

EI DORADO INTRA-COUNTY COORDINATION AGREEMENT

This El Dorado Intra-County Coordination Agreement (“Agreement”) is made and entered into this ____ day of _____, 2005 by and between the following parties:

- The County of El Dorado;
- The El Dorado County Water Agency;
- The Georgetown Divide Public Utility District;
- The El Dorado Irrigation District; and
- The El Dorado Water and Power Authority.

WHEREAS, the County of El Dorado (“County”), the El Dorado County Water Agency (“EDCWA”), the El Dorado Irrigation District (“EID”) and the Georgetown Divide Public Utility District (“GDPUD”) (each individually a “Party” and collectively “the Parties”) formed the El Dorado Water & Power Authority (“EDWPA”) for the purpose of protecting, preserving and enhancing the water and power interests of El Dorado County;

WHEREAS, the County and EDCWA executed two agreements with the Sacramento Municipal Utility District (“SMUD”) regarding the use of the Upper American River Project (“UARP”) in 1957 and 1961 (“1957 and 1961 Agreements”), respectively, both thereafter assigned to EDCWA, and subsequently further assigned to EID pursuant to an Agreement between EDCWA and EID, attached hereto as Exhibits “A”, “B” and “C”, respectively;

WHEREAS, SMUD and the Parties have differing interpretations of the 1957 and 1961 Agreements and preferring to resolve their disputes and order their affairs by mutual agreement, the Parties have negotiated a Cooperation Agreement with SMUD that sets forth the Parties’ agreed rights and obligations regarding the use of UARP facilities for the storage and diversion of water;

WHEREAS, SMUD has applied for a new license for the UARP from the Federal Energy Regulatory Commission (“FERC”) and the Parties desire compensation for mitigation of adverse impacts associated with the issuance of the new license, and SMUD intends to provide compensation to the Parties as provided in the Cooperation Agreement;

WHEREAS, the Cooperation Agreement will be approved and executed by SMUD and each of the Parties;

WHEREAS, the Cooperation Agreement provides certain rights for the Parties and requires certain performances of the Parties, but without allocation or delegation of all

benefits or burdens among the Parties, and it is the mutual desire of the Parties by this Agreement to make a binding and final allocation and delegation among them, and each of them, as to all such rights and performances;

WHEREAS, as a separate, independent and subsequent action, in a manner consistent with the Cooperation Agreement the Parties may subsequently pursue and acquire rights for the storage within the UARP and thereafter diversion and use in El Dorado County of available water to meet projected demands of up to 30,000 acre-feet per year in 2025 and up to 40,000 acre-feet per year thereafter pursuant to the Cooperation Agreement; and

WHEREAS, the Parties desire to coordinate their subsequent discretionary actions to secure a water supply and their required actions under the Cooperation Agreement.

NOW THEREFORE, the Parties agree as follows:

1. Acknowledgment of Rights. The shared uses of the UARP facilities described and conditioned by the Cooperation Agreement are permissive benefits that will be apportioned among the Parties to allow the development of water for consumptive use within El Dorado County, only as described in this Agreement. The Parties mutually acknowledge and agree that by the Cooperation Agreement and this Agreement none of the Parties acquire any title or ownership interest in either of the 1957 or 1961 Agreements not held and owned by any of them at the time of entering into this Agreement.

1.1 Allocation of Use of Facilities and Water Storage. Among the El Dorado Parties the right to use SMUD’s UARP facilities for the storage and delivery of water will be allocated as provided herein.

1.1.1 GDPUD. GDPUD will have the right to use the UARP facilities for the purpose of receiving Annual Deliveries of up to 10,000 acre-feet per year, as well as the right to any associated Seasonal Storage as “GDPUD Reserved Capacity.” However, to the extent GDPUD is not making use of any portion of the GDPUD Reserved Capacity, then EID may make use of the UARP facilities reserved to GDPUD in addition to its rights provided under Sections 1.1.2 and 1.1.3 below without providing compensation to GDPUD. In the event that EID has actually used some portion of the GDPUD Reserved Capacity, EID will terminate its use of the GDPUD Reserved Capacity upon GDPUD’s compliance with the following preconditions: (i) GDPUD will provide a preliminary notice to the Parties five (5) years prior to the date at which GDPUD intends to use the GDPUD Reserved Capacity, and (ii) GDPUD, upon the certification of an environmental review document required by CEQA or a successor statute for a project that will allow its use of its Reserved Capacity under this section, will provide a further notice of its intent to use the GDPUD Reserved Capacity at least eighteen (18) months before GDPUD intends to begin using the GDPUD Reserved Capacity.

1.1.2 EID. EID will have the right to use the UARP facilities for the purpose of receiving Annual Deliveries or making Deliveries to Carryover Storage of up to a total of 20,000 acre-feet until the year 2025 and thereafter, up to 30,000 acre-feet per year, as well as the right to any associated Seasonal Storage along with its Carry-Over Storage rights set forth in 1.1.3 as EID Reserved Capacity.

1.1.3 Carryover Storage. EID will have the exclusive right to store water in and receive deliveries from Carryover Storage, as it is described in the Cooperation Agreement.

1.1.4 Restricted Deliveries. In the event that the entire 30,000 or 40,000 acre-feet of El Dorado Water is not available for Annual Deliveries or Delivery to Carryover Storage in a particular year, EID and GDPUD shall share in any reduction pro rata on the basis of entitlement, except that GDPUD shall have the right to receive not less than 2,000 acre-feet so long as it is available.

1.1.5 Mutual Rights. The Parties recognize and understand that each of the Parties' abilities, constraints, desires, or needs to utilize the shared uses of the UARP facilities provided in the Cooperation Agreement and allocated by this Agreement are different and may vary in amount, timing and use. The water supplies that may be subsequently acquired by the Parties may be commingled and withdrawn in accordance with the terms of the Cooperation Agreement and as further allocated herein. No consideration is to be paid or received for variances in amount, timing and use.

2. Coordination of Efforts

2.1 Position of the Parties. No Party will take a position in any judicial or administrative forum that is inconsistent with the Cooperation Agreement or this Agreement. Specifically, for so long as this Agreement is in effect no Party will assert claims, interpretations or rights to or under the 1957 and 1961 Agreements that are or may be inconsistent with the provisions of this Agreement or the Cooperation Agreement.

2.2 El Dorado Designated Representative. The El Dorado Parties agree that the El Dorado Designated Representative will be the sole and exclusive Party that may, and is responsible for the exercise of, the obligations described in Section 19.1 of the Cooperation Agreement and in the case of any litigation challenging the rights of the El Dorado Parties arising under the Cooperation Agreement. The El Dorado Water and Power Authority will serve as the El Dorado Designated Representative unless and until that entity ceases to exist, in which case the El Dorado County Water Agency will succeed to the exercise of the rights and responsibilities of the El Dorado Designated Representative.

2.3 Coordination of Water Supply Acquisition Efforts. The Parties will exercise good faith and their best efforts to coordinate their actions to acquire water supplies for the storage, diversion and use of the UARP facilities in accordance with and

that implements the Cooperation Agreement. The El Dorado Designated Representative will serve as the representative of the Parties for all purposes in the process of acquiring the water rights and water supplies to be stored in and diverted through and from the UARP in a manner consistent with this Agreement, as contemplated by Sections 6.1, 6.2, and 6.3 of the Cooperation Agreement, as follows:

2.3.1 in seeking regulatory approvals from the California State Water Resources Control Board (“SWRCB”), FERC and the United States Bureau of Reclamation (“USBR”); and

2.3.2 in all negotiations, including but not limited to negotiations with the City of Sacramento, the USBR, the SWRCB, the Central Valley Project Contractors and the State Water Project Contractors; and

2.3.3 in any Water Forum process that may be established as contemplated by the Cooperation Agreement, except to the extent a “Purveyor Specific Agreement” requires separate representation and individual participation by one or more of the Parties. To the extent GDPUD and EID independently participate in the Water Forum process, each Party will reasonably coordinate their efforts with the El Dorado Designated Representative so as to present common and consistent positions.

2.3.4 The El Dorado Designated Representative will exercise its best efforts in good faith to secure water supplies in a manner that is (a) consistent with the Cooperation Agreement and (b) preserves to all of the Parties the rights, benefits and obligations accruing under the Cooperation Agreement, as allocated under this Agreement.

2.3.5 The Parties will share the costs and expenses of the water supply acquisition efforts pursuant to the funding mechanisms then employed by EDWPA, or as the Parties may otherwise determine. Such costs and expenses shall include those necessary for compliance with sections 5.2.2.4, 11.2.5, and section 2(e) of Exhibit G of the Cooperation Agreement.

2.4 Compliance with CEQA. The Parties will coordinate their actions under the California Environmental Quality Act (“CEQA”), including but not limited to the designation of appropriate Lead and Responsible Agencies.

2.5 Subsequent Instruments. Subject to compliance with applicable law, including but not limited to the California Environmental Quality Act, the Parties will reasonably review, approve and execute additional and supplemental documents that may be necessary, customary or useful in securing water supplies in a manner consistent with the Cooperation Agreement.

3. Coordination with SMUD. The Parties agree to coordinate their interaction with SMUD pursuant to the Cooperation Agreement as described in this section 3.

3.1 General Interaction. Subject to the Parties' compliance with the procedures of paragraph 7.4, the El Dorado Designated Representative will not refuse any reasonable request of any Party to take action (either proactive or reactive) in its representative capacity pursuant to Section 2.2 of this Agreement.

3.2 Scheduling of Deliveries. The El Dorado Designated Representative will comply with the notice and forecasting requirements contained in Sections 5.2.1, 5.2.2, 5.3, and 5.4 of the Cooperation Agreement and it will specifically identify for each El Dorado Party the quantity of water delivery being forecasted. EID and GDPUD will coordinate with the El Dorado Designated Representative in order that the El Dorado Designated Representative may meet the notice and forecasting requirements contained in sections 5.2.1, 5.2.2, 5.3 and 5.4 of the Cooperation Agreement. EID and GDPUD will provide the El Dorado Designated Representative with the required information five (5) working days before such information must be provided to SMUD.

3.3 Reporting of Deliveries. The El Dorado Designated Representative will comply with the reporting requirements set forth in Sections 7.1.3 and 7.3 of the Cooperation Agreement. EID and GDPUD will coordinate with the El Dorado Designated Representative in order that the El Dorado Designated Representative may meet reporting requirements contained in sections 7.1.3 and 7.3 of the Cooperation Agreement. EID and GDPUD will provide the El Dorado Designated Representative with the required information five (5) working days before such information must be provided to SMUD.

3.4 Negotiation of Interconnection Construction Agreement. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties in the negotiations of the Interconnection Construction Agreement pursuant to Section 5.2.2.2 of the Cooperation Agreement. The El Dorado Party that will primarily utilize the interconnection to the White Rock Delivery Point will coordinate with the El Dorado Designated Representative for the purposes of such negotiations. EID will serve as the El Dorado Designated Representative's agent in its compliance with this section 3.4.

3.5 Construction, Maintenance and Operation of Interconnection Facilities. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties in all matters related to the construction, maintenance and operation of the interconnection facilities described in Section 5.2.2 of the Cooperation Agreement. The El Dorado Party that will primarily utilize the interconnection to the White Rock Delivery Point will coordinate with the El Dorado Designated Representative for the purposes of such negotiations. Such El Dorado Party shall bear the costs of such construction, maintenance and operation. EID will serve as the El Dorado Designated Representative's agent in its compliance with this section 3.5.

3.6 Negotiation of and Communications under the Data Interchange Agreement. The El Dorado Designated Representative will serve as the

representative of the El Dorado Parties in the negotiation of and communications under the Data Interchange Agreement, pursuant to Section 5.4.3 of the Cooperation Agreement. EID and GDPUD will coordinate with the El Dorado Designated Representative in order that the El Dorado Designated Representative may perform under the requirements of the Cooperation Agreement related to the Data Interchange Agreement. As to the Annual Deliveries, Deliveries to Carryover Storage, and Deliveries from Carryover Storage to which each may be entitled, GDPUD and EID will serve as the El Dorado Designated Representative's agent in its compliance with this section 3.5.

3.7 Installation, Maintenance and Calibration of White Rock Meter. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties in all matters related to the installation, maintenance and calibration of the White Rock Meter pursuant to Section 7.1 of the Cooperation Agreement. That El Dorado Party responsible for Installation of the White Rock Meter(s) pursuant to Section 4.1 of this Agreement shall coordinate with the El Dorado Designated Representative in such representation. EID will serve as the El Dorado Designated Representative's agent in its compliance with this section 3.7.

3.8 Reopening of Cooperation Agreement. The El Dorado Designated Representative will serve as the representative of the El Dorado Parties in any negotiations pursuant to a re-opener as identified in Article XIII of the Cooperation Agreement. The Parties agree to coordinate their actions in regard to the re-opening of the Cooperation Agreement, pursuant to Article XIII thereof. The El Dorado Designated Representative will act as the primary designated representative of the Parties in any negotiations pursuant to a re-opener as follows:

3.8.1 In the event that a Party requests that a re-opener be exercised under the Cooperation Agreement, the moving Party will provide written notice to the other Parties identifying the specific re-opener it seeks to exercise and a brief summary of the requested relief. Within 30 days of the written notice, a meeting will be promptly scheduled among the Parties so as to establish a mutually agreeable course of action.

3.8.2 If, after the exercise of reasonable efforts a mutually agreeable strategy has been reached, the Parties, through the El Dorado Designated Representative, will implement the strategy.

3.8.3 If, after the exercise of reasonable efforts the Parties are unable to reach agreement upon a mutually agreeable strategy, the direction provided by a majority vote of EDWPA or its successors, will determine the course of action, including whether to request a re-opener under the Cooperation Agreement. EDWPA shall not refuse to approve the request of a Party to exercise a re-opener unless it makes, based on substantial evidence, one or more of the following findings: (a) the water supply needs of the Party requesting exercise of the re-opener do not justify such exercise; (b) the Party requesting exercise of the re-opener will not have the financial capability to operate under the situation desired; or (c) the exercise of the re-opener will

materially impair the water supply availability or cause material financial harm to any other Party. GDPUD's use or intended use of the GDPUD Reserved Capacity or EID's use or intended use of the EID Reserved Capacity, as allocated under sections 1.1.1, 1.1.2 and 1.1.4, shall not be considered to materially impair any other Party's water supply availability.

In the event that EDWPA should refuse to approve such a request, such refusal will be subject to challenge through the use of a neutral arbitrator, whose decision will be binding upon the parties. If the Parties cannot agree upon an arbitrator, each of EDWPA and the Party requesting the exercise of such re-opener will nominate a neutral arbitrator and those two arbitrators shall agree upon a neutral arbitrator to conduct such arbitration. The neutral arbitrator shall comply with California law and shall apply the standard of review stated in Code of Civil Procedure section 1094.5.

3.9 Resolution of Disputes under the Cooperative Agreement. In the case of any dispute that may arise under the Cooperation Agreement, as between the Parties on the one hand, and SMUD on the other, the El Dorado Designated Representative will serve as the representative of the Parties in any proceedings in order to resolve such dispute, as described in Article XVII of the Cooperation Agreement on a cost and expense sharing basis pursuant to the funding mechanisms then employed by EDWPA, or as the Parties may otherwise determine.

3.10 Power Foregone Payments. The El Dorado Designated Representative will detail in its monthly reporting, pursuant to Sections 7.1.3 and 7.3 of the Cooperation Agreement, to which Party and the quantities of deliveries that have been made and provide copies to each Party. Questions or corrections of any El Dorado Designated Representative report must be made by any affected Party within fifteen (15) days of receipt of such report. The Parties will meet and confer within five (5) days of the raising of such question or correction in order to resolve such question or correction. Any disputes among the Parties regarding the accuracy any monthly reporting by El Dorado Designated Representative will be resolved no later than January 15 of each Payment Year. The final report issued to SMUD by El Dorado Designated Representative will be deemed conclusive for all purposes as among the Parties of the apportionment of water provided and the accuracy of the quantities stated therein. EID and GDPUD, as may be applicable, shall make direct payment to SMUD as described in Section 8.2 of the Cooperation Agreement for only the portion of water deliveries that each has received, as reported in the final report issued to SMUD.

3.11 Notices. The El Dorado Designated Representative will serve as the representative of the Parties for providing and receiving all notices required under the Cooperation Agreement, including notices of reopener under Article XIII of the Cooperation Agreement.

4. Subsequent Construction. EID and GDPUD shall each be responsible for the construction and funding of all non-UARP facilities necessary for each to exercise the rights described in the Cooperation Agreement and as allocated or implemented under

this Agreement. Additionally, EID and GDPUD agree that each Party will act as Lead Agency, if appropriate under CEQA, for the purposes of CEQA compliance, in their respective construction of any such facilities, and that any such construction will be accomplished in compliance with CEQA.

4.1 Installation of Meters. The Party constructing facilities that will allow the collection of deliveries at the White Rock Delivery Point will pay for and install meters that conform to, and otherwise timely comply with all other, requirements of Section 7 of the Cooperation Agreement.

5. Support for GDPUD and EID Funding. Upon written request by GDPUD or EID, EDWPA, or its successors, and its member agencies will act in good faith to determine reasonable efforts the Parties might undertake to support the efforts of EID or GDPUD to secure identified state or federal funding to offset the costs of construction, operation and maintenance of water facilities, including but not limited to funding obtained through Proposition 50 grants or Water Resources Development Act allocations.

6. SMUD Payments. Any payments made by SMUD pursuant to the Cooperation Agreement will be disbursed or used as described in this Section 6.

6.1 Initial and Annual Payments. SMUD's Annual Payments and Initial Payments, as described in the Cooperation Agreement, shall be made to the County as it may direct SMUD. As between the Parties to this Agreement, the County has complete discretion as to where and how these monies will be used within El Dorado County as limited only by Section 4.4 of the Cooperation Agreement, except as provided in sections 6.2 and 6.3 of this Agreement.

6.2 Iowa Hill Payments. The Iowa Hill Initial Payment, Iowa Hill Annual Payments and the Iowa Hill Measured Impacts Payments, as described in the Cooperation Agreement, shall be paid to the County as it may direct SMUD. As between the Parties to this Agreement, the County has complete discretion as to where and how these payments will be allocated and distributed solely for the benefit of that region within El Dorado County affected by the construction of the Iowa Hill Development.

6.3 GDPUD Payment. Each year, during the continuance in effect of the Cooperation Agreement, that the County receives payment from SMUD pursuant to Section 4.2 of the Cooperation Agreement, within 30 days of the County's receipt of said Annual Payment in unrestricted good funds, the County shall pay to GDPUD 9/59 of that amount that the County receives, without administrative or processing charges or fees. Within ten (10) calendar days of receiving such payments, GDPUD will provide acknowledgement, in writing, of such receipt.

7. General Provisions

7.1 Effective Date. This Agreement will be effective upon the execution by each and every Party hereto.

7.2 Term. Unless superseded or amended by subsequent agreement among the Parties, the term of this Agreement will be coterminous with that of the Cooperation Agreement, including any renewal terms.

7.3 Remedies. The Parties acknowledge and agree that the covenants, agreements and representations of the Parties as set forth in this Agreement are unique and of such a nature as to be inherently difficult or impossible to value in monetary damages, and that a remedy at law for any breach will be by itself inadequate. Accordingly, each Party agrees that if any breach occurs, the remedy of specific performance or other injunctive or equitable relief in addition to compensatory relief will be available to the fullest extent available under the law.

7.4 Dispute Resolution. Other than in an emergency, the Parties will exercise good faith and reasonable efforts in attempting to resolve disputes under this Agreement. Upon the request of any Party, the Parties will employ a mediator to assist them in attempting to resolve a dispute. The mediator shall be acceptable to all Parties to the dispute. The Parties to the dispute shall share the mediator's fees and costs. Each Party shall be responsible for the fees and costs of professionals, including attorneys, that it employs to assist it in participating in mediation under this section 7.4.

In the event that a dispute arises between the Parties regarding a performance due of the Parties that is to be accomplished by the El Dorado Designated Representative, and that dispute cannot be resolved prior to the time at which such performance is due, or the El Dorado Designated Representative believes that withholding such performance would prejudice the rights of any or all of the El Dorado Parties, the El Dorado Designated Representative shall be permitted to accomplish such performance that it determines is reasonably necessary prior to the resolution of such dispute.

7.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed in this State.

7.6 Assignment. No Party may transfer or assign this Agreement or any part thereof except to another Party to this Agreement, and then only with the other Parties' prior written consent, which consent may not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective permitted assigns and successors in interest. Should an additional water purveying entity be created within El Dorado County that could benefit from utilization of water developed through the Cooperation Agreement, upon becoming a member agency of EDWPA, that entity may be made a party to this Agreement upon the consent of the then-existing Parties to this Agreement.

7.7 Other Instruments. Each Party from time to time will execute and deliver such other and further documents as another Party or the El Dorado Designated Representative may reasonably deem necessary to effectuate the intent of the Parties and carry out the provisions of this Agreement.

7.8 Reservation of Rights. Nothing in this Agreement limits or affects the Parties' rights to secure water rights for storage or use through facilities other than as provided in the Cooperation Agreement.

7.9 Signatures - Counterparts. This Agreement and any amendment hereto, may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement will not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any of such completely executed counterparts will be sufficient proof of this Agreement.

8. Condition Subsequent. As an express condition subsequent, this Agreement will be terminated and without further effect if the Parties have not: (a) executed a Cooperation Agreement with SMUD within one year of the Effective Date or (b) secured approval for the diversion of water through the UARP, pursuant to the Cooperation Agreement, within ten years of the Effective Date.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and and year set forth above.

County of El Dorado

By: _____

Attest:

El Dorado County Water Agency

By: _____

Attest:

Georgetown Divide Public Utility District

By: _____

Attest:

El Dorado Irrigation District

By: _____

Attest:

El Dorado Water and Power Authority

By: _____

Attest:

APPROVED AS TO FORM:

By: _____

By: _____

By: _____

By: _____

By: _____