Water Forum Successor Effort agree that results show that use of the additional diversion capacity pursuant to Section 1 above would have a significant adverse impact not considered in the City's prior environmental review, the City will reduce its use of the additional diversion capacity to levels that will not have such significant adverse impact.

(2) If at some time in the future, the City determines that it needs additional capacity and the Water Forum Successor Effort agrees that results demonstrate that increased diversions will not have significant adverse impacts, the City will have the support of all signatories if it chooses to pursue regulatory approvals for appropriate higher diversion limits and for the construction of more diversion and treatment capacity at FWTP for use within the POU.

(3) If the City and the Water Forum Successor Effort cannot agree on the results of (1) above, the limits will remain as specified in Section 1, the studies will continue and the evaluation of results will be repeated, as above, at intervals not exceeding three years.

E. SPECIFIC AGREEMENTS FOR COMPLYING WITH THE SEVEN ELEMENTS

(Agreements in italics are common in all Specific Agreements.)

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

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

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

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

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

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

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

3. Endorsement of the water entitlements and related facilities in the Water Forum Agreement means that signatories will expend reasonable efforts to:

a. Speak before stakeholder boards and regulatory bodies,

b. Provide letters of endorsement,

c. Provide supportive comments to the media,

d. Advocate the Water Forum Agreement to other organizations, including environmental that are not signatory to the Water Forum Agreement, and

e. Otherwise respond to requests from other signatories to make public their endorsement of the Water Forum Agreement.

4. *All signatories agree that participation in the Water Forum, and the Successor Effort is in the best interests of water consumers and the region as a whole. Participation in the Water Forum is the most economically feasible method of ensuring that water demands of the future will be met. Furthermore, provisions for groundwater management, conjunctive use, conservation programs, improved pattern of fishery flow releases from Folsom Reservoir, habitat management, and a reliable dry year supply are in the public interest, and represent reasonable and beneficial use of the water resource.*

5. All signatories will not oppose and will endorse where appropriate needed rates and fees applied equitably. This includes endorsement at the California Public Utilities Commission for investor owned utilities' ability to recover all costs of conservation programs, including residential meter retrofit, through rates.

6. All signatories will endorse an Improved Pattern of Fishery Flow Releases from Folsom Reservoir and reduced daily flow fluctuations for the Lower American River. (Reference Section Three, III.)

7. All signatories will endorse formal assurances that the diversions will be consistent with the conditions in the Water Forum Agreement and that an Improved Pattern of Fishery Flow Releases from Folsom Reservoir will be implemented.

8. All signatories will endorse and participate where appropriate in all provisions of the Water Forum Agreement, including all agreements pertaining to other signatories and executed as part of this Agreement.

9. All signatories will participate in education efforts and advocate the Water Forum Agreement to regulatory bodies and signatory stakeholder boards as appropriate.

10. All signatories will participate in the Water Forum Successor Effort to oversee, monitor and report on the implementation of the Water Forum Agreement. (Reference Section Three, VII., Water Forum Successor Effort). This includes participating with other signatories in carrying out procedural agreements as identified in the Water Forum Agreement. To the extent that conditions change in the future, all signatories will work together in good faith to identify ways to ensure that the two coequal goals of the Water Forum will still be met.

11. All signatories will endorse and, where appropriate, financially participate in the Lower American River Habitat Management Element (Reference Section Three, IV.,Lower American River Habitat Management Element).

12. All signatories will endorse and, where appropriate, implement the Water Conservation Element of the Agreement (Reference Section Three, V., Water Conservation Element). This purveyor's implementation of water conservation will be as specified in its Water Conservation Plan which is incorporated as Appendix J to the Water Forum Agreement.

13. All signatories will endorse and, where appropriate, participate in implementation of the Sacramento North Area Groundwater Management Authority to maintain a North Area estimated average annual sustainable yield of 131,000 acre feet.

14. All signatories will endorse development of a groundwater management arrangement for the South Area and where appropriate participate in its development, to maintain a South Area estimated average annual sustainable yield of 273,000 acre feet.

15. All signatories will endorse development of a groundwater management arrangement for the Galt Area and where appropriate participate in its development, to maintain a Galt Area estimated average annual sustainable yield of 115,000 acre feet.

16. Signatories authorizing individuals to represent them in matters included within the Water Forum Agreement will ensure that representations made by those individuals are consistent with the Water Forum Agreement and are upheld by the signatories.

17. This Agreement is in force and effect for all signatories for the term of the Memorandum of Understanding, December 31, 2030.

18. Any solution that provides for future needs will have costs. New diversion, treatment, and distribution facilities, wells, conservation programs, and required environmental mitigation will be needed. This Agreement identifies that these solutions must be equitable, fiscally responsible, and make the most efficient use of the public's money.

Water suppliers have both capital costs for facilities and operations and maintenance costs. This Agreement recommends that charges imposed to recover capital costs associated with water acquisition, treatment, or delivery be equitable. Any costs for facilities funded through bonds will be recovered as provided by law. In addition, signatories to the Water Forum Agreement agree that operational, maintenance and replacement costs should be recovered from beneficiaries of the system in accordance with California Government Code Sections 53720 to 53730 (Proposition 62) and California Constitution, Articles XIII, C and XIII, D (Proposition 218) and other laws to the extent they are applicable.

19. All signatories to the *Agreement* will endorse County/SCWA agreements with the City of Sacramento for wheeling and wholesaling of surface water prior to and after completion of the City's capacity expansion.

20. All signatories agree to endorse, and where appropriate, participate in Sacramento River Supply for North Sacramento County and Placer County (Reference Section Four, III).

21. All signatories will endorse, and where appropriate, participate in the section of the Water Forum Agreement entitled "Relationship of Water Forum Agreement to Land Use Decision Making" (Reference Four, IV).

22. All signatories will endorse, and where appropriate, participate in the Folsom Reservoir Recreation Program (Reference Section Four, V).

23. Purveyors signatory to the Water Forum Agreement will reference the Water Forum Agreement, including agreed upon estimated average annual sustainable yields of each of the three subareas of the groundwater basin in Sacramento County and limits to diversions from the American River in their water master plans and urban water management plans, which are used in providing information to cities and counties as required under Chapter 881 of the Statutes of 1995.

24. Any transfers of American River water by signatories will be delivered in a manner consistent with an Improved Pattern of Fishery Flow Releases as referenced in the Water Forum Agreement.

F. ASSURANCES AND CAVEATS

Because the *Water Forum Agreement* is a comprehensive set of linked elements, it is absolutely essential that adequate assurances be secured for every element. In an agreement that will extend over three decades, the timing of these assurances is critical. Full implementation of all seven elements cannot occur simultaneously. Therefore all signatories agree with the provisions in the Assurances and Caveats Section of this *Water Forum Agreement*.

Two particularly important assurances are the updated Lower American River Flow Standard and Upstream American River Diversion Agreements.

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

Water Forum Agreement provisions on water diversions including dry year diversions, and

Implementation of the Improved Pattern of Fishery Flow Releases which optimizes the release of water for the fisheries.

The recommendation will also address related issues such as principles to guide water management in the driest years, flexibility in the standard to allow adaptive management, and amending the existing "Declaration of Full Appropriation for the American River."

Purveyors signatory to the *Water Forum Agreement* who divert from upstream of Nimbus Dam agree they will enter into contract with the Bureau that will provide assurances that the upstream diverters will divert only the agreed upon amounts, which include provisions for reductions in dry year and/or other equivalent measures.

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

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

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

(1) Support for the Improved Pattern of Fishery Flow Releases
(2) Water Forum Successor Effort
(3) Water Conservation Element
(4) Lower American River Habitat Management Element
(5) Support for the Updated Lower American River flow standard
(6) Restriction of diversions or implementation of other actions to reduce diversion impacts in drier years as specified in its Purveyor Specific Agreement.

and

b. If a purveyor is not successful in obtaining all necessary approvals for all of its facilities and entitlements as shown on the chart in Section Three, I., of the *Water Forum Agreement*, "*Major Water Supply Projects that will Receive Support Upon Signing the Water Forum Agreement,*" that would constitute a changed condition that would be considered by the Water Forum Successor Effort.

2. All signatories agree that business, citizens, and environmental signatories' obligation to support, and where specified, implement all provisions of the *Water Forum Agreement* is contingent on implementation of those provisions of the *Agreement* that meet their interests.

3. A stakeholder's support for water supply entitlements and facilities is contingent on:

a. Project-specific compliance with the California Environmental Quality Act, and where applicable, the National Environmental Policy Act, federal Endangered Species Act and California Endangered Species Act.

b. Purveyors' commitment in their project-specific EIRs and CEQA findings to: all seven elements of the *Water Forum Agreement*; support for updating the Lower American River flow standard; commitment by those purveyors that divert from upstream of Nimbus Dam to entering into signed diversion agreements with the U.S. Bureau of Reclamation; commitment by the City of Sacramento to inclusion of the terms of the diversion provisions of its Purveyor Specific Agreement into its water rights.

c. Signed diversion agreements between purveyors that divert upstream of Nimbus Dam and the U.S. Bureau of Reclamation. Other signatories to the *Water Forum Agreement* shall be third party beneficiaries to the diversion agreements solely for the purpose of seeking specific performance of the diversion agreements relating to reductions in surface water deliveries and/or diversions if Reclamation fails to enforce any of those provisions. The status of a signatory to the *Water Forum Agreement* as a third party beneficiary to the diversion agreements is dependent on that signatory complying with all the terms of the *Water Forum Agreement*, including support for the purveyor specific agreement for the purveyor's project. This is not to intend to create any other third party beneficiaries to the diversion agreements, and expressly denies the creation of any third party beneficiary rights hereunder for any other person or entity.

d. Adequate progress on the updated Lower American River standard. The schedule for obtaining the updated standard is in Section Four, I., of the *Water Forum Agreement*.

e. Adequate progress in construction of the Temperature Control Device.

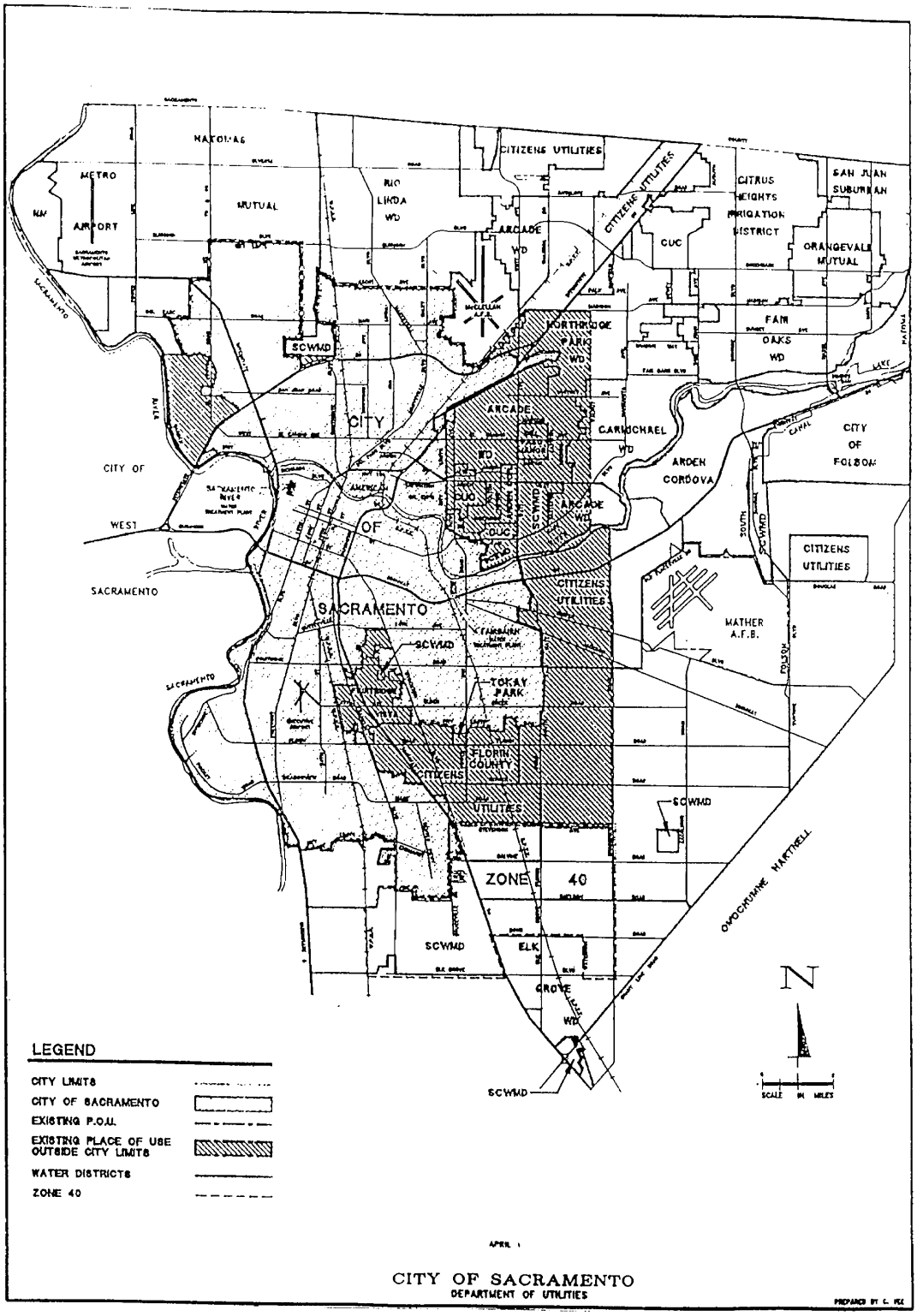
f. Adequate progress in addressing the Sacramento River and Bay-Delta conditions associated with implementation of the *Water Forum Agreement*.

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

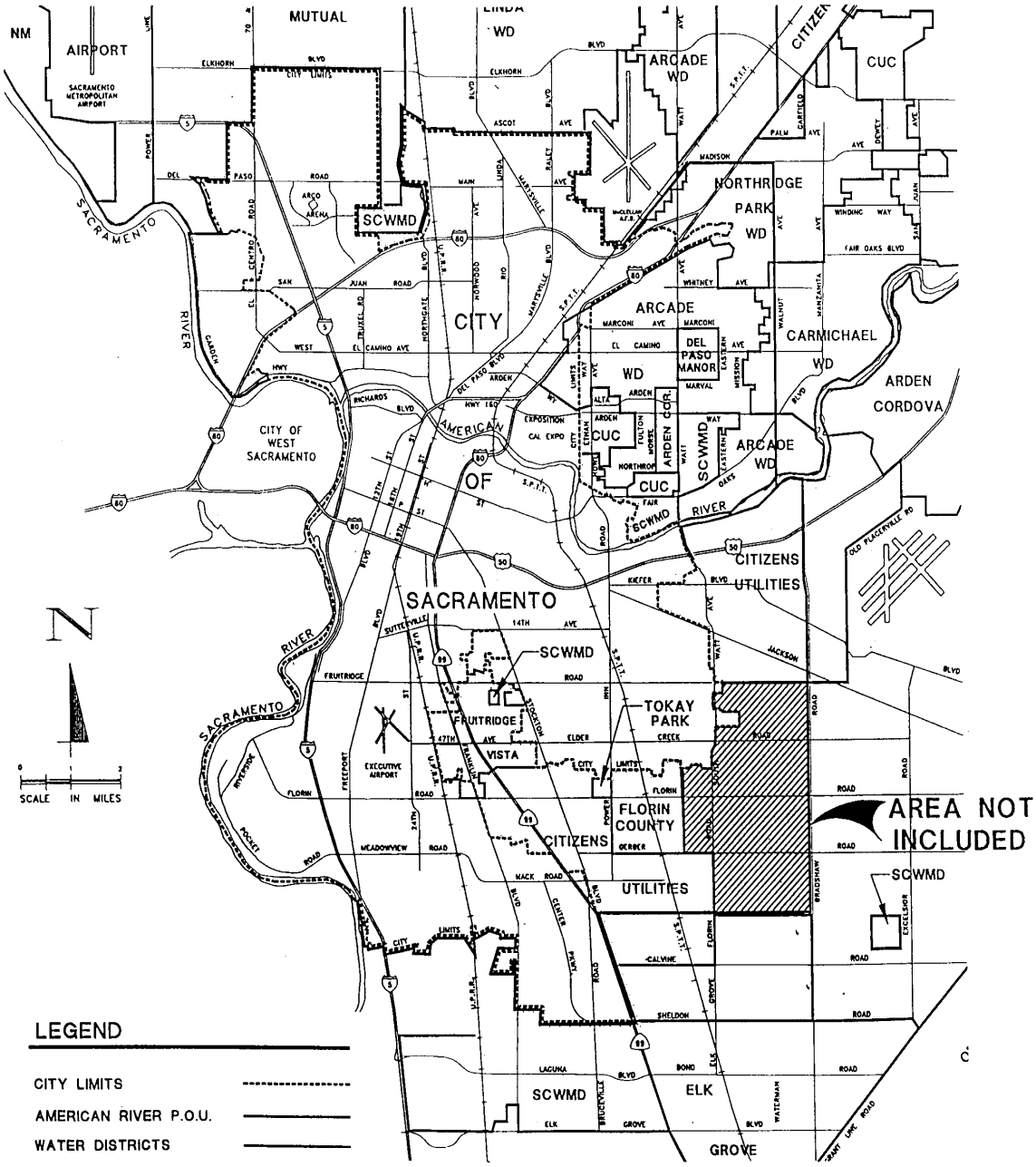
G. REMAINING ISSUES

Development of a groundwater management arrangement for the South Area.

Attachment I
Map of City POU as of 1/1/97



Attachment II
Retail Service Area Exception



Contract No.
14-06-200-6497

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
CENTRAL VALLEY PROJECT, CALIFORNIA

OPERATING CONTRACT RELATING TO FOLSOM AND NIMBUS DAMS AND THEIR RELATED WORKS AND TO DIVERSIONS OF WATER BY THE CITY OF SACRAMENTO

1. THIS CONTRACT, made this 28th day of June, 1957, in pursuance generally of the Act of Congress approved June 17, 1902 (32 Stat. 388), and all acts of Congress amendatory thereof or supplementary thereto, particularly Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1187, 1197-1198), and the Act of Congress approved October 14, 1949 (Ch. 690, 63 Stat. 852), all of which are commonly known and referred to as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as the "United States", represented by its officer who executes this contract, his duly appointed successor, or his duly authorized representative, herein styled the "Contracting Officer", and THE CITY OF SACRAMENTO, CALIFORNIA, a municipal corporation, herein styled the "City", acting by and in pursuance of the authority contained in the Constitution and laws of the State of California and particularly Article XI, Sections 8 and 19 of said Constitution, and Sections 2 and 8 of the City's Charter approved by Stats. 1921, p. 1919, as amended.

W I T N E S S E T H:

2. WHEREAS, the United States has constructed a dam and reservoir in and across the American River at a point upstream from Folsom, Sacramento County, California, and will utilize said dam and

reservoir and their related works for the diversion and storage of waters of the American River for reasonable and beneficial uses and purposes, said dam being known as Folsom Dam and the reservoir created thereby being known as Folsom Lake; and

3. WHEREAS, in carrying out the provisions of said Federal Reclamation Laws the United States deems it advantageous upon the terms herein agreed upon to dispose of rights to stored water in its reservoirs heretofore constructed or that might be constructed by the United States under the provisions of the Reclamation Act, and

4. WHEREAS, the City has constructed and is operating certain diversion and distribution facilities for the diversion of water of the Sacramento River and has perfected certain rights to the use of water of the Sacramento River and its tributaries from natural flow and is in the process of perfecting additional rights to the use of water of the Sacramento and American Rivers, and the water it has historically diverted is deemed insufficient for the anticipated growth and water requirements of the City, and

5. WHEREAS, the City is desirous of perfecting its water supply by arranging with the United States for the use of a portion of the said storage waters, and

6. WHEREAS, the City desires and intends to construct water diversion and filtration facilities and related works on the American River below Nimbus Dam within or adjacent to the City for diversion and distribution of water supplies for a municipal use and desires to continue and develop the use of the waters of the Sacramento River through its existing facilities at a point one-quarter

mile below the confluence of the Sacramento and American Rivers, and through other facilities which may be constructed on the Sacramento River within or adjacent to the City, for diversion, filtration and distribution of water, and

7. WHEREAS, the United States and the City have filed applications for the appropriation of unappropriated water and have protested certain applications of each other for the appropriation of unappropriated water, and it is the desire of the parties to settle and adjust any and all differences that might exist between them so that definite assurances can be had as nearly as practicable for the continued enjoyment and use of their respective diversion facilities and operations and to provide amicable means for the necessary increase and expansion of the City's beneficial uses of water, and

8. WHEREAS, the construction and operation of Folsom Dam and its related works and the distribution and regulation of the water of the American River and its tributaries as provided for under this contract are deemed to be mutually beneficial and desirable:

NOW, THEREFORE, in consideration of the premises herein contained, it is hereby agreed by and between the parties hereto as follows:

9. On March 19, 1957, the United States and the Sacramento Municipal Utility District, a municipal corporation, executed a contract entitled "Contract Relating to Sacramento Municipal Utility District Upper American River Project Reservoirs", a copy of which is attached hereto and hereinafter referred to as the SMUD contract.

The following paragraph of this Article is a diversion schedule prepared to show the schedule of diversions by the City of

Sacramento with and without the development by SMUD referred to in the SMUD contract. The quantities are expressed in thousands of acre feet for the respective years. The requirements shown in Schedule A of the tabulation are derived from information given in City of Sacramento Exhibit No. 4, Table 8, of the records, files and proceedings of the California State Water Rights Board concerning Application 12140, and others, before that Board for the appropriation of unappropriated water. The quantities shown in Schedule B of the tabulation are 75% of the annual requirements given in Schedule A of the tabulation.

Diversion schedule by City of Sacramento
with and without SMUD development,
in 1,000 acre-feet

Year	Total requirement Schedule "A"	Requirement from American River Schedule "B"	Required from Folsom Reservoir: Without SMUD development Schedule "C"	Required from Folsom Reservoir: With SMUD development Schedule "D"
1963	64.0	48.0	8.0	8.0
64	66.0	49.5	8.5	8.5
1965	68.0	51.0	9.0	9.0
66	70.5	53.0	9.4	9.4
67	73.0	55.0	9.8	9.8
68	75.5	56.5	10.0	10.0
69	78.0	58.5	10.5	10.5
1970	80.7	60.5	11.0	11.0
71	83.0	62.5	11.5	11.5
72	86.0	64.5	12.0	12.0
73	88.5	66.5	12.5	12.5
74	91.5	68.5	13.0	13.0
1975	94.5	71.0	13.5	13.5
76	97.5	73.0	14.0	14.0
77	100.5	75.5	15.0	14.5
78	103.5	77.5	16.0	15.0
79	106.5	80.0	17.5	15.5
1980	110.0	82.5	19.0	16.0
81	113.0	85.0	21.0	16.5
82	116.0	87.0	23.0	17.0
83	119.5	89.5	25.0	17.5
[illegible]	123.0	92.0	27.5	18.0
[illegible]5	126.0	94.5	30.0	18.5

Year	Total requirement Schedule "A"	Requirement from American River Schedule "B"	Required from Folsom Reservoir: Without SMUD development Schedule "C"	Required from Folsom Reservoir: With SMUD development Schedule "D"
1986	129.5	97.0	32.0	19.5
87	133.0	99.5	35.0	20.0
88	136.5	102.0	37.5	20.5
89	140.0	105.0	40.0	21.0
1990	143.5	107.5	43.0	22.0
91	147.5	110.5	46.0	22.5
92	151.0	113.0	49.0	23.5
93	154.5	116.0	52.0	24.0
94	158.5	119.0	55.0	24.5
1995	162.5	122.0	58.0	25.5
96	166.5	125.0	61.0	26.0
97	171.0	128.0	64.5	27.0
98	175.0	131.0	67.5	28.0
99	179.0	134.0	71.0	29.0
2000	183.5	137.5	74.5	30.0
01	187.5	140.5	78.0	31.0
02	192.0	144.0	81.0	32.0
03	196.0	147.0	85.0	33.0
04	200.5	150.5	88.0	34.5
2005	205.0	154.0	91.5	36.0
06	209.5	157.0	95.0	37.5
07	214.0	160.5	98.5	39.0
08	218.5	164.0	102.0	40.5
09	223.0	167.5	105.5	42.5
2010	227.5	170.5	109.0	44.0
11	232.5	174.5	113.0	46.5
12	237.0	178.0	116.0	48.5
13	242.0	181.5	120.0	50.5
14	247.5	185.5	124.0	53.0
2015	252.0	189.0	127.5	55.5
16	257.5	193.0	131.0	58.0
17	262.5	197.0	135.0	60.0
18	268.0	201.0	138.5	62.5
19	273.0	205.0	142.5	64.5
2020	278.0	208.5	146.5	67.0
21	283.0	212.5	150.5	69.5
22	288.5	216.5	154.5	71.5
23	293.5	220.0	158.5	74.0
24	298.5	224.0	162.5	76.0
2025	304.0	228.0	166.5	78.5
26	308.5	231.5	171.0	81.0
27	313.5	235.0	175.0	83.0
28	318.0	238.5	179.0	85.5
29	322.5	242.0	183.5	88.0
2030 and subsequent years	326.8	245.0	187.5	90.0

The United States will make available for diversion by the City water from the American River up to the quantities specified in Schedule B, and the United States will so operate Shasta Dam and its related works so as not to interfere with the diversions by the City at its facilities on the Sacramento River referred to in Article No. 6 above or to prevent the City from enjoying the additional diversions represented by the difference between Schedules A and B.

The United States will impound and store water in the reservoirs back of Folsom and Nimbus Dams or elsewhere and does hereby agree to discharge and release into the river channel below Nimbus Dam for the use of the City an amount of water which will, with all of the water that the City is otherwise entitled to and all water not otherwise appropriated, aggregate a quantity of water as shown in Schedule B and will so operate Folsom and Nimbus Dams and their related works that water will be discharged and released into the river channel below Nimbus Dam for later downstream diversion by the City at its said American River diversion and filtration facilities at the times and in the quantities shown in Schedule B.

10. The City's rate of diversion from the Sacramento River shall not exceed 225 cubic feet of water per second and its rate of diversion from the American River shall not exceed 675 cubic feet of water per second; and the total quantity diverted by the City from the American River shall not exceed the quantities shown in Schedule B. Following April 1 of any water year in which the October 1 - Sept. 30 estimated natural inflow to Folsom Reservoir measured and as predicted the United States based, in part, upon the runoff estimates of the California Cooperative Snow Survey Program on April 1 is less than

1,275,000 acre-feet, City's diversions from the American River each month when requested by the Contracting Officer shall not exceed 75% of the aggregate taking from both the Sacramento and American Rivers until Folsom Reservoir would fill or reach flood-control limitation in the absence of additional storage facilities on the American River.

11. The City shall be entitled to reasonable flexibility in demands based on maximum daily requirements and maximum peaks during such days. The City will cooperate with the Contracting Officer to facilitate United States operations to make this possible.

12. City shall pay, at the rate of $9.00 per acre foot, beginning in 1963, for the number of acre feet shown in Schedule C: Provided, however, that if the Sacramento Municipal Utility District builds its Upper American River Project and operates that project in accordance with the SMUD contract the City shall pay, at the rate of $9.00 per acre foot, beginning in 1963, for the number of acre feet shown in Schedule D.

The City shall make payments to the United States each calendar year as hereinafter provided, at rates fixed as provided in this Article. The City shall pay one-half of the amount payable for the year on or before January 1, and shall pay the remainder of the amount payable for the year on July 1.

Upon every installment of money required to be paid by the City to the United States pursuant to this contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a charge of one-half (1/2) of one (1) percent per month of the amount of such delinquent installment from and after the date when the same becomes due until paid; and the City hereby agrees

o pay said charge: Provided, That no such charge shall be made to or be paid by the City unless such delinquency continues for more than thirty (30) days.

Payment shall be made at the office of the Regional Director of the Bureau of Reclamation, Town and Country Village in Sacramento County, or at any other place designated by the United States in a written notice to the City.

NOTE

13. The parties agree that in 1978 and again in 1988 the parties may renegotiate the terms of this contract as to quantities of water diverted and to be diverted by the City, so that the schedule of water diversions can be revised downward, and consequent payment for water shall be reduced proportionately thereafter in the ratio that the revised Schedule "B" bears to the original Schedule "B".

14. If prior to the year 2030, the City finds that because of accelerated growth its water requirements are greater than those indicated by Schedule A, the quantity of water to be furnished each year can be advanced in the schedule. In such case, the payment based upon Schedules C or D would be similarly advanced. This advancement of the schedule of diversions and of payments would not entitle the City to any water from the American River above the maximum of 245,000 acre feet annually as provided for in Schedule B above.

15. Should the City requirements exceed 245,000 acre feet annually from the American River it shall be the right of the City to secure the additional water it needs by means other than this contract. These other means may be, and are not restricted to, additional contracts with the United States if both the City and United States agree

such contracts, contracts with other parties, or the development by the City itself of additional water supplies, provided that the development of such supplies shall not involve the use of any facilities or water rights of the United States without its permission.

16. Should the Sacramento Municipal Utility District build and operate its project as provided in the SMUD contract during or after 1978 then payments being made by the City would change from Schedule C basis back to Schedule D basis when the SMUD project becomes so operational.

17. Should the Sacramento Municipal Utility District build and operate a project of lesser extent than that contemplated in the SMUD contract and which project might produce less water, and to the extent that SMUD releases are smaller, a new payment schedule shall be computed which will be intermediate between the basis of Schedules C and D and so computed to reflect payment for average computed demands on Folsom Reservoir.

18. The City will retain all its water rights and as between the United States and the City, the use of water by the City under the contract shall be treated by the United States as diligence of the City in perfecting by beneficial use the developing rights of the City in the Sacramento and American Rivers. Furthermore, by this contract the parties request the properly constituted agencies of the State of California to issue permits and licenses designated to sanction or permit the operations specified in this contract, but the parties agree that any necessary applications, permits and licenses, and rights of any and all sources and derivations owned by them may and shall be exercised as required to the end that the operational matters specified in this contract may and shall be performed, and the parties will use

due diligence to protect and defend their water rights and to acquire and keep in good standing any necessary applications, permits and licenses provided for by the laws of the State of California.

19. The City upon receiving the water discharged and released below Nimbus Dam and bypassed below Nimbus Dam as herein provided will at its own cost convey the same to the places of use and perform all actions necessary or required by law or custom in order to maintain its control over such water, and in order to secure its lawful and proper diversion from the said river through the head works of the City and the beneficial application of the same to use. All losses or diminution of such water by reason of seepage, evaporation, or other causes, after diversion by the City at the aforesaid point of diversion shall be bourne by the City.

20. Beneficial use shall be the basis, measure and limit of all rights hereunder.

21. The United States shall not be responsible for failure to supply water under this contract caused by insufficient supply of water, hostile diversion, unusual drouth, interruption of service made necessary by repairs, nor on account of any other distribution than that herein stipulated for, directed, or ordered to be made by any valid or subsisting order or decree of a court, nor for any damages caused by floods, acts of hostility, or unavoidable circumstances, nor for loss of crops or other damage caused by non-delivery of water.

22. The rights under this agreement shall be such as would permit the City to use the water in such manner as may be granted to it under State law.

23. This contract shall be permanent, but the quantity of water diverted from the American River by the City shall not exceed 245,000 acre-feet per year nor the rate of 675 cfs; also, the quantity diverted by the City from the Sacramento River shall not exceed 225 cfs. Provided, as a condition and not as a limitation or covenant, performance by the United States under the contract shall be in accord with the rights of the City as defined in any license or licenses granted under the law of California, and should such license or licenses provide for a lesser rate of diversions than those herein assumed, then the obligation of the United States for the discharge and releases of water from and by its storage works on the Sacramento and American Rivers shall be adjusted accordingly.

24. The execution of this contract shall constitute a withdrawal of any protest the United States has against any applications of the City for the appropriation of unappropriated water of the American and Sacramento Rivers.

25. The execution of this contract, also, shall constitute a withdrawal of any protests by the City against the applications of the United States for the appropriation of unappropriated water of the American and Sacramento Rivers.

26. By the execution of this agreement the parties hereto join in asking the Director of the Department of Water Resources of the State of California to execute a partial transfer to the City of Applications 5635, 5636, 5645, 7938, 7939 and 7940 for the appropriation of unappropriated water, insofar as they may now or hereafter be required for operations for the benefit of the City under this contract and to assign the rest and remainder of said applications to

the United States for use in the operation of the Central Valley Project.

27. Notwithstanding any permit or license issued to the United States for any diversion of the Sacramento and American Rivers below the points of diversion of the City of Sacramento, the uses of water under this contract shall carry all priorities accorded to or for municipal uses under the laws of the State of California and the United States will recognize such priorities. Within the limits of available water supply the City would not be required to accept any pro-rata of a deficiency in water of the American River.

28. No warranties, express or implied, by the United States shall be deemed to exist with regard to the potability of the water supplies diverted by the City, but to the contrary, the City self will take due measures on its own behalf to insure and protect the potability of its own water supplies.

29. The parties agree and consent that this contract can be referred to and adopted by any administrative or judicial body of the state or federal government that has a proper governmental function with respect to the operational matters referred to in this contract and it may adopt, if desired, this contract as a part of any relevant administrative or judicial act, order or decree.

30. In order to enable the United States to discharge and release the supply of water herein specified on the basis of payments as herein provided, the City hereby makes available to the United States for exercise, delivery and performance of this contract, with title, however, to remain in the City, all of its right, title, and terest to the waters of the Sacramento River and its tributaries over and above any amounts provided for in this contract, and limits

its claims to the amounts specified in this contract, and the City shall assist the United States in the defense of said claims by the furnishing of all evidence and other like matters in its power or knowledge, in consideration whereof, upon the failure of the United States, through drouth or otherwise to fulfill its obligations hereunder, the City's said claims and rights to water shall revert unburdened to the City until deliveries of water as provided by this contract shall be resumed. The City will not convey, encumber, or transfer its water rights in such manner as to impair the ability of the parties to perform the provisions of this contract, and the City warrants that it has not heretofore impaired any of its water rights.

31. The City agrees to install, operate, and maintain such equipment and to make such computations as may be necessary to record all stream diversions of and by its various project facilities. Authorized representatives of the United States shall have access to such equipment at all reasonable times and shall be supplied with copies of all such records and computations upon request.

32. Except as provided herein, nothing herein is to be construed as an allocation of water rights as between the United States and the City or as between the signatories hereto and any third parties.

33. Subject to the provisions of this contract the United States may store and retain in its reservoirs on the American River, now constructed or to be constructed, all or such part of the water of the American River and its tributaries for such periods of time, including periods of several years' duration, as it may desire, and may withdraw water from storage in its reservoirs, in such amounts and in such rates as it may desire, and may restore

in one or more of its reservoirs all or any part of the water of the American River and its tributaries, and may divert the water within or without the watershed, provided, that nothing herein shall prevent the City from obtaining rights to use waters of the American River for municipal purposes from any storage project on the American River hereafter constructed which does not utilize facilities or water rights of the United States.

34. Subject to the provisions of this contract the United States may store and retain in its reservoirs on the Sacramento River, now constructed or to be constructed, all or such part of the water of the Sacramento River and its tributaries for such periods of time as it may desire, including periods of several years' duration, and may withdraw water from storage in its reservoirs, in such amounts and at such rates as it may desire, and may restore in one or more of its reservoirs all or any part of the water of the Sacramento River and its tributaries as it may desire, and may divert the water within or without the watershed, provided, that nothing herein shall prevent the City from obtaining rights to use waters of the Sacramento River or its tributaries for municipal purposes from any storage project on the Sacramento River or its tributaries hereafter constructed which does not utilize facilities or water rights of the United States.

35. It is the desire of the United States and the City to provide for the maximum beneficial use of the waters of the American and Sacramento Rivers and their tributaries, and to accomplish such purpose it may be desirable that operations under this contract be modified. Representatives of the United States and the City will confer with each other at least once each year, and if it shall appear

to them that storage, retention, or release other than that contemplated by this contract may be made without substantial injury or harm to the respective interests of the parties hereto in such waters and their use, then it is agreed between the parties that such storage, retention, or release may be made for the period agreed upon. Upon the expiration of such agreed period of time, in the absence of further agreement, the operations specified in this contract shall govern. Any such agreement reached by representatives of the United States and of the City shall forthwith be confirmed in writing by the representative of the party initiating the request. For the purpose of such conferences the City shall designate a representative, and the Contracting Officer shall designate a representative for the United States. Each such representative shall continue in office until his successor is duly designated. Such representative shall be authorized so to confer and to agree to such storage, retention, and release under such conditions as may carry out the purpose of this Article.

36. Representatives of the United States and the City shall confer with each other as often as necessary for the purpose of agreeing upon or approving methods, procedure, data, or other matters required under this contract to be mutually agreed upon or approved by the United States and the City. For the purpose of such conferences and for agreeing to or approving such matters the City shall designate a representative, and the Contracting Officer shall designate a representative for the United States, which may be the same persons designated pursuant to the preceding Article. Any such agreement reached by the United States and the City shall be reduced to writing and signed

by such representatives. Each such representative shall continue in office until his successor is duly designated. Such representatives shall be authorized so to confer and to agree to or approve such matters.

37. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made by a corporation or company for its general benefit.

38. This contract shall inure solely to the benefit of the parties hereto and their respective successors and assigns. No other person, partnership, association, district, or corporation shall acquire or have any right under or by virtue of this contract. This contract shall be binding upon any respective successors and assigns of the parties hereto.

39. This contract shall become effective concurrently with the issuance to the parties of permits by the California State Water Rights Board in consonance with the operations herein specified. The effective date shall be established by a joint announcement of the parties. The operating requirements of the parties shall begin with the year 1963 in which the City expects to begin the operation of its American River diversion facilities, but payments under the contract by the City shall be apportioned in accordance with the American River diversions by the City during that year.

40. <u>Contingent upon Appropriations</u>

Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress

aking the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the City hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

41. Nondiscrimination in Employment

In connection with the performance of work under this contract, the City agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The City agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

The City further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

IN WITNESS WHEREOF, the parties hereto have duly executed these presents in eight counterparts all as of the day and year first hereinabove written.

THE UNITED STATES OF AMERICA

/s/ By C. H. SPENCER
Regional Director, Region II
Bureau of Reclamation

CITY OF SACRAMENTO,
a municipal corporation

/s/ By CLARENCE L. AZEVEDO
Mayor

ATTEST:

/s/ PAUL H. MANBY
City Clerk

APPROVED AS TO FORM:

/s/ EVERETT M. GLENN
City Attorney

APPENDIX C

WHAT IS THE HODGE DECISION?

Existing flow requirements, for the Lower American River, known as Decision D – 893, were set 40 years ago when much less was known about the life cycles and needs of the fish, particularly fall-run chinook salmon. Since then we have learned more about them and watched as their population further declined under the outdated standard.

In 1970 the East Bay Municipal Utility District (EBMUD) contracted with the U. S. Bureau of Reclamation for water that would be diverted from the Lower American River into the Folsom South Canal at Nimbus which is upstream of the Lower American River. Parties including Sacramento County, the Environmental Defense Fund, and Save the American River Association sued EBMUD over concern about how these increased diversions would further impact the Lower American River fishery. Millions of dollars were spent on legal costs and fishery studies.

At the end of the 17-year lawsuit, Judge Hodge evaluated all of the evidence and issued his decision which balanced the needs of the fishery with EBMUD's contractual entitlement to American River water. Judge Hodge reasoned that because EBMUD had reasonable and feasible alternatives for meeting its needs, it could use the Folsom-South Canal diversion only when specified flows would remain in the river. These flows have come to be known as the Hodge Flows.

While Judge Hodge's decision applies only to parties to that lawsuit, the Water Forum is considering the same standards for any water district that was found to have reasonable and feasible alternatives.

The Water Forum also recognizes that some agencies, such as those at higher elevations, have no reasonable and feasible alternatives to increased American River diversions in most years and therefore probably would not be held to the Hodge standard.

D – 893

September 15 – December 31	500 cubic feet per second
January 1 – September 14	250 cubic feet per second

Hodge Decision

October 15 – February	2,000 cubic feet per second
March – June	3,000 cubic feet per second
July – October 14	1,750 cubic feet per second