# SETTLEMENT AGREEMENT

by and among

Planning and Conservation League, Plumas County Flood Control and Water Conservation District, Citizens Planning Association of Santa Barbara County, Inc.

and

The State of California Department of Water Resources, Central Coast Water Authority, Kern Water Bank Authority and those State Water Project Contractors identified herein.

_____, 2003

## TABLE OF CONTENTS

**Page**


I. DEFINITIONS ..... 4

A. "Attachment A Amendments" ..... 4

B. "Attachment B Principles" ..... 4

C. "Attachment C Guidelines" ..... 4

D. "Attachment D Principles" ..... 4

E. "Attachment E Transfers" ..... 4

F. "CEQA" ..... 4

G. "Citizens Planning Association" ..... 4

H. "CCWA" ..... 4

I. "Consent to Entry of Order Discharging Writ" ..... 5

J. "DWR" ..... 5

K. "EIR Committee" ..... 5

L. "HCP" ..... 5

M. "Interim Implementation Order" ..... 5

N. "JAMS Trust Account" ..... 5

O. "Kern-Castaic Transfer" ..... 5

P. "Kern Environmental Permits" ..... 5

Q. "Kern Fan Element Transaction" ..... 5

R. "KWB Lands" ..... 6

S. "KWBA" ..... 6

T. "Mediator" ..... 6

U. "Mediation Issue" ..... 6

V. "Monterey Agreement" ..... 6

W. "Monterey Amendment" ..... 7

X. "New EIR" ..... 7

Y. "Party" ..... 7

Z. "PCL" ..... 7

AA. "PCL Complaint" ..... 7

BB. "Plaintiffs" ..... 7

CC. "Plaintiffs' Expenses Trust Account" ..... 7

**TABLE OF CONTENTS**
**(continued)**

**Page**


DD. "Plumas" ..... 7

EE. "Plumas Amendment" ..... 7

FF. "Plumas Arrearages" ..... 7

GG. "Return to Writ" ..... 7

HH. "Rossmann" ..... 7

II. "Section VI Trust Account Agreement" ..... 8

JJ. "Superior Court" ..... 8

KK. "SWP" ..... 8

LL. "SWP Contracts" ..... 8

MM. "SWP Contractors" ..... 8

NN. "Validation Cause of Action" ..... 8

OO. "Watershed Forum" ..... 8

PP. "Watershed Programs" ..... 9

QQ. "1995 EIR" ..... 9

II. ADMINISTRATION OF THE STATE WATER PROJECT PENDING NEW ENVIRONMENTAL IMPACT REPORT AND DISCHARGE OF WRIT OF MANDATE ..... 9

III. NEW ENVIRONMENTAL IMPACT REPORT ..... 9

A. Preparation ..... 9

B. EIR Committee ..... 10

C. New EIR Content ..... 10

D. Acknowledgement and Agreement Regarding Attachment E Transfers ..... 12

E. Acknowledgement and Agreement Regarding Kern-Castaic Transfer ..... 12

F. Acknowledgement and Agreement Regarding Kern Water Bank ..... 12

G. Reimbursement of Plaintiffs' Expenses for Participation in the Preparation of New EIR ..... 13

1. DWR Obligation to Reimburse Plaintiffs. ..... 13

2. Deposit into Trust Account. ..... 13

3. Disbursement of Funds to Plaintiffs. ..... 13

H. Disputes Regarding Mediation Issues ..... 14

1. Referral to Director of DWR. ..... 14

**TABLE OF CONTENTS**
**(continued)**

**Page**


2. Referral to Mediator. 14
3. Notices to Other Parties. 14
4. Advisory Opinion by Mediator. 14
5. Final Decision by DWR. 14
6. Mediator's Costs and Expenses. 15
a. Referrals by Plaintiffs' Representatives. 15
b. Referrals by SWP Contractors' Representatives. 15
c. Frivolous or Harassing Referrals. 15
I. Filing of New EIR upon Completion 15
IV. PLUMAS MATTERS 16
A. Monetary Settlement 16
1. Agreement to Pay. 16
2. Schedule of Payments. 16
a. Annual Payments. 16
b. Post Notice-of-Determination Payments. 16
c. Effects of Litigation on Payment Obligation. 17
(1) Suspension of Payment Obligation. 17
(2) Termination of Payment Obligation. 17
3. Use of Funds. 18
a. Funding of Watershed Programs. 18
b. Balance of Funds to General Purposes. 18
c. Annual Carry-Over. 18
B. Watershed Forum and Programs 18
1. Formation of Watershed Forum. 18
2. Purpose and Goals 18
a. Generally. 18
b. Specific Goals. 19
c. Emphasis on Feather River Watershed. 19
d. Technical Advisors. 19
3. General Watershed Forum Issues 20

**TABLE OF CONTENTS**
**(continued)**

**Page**


a. Cooperation. 20
b. Dispute Resolution. 20
c. Interruption in Funding. 20
d. No Limitation on DWR Obligations. 20
C. Plumas Amendment 20
D. Dialogue between Plumas and DWR 21
E. Future Relations 22
F. Contract Payments 22
V. KERN WATER BANK. 22
A. Title 22
B. Restrictions on Use of KWB Lands 22
1. Continued Use as Water Bank. 22
2. Use of KWB Lands for other SWP Purposes. 23
3. Use of KWB Lands for other than SWP Purposes. 23
4. The 490 Acres. 23
5. Application of HCP Restrictions. 23
6. Land Use Changes Subject to CEQA. 24
C. Transfer/Development Proceeds 24
D. Consultation with Plaintiffs 24
E. Scope of Restrictions 25
F. Effective Date of Restrictions 25
VI. FUNDING TO PLAINTIFFS 26
A. Agreement to Pay 26
B. Schedule of Payments 26
C. Effects of Litigation on Payment Obligations 27
1. Suspension of Payment Obligation. 27
2. Termination of Payment Obligation. 27
D. Use of Funds 27
E. Unrelated to Attorney Fees 27

**TABLE OF CONTENTS**
**(continued)**

**Page**


VII. SEQUENCE AND PROCESS FOR IMPLEMENTATION OF SETTLEMENT ..... 28

A. Non-Reliance on 1995 EIR ..... 28

B. Attachment A Amendments ..... 28

C. Motion for Order Approving Settlement Agreement and Interim Implementation Order ..... 29

D. Implementation of New Policies, Procedures and Guidelines ..... 30

E. Dismissal of Validation Cause of Action ..... 30

F. Tolling of Statute of Limitations ..... 30

G. Notice of Determination, Return to Writ and Motion for Order Discharging Writ ..... 31

H. Consent to Entry of Order Discharging Writ ..... 31

1. Obligation to File. ..... 31

2. Conditions Precedent to Filing ..... 31

3. Earliest Effective Date of Discharge of Writ. ..... 31

I. Subsequent CEQA Challenge ..... 31

1. Limited Basis for Challenge. ..... 31

2. Stipulation to Continued Operations ..... 32

3. Order for New EIR ..... 32

J. No Future Challenges ..... 33

K. Mutual Interdependency ..... 33

L. Implementation Dispute Resolution ..... 33

VIII. ATTORNEY FEES ..... 33

IX. DISPUTE RESOLUTION ..... 35

X. MISCELLANEOUS ..... 35

A. No Admission ..... 35

B. Compliance with Laws ..... 36

C. Authority ..... 36

D. Not a General Appearance or Concession to Jurisdiction ..... 37

E. Successors and Assigns ..... 37

F. Governance ..... 37

G. Entirety of Agreement; No Amendment ..... 37

**TABLE OF CONTENTS**
**(continued)**

**Page**


H. Mutual Preparation ..... 38
I. Further Acts ..... 38
J. No Waiver ..... 38
K. No Representations or Warranties ..... 38
L. Independent Investigations ..... 39
M. Survival ..... 39
N. Headings ..... 39
O. Not Binding on Others ..... 39
P. Counterparts ..... 39
Q. Voluntary and Knowing Execution ..... 39
R. Obligations Dependent on Validity of Monterey Amendments ..... 40

## LIST OF ATTACHMENTS AND EXHIBITS

Attachments


| | |
|---|---|
| Attachment A | Amendment to SWP Contract |
| Attachment B | Principles Regarding State Water Project Reliability |
| Attachment C | Transfer Guidelines for Annual Table A Amounts |
| Attachment D | Principles Regarding Public Participation in SWP Contract Negotiations |
| Attachment E | Final Permanent Table A Amount Transfers from KCWA Subsequent to the Monterey Amendments |


Exhibits


| | |
|---|---|
| Exhibit 1 | Plaintiffs' Expenses Trust Account Agreement |
| Exhibit 2 | Kern Environmental Permits |
| Exhibit 3-A | Proposed 21168.9 Order |
| Exhibit 3-B | Proposed Writ of Mandate |
| Exhibit 4 | Section VI Trust Account Agreement |

# SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** is entered into as of _____, 2003, by and among Planning and Conservation League, Plumas County Flood Control and Water Conservation District, Citizens Planning Association of Santa Barbara County, Inc., The State of California Department of Water Resources, Central Coast Water Authority, Kern Water Bank Authority and those SWP Contractors who have executed this Settlement Agreement. Certain terms used herein are defined in Section I.

## RECITALS

**WHEREAS**, in 1951, the State of California Legislature authorized the construction of the State Water Project ("**SWP**");

**WHEREAS**, eight years later, the Legislature authorized the submission for voter approval of a general obligation bond issue to build the SWP, which voters subsequently approved (California Water Code, Section 12930 et seq.);

**WHEREAS**, commencing in the early 1960's, DWR, as operator of the SWP, entered into certain SWP Contracts with various water districts throughout California;

**WHEREAS**, in 1994, as a result of disputes arising from water shortages experienced during an extended drought period, DWR and certain of the SWP Contractors entered into an agreement known as the Monterey Agreement and thereafter implemented the terms of the Monterey Agreement by execution of the so-called Monterey Amendments;

**WHEREAS,** pursuant to CEQA, the environmental impact report for the Monterey Amendments was prepared in 1995 by CCWA as "lead agency," and adopted by DWR as "responsible agency" (as those terms are defined in CEQA) (the "**1995 EIR**");

**WHEREAS**, on December 27, 1995, PCL filed the PCL Complaint against DWR and CCWA challenging the sufficiency of the 1995 EIR;

**WHEREAS**, on February 12, 1996, Plaintiffs filed a First Amended Complaint adding the Validation Cause of Action;

**WHEREAS**, the trial court ultimately determined that although CCWA was not the appropriate lead agency for the 1995 EIR, such designation of CCWA was not fatal to the EIR, and ruled against Plaintiffs with respect to their challenge to the sufficiency of the 1995 EIR. The trial court also granted summary adjudication in favor of DWR and CCWA on the Validation Cause of Action. Plaintiffs appealed the trial court's rulings;

**WHEREAS**, in Planning and Conservation League v. Department of Water Resources, 83 Cal. App. 4th 892 (2000), the Court of Appeal held that (i) DWR, not CCWA, had the statutory duty to serve as lead agency, (ii) the trial court erred by finding CCWA's EIR sufficient despite its failure to discuss implementation of Article 18, subdivision (b) of the SWP Contracts, as a no-project alternative, (iii) said errors mandate preparation of a new EIR under the direction of DWR, and (iv) the trial court erroneously dismissed the challenge to DWR's transfer of title to the KWB Lands (the Validation Cause of Action) and execution of amended SWP Contracts for failure to name and serve indispensable parties. The Court of Appeal remanded the case to the trial court, ordering it to take the following five actions: (1) vacate the trial court's grant of the motion for summary adjudication of the Validation Cause

of Action; (2) issue a writ of mandate vacating the certification of the 1995 EIR; (3) determine the amount of attorney fees to be awarded Plaintiffs; (4) consider such orders it deems appropriate under Public Resources Code Section 21168.9(a) consistent with the views expressed in the Appellate Court's opinion; and (5) retain jurisdiction over the action until DWR, as lead agency, certifies an environmental impact report in accordance with CEQA standards and procedures, and the Superior Court determines that such environmental impact report meets the substantive requirements of CEQA;

**WHEREAS**, since the Court of Appeal ruling, representatives of the Parties to this Settlement Agreement have engaged in extensive settlement negotiations, mediated by retired Judge Daniel Weinstein, with the intent of avoiding further litigation and associated fees and providing for an effective way to cooperate in the preparation of a new environmental impact report and make such other improvements in the operation and responsiveness of the SWP as set forth in this Settlement Agreement;

**WHEREAS**, on July 22, 2002, an agreement was reached regarding the principles for a settlement; and

**WHEREAS**, the Parties now desire to formally enter into this Settlement Agreement.

## AGREEMENT

**NOW, THEREFORE**, in exchange for the following covenants and agreements and other valuable and sufficient consideration, the receipt of which is acknowledged, the Parties agree as follows:

I. **Definitions**. Certain terms, as used in this Settlement Agreement, are defined as follows.

A. **"Attachment A Amendments"** means those amendments in the substantive form of Attachment A hereto (conformed to the format of each individual SWP Contract and the parties thereto), to be executed by DWR and the SWP Contractors who are signatories to this Settlement Agreement pursuant to and in accordance with the terms and conditions of this Settlement Agreement.

B. **"Attachment B Principles"** means those principles set forth in Attachment B hereto regarding SWP reliability.

C. **"Attachment C Guidelines"** means the guidelines set forth in Attachment C hereto regarding review of proposed permanent transfers of Annual Table A Amounts (as such latter term is used in the SWP Contracts).

D. **"Attachment D Principles"** means those principles set forth in Attachment D hereto regarding public participation in SWP Contract negotiations.

E. **"Attachment E Transfers"** means those water transfers identified on Attachment E hereto.

F. **"CEQA"** means the California Environmental Quality Act, California Public Resources Code Section 21000 et seq.

G. **"Citizens Planning Association"** means Citizens Planning Association of Santa Barbara County, Inc.

H. **"CCWA"** means Central Coast Water Authority.

I. **"Consent to Entry of Order Discharging Writ"** has the meaning given in Section VII(H)(1).

J. **"DWR"** means The State of California Department of Water Resources.

K. **"EIR Committee"** means a committee of no more than four (4) SWP Contractor representatives, and no more than four (4) Plaintiff representatives, chaired by a DWR representative, which has been formed for the purposes set forth in Section III(B).

L. **"HCP"** means the Habitat Conservation Plan/Natural Community Conservation Plan prepared for the Kern Water Bank Authority and approved through an Implementation Agreement dated October 2, 1997, with the United States Fish and Wildlife Service and California Department of Fish and Game.

M. **"Interim Implementation Order"** has the meaning given in Section VII(C).

N. **"JAMS Trust Account"** means the account established by DWR with, and maintained by, the Mediator for the purpose set forth in Section VI.

O. **"Kern-Castaic Transfer"** means the transfer of 41,000 acre-feet of water from Kern County Water Agency to the Castaic Lake Water Agency approved by DWR on March 31, 1999.

P. **"Kern Environmental Permits"** means the HCP and certain other permits, approvals and agreements relating to the Kern Water Bank, as set forth in and contemplated by the Addendum to the 1995 EIR, including those specified in Exhibit 2 hereto and similar, related permits, approvals and agreements.

Q. **"Kern Fan Element Transaction"** means DWR's transfer of the KWB Lands to Kern County Water Agency, as described in Article 52 of the Monterey Amendments. Kern County Water Agency subsequently conveyed the KWB Lands to KWBA. Each of the stated conveyances occurred on August 9, 1996, based upon separate agreements dated December 13, 1995.

R. **"KWB Lands"** means the property known as the Kern Fan Element, as more specifically described in that certain Deed, executed by the Kern County Water Agency in favor of KWBA, dated August 9, 1996, and recorded in the Official Records of Kern County as Instrument No. 0196101606.

S. **"KWBA"** means Kern Water Bank Authority.

T. **"Mediator"** means retired Judge Daniel Weinstein, unless Judge Weinstein is unavailable, in which case the Mediator shall be another retired jurist mutually agreed to by DWR and the other members of the EIR Committee with respect to matters referred to the Mediator under Section III(H), and for all other matters another retired jurist approved by agreement of the Parties.

U. **"Mediation Issue"** means any issue relating exclusively to the compliance of the New EIR with any of the following requirements: (a) the requirements of CEQA; (b) the direction of the courts in the underlying litigation; or (c) the terms and conditions of this Settlement Agreement.

V. **"Monterey Agreement"** means the formal agreement, dated as of December 1, 1994, by and among DWR and certain SWP Contractors that memorializes fourteen principles to address the distribution of water during shortages and various other issues under the SWP Contracts.

W. **"Monterey Amendment"** means the amendment to the SWP Contracts entered into by DWR and certain SWP Contractors for purposes of implementing the Monterey Agreement.

X. **"New EIR"** has the meaning given in Section III.

Y. **"Party"** and "**Parties**" mean the signatories, individually and collectively, to this Settlement Agreement.

Z. **"PCL"** means Planning and Conservation League.

AA. **"PCL Complaint"** means the Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandate filed December 27, 1995, by PCL in the Superior Court, as amended and supplemented by the First Amended Complaint filed February 12, 1996.

BB. **"Plaintiffs"** means PCL, Citizens Planning Association and Plumas.

CC. **"Plaintiffs' Expenses Trust Account"** means the account maintained by JAMS for the purposes set forth in Section III(G).

DD. **"Plumas"** means Plumas County Flood Control and Water Conservation District.

EE. **"Plumas Amendment"** means an amendment to the Plumas SWP Contract to be entered into by DWR and Plumas pursuant to Section IV(C).

FF. **"Plumas Arrearages"** means any amount owed by Plumas to DWR under its SWP Contract that accrued prior to the resumption of payments by Plumas under Section IV(F).

GG. **"Return to Writ"** has the meaning given in Section VII(G).

HH. **"Rossmann"** means the Law Offices of Antonio Rossmann.

II. "**Section VI Trust Account Agreement**" means a trust account agreement regarding the disbursement by JAMS to Plaintiffs of those funds delivered by DWR pursuant to Section VI of this Settlement Agreement, the form of which agreement is attached hereto as Exhibit 4.

JJ. **"Superior Court"** means the Superior Court of the State of California, County of Sacramento.

KK. **"SWP"** means the State Water Project, officially called the State Water Resources Development System, as defined in Water Code Section 12931.

LL. **"SWP Contracts"** means those long-term contracts entered into by and between DWR, as the operator of the SWP, and individual SWP Contractors for the delivery of water from the SWP.

MM. **"SWP Contractors"** for purposes of this Settlement Agreement, means those contracting agencies identified in Table 1-6 of the DWR Bulletin 132-00, dated December 2001. All references to "SWP Contractors who are parties to this Settlement Agreement" are meant to exclude Plumas. Specific issues relating to Plumas are addressed in Section IV.

NN. **"Validation Cause of Action"** means the fifth cause of action of the PCL Complaint.

OO. **"Watershed Forum"** means a newly formed stakeholder group consisting of one or more representatives from each of Plumas, local community-based groups, DWR and the SWP Contractors who are parties to this Settlement Agreement, established for the purposes set forth in Section IV(B).

PP. **"Watershed Programs"** means programs, studies or projects approved by the Watershed Forum and implemented in pursuit of the goals set forth in Section IV, and other such activities approved by the Watershed Forum that are consistent with such purposes and goals.

QQ. **"1995 EIR"** means the Final Programmatic Environmental Impact Report for the Implementation of the Monterey Agreement Statement of Principles by State Water Project Contractors and the State of California Department of Water Resources for Potential Amendments to State Water Supply Contracts, prepared in October, 1995 by CCWA, as lead agency, and reviewed and considered in December 1995, by DWR, as a responsible agency, as each of those terms is defined in CEQA.

## II. Administration of the State Water Project Pending New Environmental Impact Report and Discharge of Writ of Mandate.

Pending the Superior Court's issuance of an order discharging the writ of mandate in the underlying litigation, the Parties will jointly request that the Superior Court enter an order approving this Settlement Agreement, and an order, pursuant to California Public Resources Code Section 21168.9, authorizing on an interim basis the administration and operation of the SWP and the Kern Water Bank in accordance with the Monterey Amendments, the terms of this Settlement Agreement and the Attachment A Amendments, as more specifically set forth in Section VII of this Settlement Agreement.

## III. New Environmental Impact Report

A. Preparation. As lead agency (as defined in CEQA), DWR shall cause a new environmental impact report to be prepared with respect to the proposed "project" (as that term is defined in Public Resources Code Section 21065 and Section

15378 of the CEQA Guidelines), in accordance with and as further described in Section III(C) below (the "**New EIR**").

B. EIR Committee. To effectuate the desire of the Parties that the New EIR be the product of a cooperative effort and comply with the requirements of CEQA and the direction of the courts in the underlying litigation, the EIR Committee has been formed to provide advice and recommendations to DWR in connection with the preparation of the draft and final versions of the New EIR.

C. New EIR Content. The proposed project to be analyzed in the New EIR will be specifically defined during the scoping process. Under all circumstances, in order to provide DWR, the responsible agencies, and the public with adequate disclosure to consider the potential environmental impacts of the Monterey Amendments, and the additional actions set forth in this Settlement Agreement, the environmental analysis in the New EIR shall evaluate, as components of the proposed project, the Monterey Amendments (including the provisions relating to the transfer of the KWB Lands) and the Attachment A Amendments. DWR shall ensure that the New EIR evaluates all proposed actions that are necessary to implement this Settlement Agreement. The New EIR shall include the following:

1. Information on water deliveries of the SWP over the relevant historical period (at least 1991 -2002), as well as data regarding the deliveries in the last extended drought (1987-1992), to be included in the description of the setting and the background for the proposed project;

2. As part of the CEQA-mandated "no-project" alternative analysis, and in light of the Court of Appeal's opinion, an analysis of the effect of pre-

Monterey Amendment SWP Contracts, including implementation of Article 18 therein. This analysis shall address, at a minimum, (a) the impacts that might result from application of the provisions of Article 18(b) of the SWP Contracts, as such provision existed prior to the Monterey Amendments, and (b) the related water delivery effects that might follow from any other provisions of the SWP Contracts;

3. Analysis of the potential environmental impacts of changes in SWP operations and deliveries resulting from implementation of the proposed project. If the proposed project results in modifications to the water sources relied upon for the SWP, those sources will be identified and the resulting environmental effects will be assessed;

4. Analysis of the potential environmental effects relating to (a) the Attachment E Transfers and (b) the Kern-Castaic Transfer, in each case as actions that relate to the potential environmental impacts of approving the Monterey Amendments; and

5. Analysis of the potential environmental effects relating to the implementation of this Settlement Agreement, including:

    a. Evaluation of the potential environmental impacts arising from the payments to Plumas as described in Section IV; and

    b. Analysis of the potential environmental effects relating to implementation of the provisions of this Settlement Agreement relating to the Kern Water Bank as discussed in Section V.

D. Acknowledgement and Agreement Regarding Attachment E Transfers. With respect to Section III(C)(4)(a), notwithstanding the analysis of the potential impacts of the Attachment E Transfers in the New EIR and without specifically endorsing or opposing those transfers or any prior environmental assessments of them, the Parties recognize that such water transfers are final. Each of the Parties agrees not to, and it shall be a condition to the initial and continuing effectiveness of this Settlement Agreement that Plaintiffs do not, hereafter challenge the effectiveness or validity of such water transfers.

E. Acknowledgement and Agreement Regarding Kern-Castaic Transfer. With respect to Section III(C)(4)(b) regarding the Kern-Castaic Transfer, the Parties recognize that such water transfer is subject to pending litigation in the Los Angeles County Superior Court following remand from the Second District Court of Appeal (*See* Friends of the Santa Clara River v. Castaic Lake Water Agency, 95 Cal. App. 4th 1373, 116 Cal. Rptr. 2d 54 (2002); *review denied* April 17, 2002). The Parties agree that jurisdiction with respect to that litigation should remain in that court and that nothing in this Settlement Agreement is intended to predispose the remedies or other actions that may occur in that pending litigation.

F. Acknowledgement and Agreement Regarding Kern Water Bank. With respect to Section III(C)(5)(b) relating to the Kern Water Bank, the Parties acknowledge that the Kern Water Bank is currently operating under the Kern Environmental Permits, which were entered into based on an Addendum to the 1995 EIR. The Parties recognize that the Addendum has been completed and agree not to

challenge it in any manner. KWBA agrees that it will not rely on the Addendum to the 1995 EIR for any new KWBA project to the extent that such reliance is based on data or analysis incorporated into the Addendum from the 1995 EIR. In addition, the New EIR shall include an independent study by DWR, as the lead agency, and the exercise of its judgment regarding the impacts related to the transfer, development, and operation of the Kern Water Bank in light of the Kern Environmental Permits. Such study shall identify SWP and any non-SWP sources of water deliveries to the Kern Water Bank. The views of the trustee agencies, as evidenced by the requirements of the HCP, will be used to provide guidance to DWR. Finally, the Parties agree that this Settlement Agreement is not intended to and shall not affect the continuing effectiveness of the Kern Environmental Permits.

G. Reimbursement of Plaintiffs' Expenses for Participation in the Preparation of New EIR .

1. *DWR Obligation to Reimburse Plaintiffs*. Subject to and in accordance with clauses (2) and (3), DWR will provide up to $300,000 to Plaintiffs for expenses actually incurred as needed to support Plaintiffs' participation in DWR's preparation of the New EIR, including service on the EIR Committee.

2. *Deposit into Trust Account*. The Parties acknowledge that in accordance with the principles of settlement, DWR caused to be deposited $300,000 into the Plaintiffs' Expenses Trust Account at JAMS on August 22, 2002.

3. *Disbursement of Funds to Plaintiffs*. Funds provided by DWR under this Section III(G) are available for disbursement and will be disbursed to Plaintiffs by JAMS from the Plaintiffs' Expenses Trust Account in accordance with that certain Plaintiff's Expenses Trust Account Agreement dated August 15, 2002, attached hereto as Exhibit 1 and incorporated herein by this reference.

H. Disputes Regarding Mediation Issues.

1. *Referral to Director of DWR*. If the Plaintiffs' or SWP Contractors' representatives on the EIR Committee, or both, disagree with DWR's proposed approach with respect to a Mediation Issue, such representatives may refer the issue in writing to the Director of DWR.

2. *Referral to Mediator*. If (a) two-thirds of Plaintiffs' representatives or (b) three-fourths of the SWP Contractors' representatives, or both, disagree with the DWR Director's written decision with respect to a Mediation Issue (which issue shall have first been referred to the Director pursuant to Section III(H)(1)), such representative(s) may refer the issue in writing for consideration to the Mediator.

3. *Notices to Other Parties*. DWR shall inform the Parties to this Settlement Agreement of any referrals made pursuant to this Section III(H).

4. *Advisory Opinion by Mediator*. In the event of a referral as described above, the Mediator will consider the views of the representatives of the EIR Committee and the DWR Director, and will provide a written advisory opinion on the issue to the EIR Committee and DWR Director.

5. *Final Decision by DWR*. After receipt of an advisory opinion from the Mediator, the DWR Director shall make a final decision on the issue.

6. *Mediator's Costs and Expenses*.

a. *Referrals by Plaintiffs' Representatives*. On any matter referred to the Mediator by Plaintiffs' representatives on the EIR Committee, the costs of the Mediator's services will be borne one-third (1/3) by the Plaintiffs and two-thirds (2/3) by DWR.

b. *Referrals by SWP Contractors' Representatives*. For any referral by the SWP Contractors who are representatives on the EIR Committee, the SWP Contractors who are signatory to this Settlement Agreement will compensate the Mediator for his services.

c. *Frivolous or Harassing Referrals*. In the event of frivolous or harassing matters referred to him/her, the Mediator shall have the authority to award costs to the prevailing party, as well as reasonable attorney fees in accordance with Section IX of this Settlement Agreement.

I. Filing of New EIR upon Completion. Upon completion of the New EIR, in accordance with the procedure set forth in CEQA, and after final consideration by and good faith consultation with the EIR Committee, DWR shall cause the New EIR to be filed with the Superior Court as a return to the writ of mandate issued by such court in connection with this case.

IV. **Plumas Matters.**

A. Monetary Settlement.

1. *Agreement to Pay*. In accordance with the procedures and subject to the conditions described herein, DWR shall pay to Plumas the sum of $8,000,000.

2. *Schedule of Payments*.

a. *Annual Payments*. A total sum of Four Million Dollars ($4,000,000) shall be paid in accordance with this Section IV(A)(2)(a). DWR shall pay to Plumas One Million Dollars ($1,000,000) within 30 days after approval of this Settlement Agreement by the Superior Court (or the first business day after said 30th day if the 30th day is not a business day).

On each anniversary date of the first $1,000,000 payment until (and inclusive of) the third (3rd) anniversary, DWR shall pay to Plumas One Million Dollars ($1,000,000).

b. *Post Notice-of-Determination Payments*. Subject to Section IV(A)(2)(c), the remaining Four Million Dollars ($4,000,000) shall be paid in four annual installments of $1,000,000 each, beginning on the later to occur of: (1) the date that is seventy days after the Notice of Determination (as defined in CEQA) has been filed for the New EIR (or the first business day after said 70th day if the 70th day is not a business day); or (2) the date that is one year after the last payment made under Section IV(A)(2)(a).

c. *Effects of Litigation on Payment Obligation*.

(1) Suspension of Payment Obligation. If litigation is commenced by anyone challenging CEQA compliance for, or the validity of, any Monterey Amendment (or any portion thereof), including matters pertaining to the Kern Fan Element Transaction, the monetary obligations of DWR under Section IV(A)(2)(b) shall be suspended until the date that is forty-five (45) days after final conclusion of that litigation (without further right of appeal) in a manner that does not invalidate any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction. Within thirty (30) days after final conclusion of any such litigation in said manner, DWR shall pay to Plumas any amounts then owed by DWR under this Section IV.

(2) Termination of Payment Obligation. If any such litigation results in a final judgment (without further right of appeal) that invalidates any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction, the obligation for payments under Section IV(A)(2)(b) shall automatically terminate.

3. *Use of Funds*.

a. *Funding of Watershed Programs*. Plumas shall apply a majority of all funds received each year pursuant to Section IV(A) to Watershed Programs.

b. *Balance of Funds to General Purposes*. Plumas may apply the balance of funds received each year to other district-related purposes, as determined by Plumas with due consideration for the needs of the Watershed Forum.

c. *Annual Carry-Over*. Funds received but not spent in any given year may be carried over to the succeeding year(s), provided, however, that any such funds shall continue to be subject to the restrictions under Sections IV(A)(3)(a) and (b).

B. Watershed Forum and Programs.

1. *Formation of Watershed Forum*. Prior to the date hereof, the Watershed Forum was formed. The Watershed Forum is locally driven but includes the active and committed participation of the SWP Contractor and DWR members of the Forum.

2. *Purpose and Goals*

a. *Generally*. The Watershed Forum's purpose is to implement watershed management and restoration activities for the mutual benefit of Plumas and the SWP. Forum activities include design of, participation in, implementation of, and review of studies and demonstration projects related to watershed restoration.

b. *Specific Goals*. The specific focus of the Watershed Forum's activities is to implement programs designed to achieve the following benefits:

(1) Improved retention (storage) of water for augmented base-flow in streams;

(2) Improved water quality (specifically, reduced sedimentation), and stream bank protection;

(3) Improved upland vegetative management; and

(4) Improved groundwater retention/storage in major aquifers.

c. *Emphasis on Feather River Watershed*. The Watershed Forum specifically promotes and encourages restoration of the Feather River watershed, with particular focus on the drainages of the three SWP Upper Feather River reservoirs. The Watershed Forum seeks to obtain funding and investments in the Feather River watershed in order to facilitate programs that will generate significant local environmental and water supply benefits.

d. *Technical Advisors*. The Watershed Forum will retain a committee of technical advisors to assist the Watershed Forum in identifying activities that can provide timely and practical benefits based on the best scientific and technical information.

3. *General Watershed Forum Issues*

a. *Cooperation*. The Watershed Forum shall seek to foster mutual cooperation and support among Plumas, DWR and other SWP Contractors in achieving local and state-wide goals.

b. *Dispute Resolution*. Any disputes between members of the Watershed Forum, or between Plumas and the Watershed Forum, with respect to Watershed Forum activities and funding will be resolved by retention of a third party neutral expert reasonably acceptable to all members of the Watershed Forum.

c. *Interruption in Funding*. If payments by DWR are interrupted due to litigation challenging any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction, as set forth in Section IV(A)(2)(c), the Parties shall, depending on the success of the watershed work and the litigation situation, give due consideration to the importance of funding watershed work in consecutive years without interruption.

d. *No Limitation on DWR Obligations*. DWR's participation in the Watershed Forum shall not compromise DWR's obligation to be impartial in the distribution of matching funds from public funding sources under its jurisdiction.

C. Plumas Amendment. Upon completion of any necessary environmental review(s), DWR shall offer to Plumas the Plumas Amendment which shall include (1) DWR's agreement that water supplied to Plumas shall be determined

based on availability of water supply from Lake Davis, and (2) DWR's agreement that water deliveries to Plumas will not be reduced during SWP shortages so long as sufficient water is available from Lake Davis. The Plumas Amendment shall apply only to the maximum Table A amount in Plumas' SWP Contract on the date that this Settlement Agreement is executed. The Plumas Amendment shall also contain assurances that Plumas' claim to area-of-origin rights will not be affected by the Amendment. The Plumas Amendment may also contain the Monterey Amendment, as modified to reflect current conditions relating to Plumas, and the Attachment A Amendments.

D. Dialogue between Plumas and DWR. Subject to Plumas' execution of this Settlement Agreement and compliance with the terms herein, DWR agrees to confer with Plumas to develop strategies and actions for the management, operation, and control of SWP facilities in Plumas County in order to increase water supply, recreational, and environmental benefits to Plumas from such facilities. In furtherance thereof, DWR and Plumas agree to evaluate and give due consideration to:

1. the potential re-operation of SWP facilities in Plumas County to increase the water supply available to Plumas;
2. the potential release of water from reservoirs, as part of planned operations, for Plumas' benefit; and
3. the appropriateness of certain charges in Plumas' SWP Contract in light of current circumstances and whether amendments thereto are warranted.

E. Future Relations. Upon the Superior Court's approval of this Settlement Agreement, Plumas agrees to maintain a positive relationship with the SWP Contractors and DWR, and to support the Monterey Amendments and the Attachment A Amendments. Plumas reserves the right to review critically the New EIR.

F. Contract Payments. Plumas shall resume and maintain timely payments under its SWP Contract. Such payments shall begin upon the earlier of (1) the first payment under Section IV(A)(2)(a) or (2) the date that Plumas or its member unit resumes taking water from Lake Davis, and shall cover the period beginning January 1 of that same year. DWR will not seek to collect the amount of any Plumas Arrearages.

V. **Kern Water Bank.**

A. Title. KWBA shall retain title to the KWB Lands. KWBA may continue to operate and administer the KWB Lands including the water bank, subject to the restrictions herein.

B. Restrictions on Use of KWB Lands.

1. *Continued Use as Water Bank.* As noted in Section III(F), the KWB Lands are subject to the HCP, which documents a plan to accomplish, among other things, certain water conservation and environmental objectives. Except as provided in Sections V(B)(2) and (3), the KWB Lands shall continue to be used for the operation of a water bank and other uses authorized by the HCP, so long as such use remains legally and economically feasible.

2. *Use of KWB Lands for other SWP Purposes*. If (a) the use of the KWB Lands as a water bank is determined by KWBA to no longer be economically and/or legally feasible, (b) DWR concurs with such determination, (c) the KWB Lands can be feasibly used for any of the SWP purposes provided in California Water Code §12930 et seq., and (d) DWR and KWBA agree on terms and conditions for such use, then the KWB Lands may be so used.

3. *Use of KWB Lands for other than SWP Purposes*. If (a) the KWB Lands can not feasibly be used for any of the SWP purposes provided in California Water Code §12930 et seq., or (b) KWBA and DWR are unable to agree on terms and conditions for such use, or (c) DWR determines not to use the KWB Lands for such purposes, then KWBA may transfer or develop all or a portion of the KWB Lands for alternative use(s), provided that any alternate use will not result in unmitigated environmental impacts. A finding by KWBA that such impacts will not occur will be subject to DWR's concurrence.

4. *The 490 Acres*. The approximately 490 acres currently subject to restrictions in the HCP, permitting use thereof as Conservation Bank Lands (as defined in the HCP), but which may be developed under the HCP, will continue to be subject to the restrictions in the HCP but may not be developed.

5. *Application of HCP Restrictions*. All of the KWB Lands, including the 490 acres, will remain subject to the restrictions contained in the HCP.

The restrictions will remain in effect regardless of amendment to, or termination of, the HCP, unless, in the event of such amendment or termination, DWR, after consultation with Plaintiffs, finds that such amendment or termination will not result in unmitigated environmental impacts. The provisions of this clause shall not apply to "Minor Amendments" to the HCP as that term is utilized in the HCP.

6. *Land Use Changes Subject to CEQA*. Changes to the allowable uses of the KWB Lands shall be subject to appropriate environmental review under CEQA.

C. Transfer/Development Proceeds. If all of the KWB Lands are transferred or developed by KWBA, the proceeds of such transfer or development (net of transaction or development costs) will be used for water management purposes identified by KWBA, subject to concurrence by DWR that such use is for bona fide water management purposes; provided, however, so long as the KWB Lands continue to be used for operation of a water bank, the proceeds (net of transaction or development costs) resulting from the transfer or development of a portion of the KWB Lands (which must be consistent with Section V(B)(5)) will be used for water management purposes identified by KWBA, subject to concurrence by DWR that the expenditure is consistent with such purposes.

D. Consultation with Plaintiffs.

1. Except as provided in Section V(D)(2), with respect to any matter that requires DWR's concurrence pursuant to Section V(B) and (C), DWR

shall consult with Plaintiffs prior to making any decision with respect thereto.

2. In lieu of consulting with Plaintiffs, following the conclusion of all litigation challenging CEQA compliance for, or the validity of, the Monterey Amendments, DWR may first provide notice and opportunity to comment to Plaintiffs and the public, and then, at Plaintiffs' request, shall consult with Plaintiffs.

E. Scope of Restrictions. The foregoing restrictions shall only apply to the KWB Lands and shall not affect the use or disposition of water stored under or withdrawn from the KWB Lands.

F. Effective Date of Restrictions. The foregoing restrictions in this Section V shall not be effective unless and until the court in the above-referenced litigation issues an order approving this Settlement Agreement and the Interim Implementation Order (as defined in Section VII(c)). The restrictions in this Section V shall become final only upon (1) filing of the Notice of Determination following the completion of New EIR, (2) discharge of the writ of mandate in the underlying litigation as provided below, and (3) conclusion of all litigation in a manner that does not invalidate any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction. The continuing effectiveness of the restrictions in this Section V, and the obligations under this Settlement Agreement to comply with these restrictions, are subject to the terms of Section VII(K) below.

## VI. Funding To Plaintiffs

A. Agreement to Pay. In accordance with the procedures and subject to the conditions described herein, DWR shall pay to Plaintiffs, collectively, the sum of $5,500,000 (in addition to the $300,000 paid pursuant to Section III(G)).

B. Schedule of Payments.

1. On or before the date that is thirty (30) days after approval of this Settlement Agreement by the Superior Court and issuance of the Interim Implementation Order under Section VII, DWR shall pay to Plaintiffs One Million Eight Hundred Seventy-Five Thousand Dollars ($1,875,000).

2. On or before the first anniversary after the date upon which delivery of funds are made by DWR pursuant to Section VI(B)(1), DWR shall pay to Plaintiffs One Million Eight Hundred Seventy-Five Thousand Dollars ($1,875,000).

3. Subject to Section VI(C), on or before the seventieth ($70^{th}$) day after the Notice of Determination has been filed for the New EIR (or the first business day after said $70^{th}$ day if the $70^{th}$ day is not a business day), DWR shall pay to Plaintiffs One Million Seven Hundred Fifty Thousand Dollars ($1,750,000).

4. All amounts to be paid by DWR under this Section VI(B) shall be paid by wire transfer, in immediately available funds, to a JAMS Trust Account from which funds are to be disbursed therefrom to Plaintiffs in accordance with the Section VI Trust Account Agreement.

C. Effects of Litigation on Payment Obligations.

1. *Suspension of Payment Obligation*. If litigation is commenced by anyone challenging CEQA compliance for, or the validity of, any Monterey Amendment (or any portion thereof), including matters pertaining to the Kern Fan Element Transaction, the monetary obligations of DWR under Section VI(B)(3) shall be suspended until the date that is forty-five (45) days after conclusion of such litigation (without further right of appeal) in a manner that does not invalidate any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction. Within thirty (30) days after final conclusion of any such litigation in said manner, DWR shall pay to Plaintiffs any amounts then owing under this Section VI.

2. *Termination of Payment Obligation*. If any such litigation results in a final judgment that invalidates any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction, the obligation for payments under Section VI(B)(3) shall automatically terminate.

D. Use of Funds. The funds paid to Plaintiffs under this Section VI shall be used to implement this settlement, as determined by Plaintiffs in their reasonable judgment, including watershed restoration projects, follow-up actions arising from this settlement, and technical studies.

E. Unrelated to Attorney Fees. The payments under this Section VI are exclusive of, and in addition to, any amounts owing by DWR with respect to Plaintiffs' attorney fees, the latter of which are addressed by Section VIII.

## VII. Sequence and Process for Implementation of Settlement

This Section VII addresses the process of implementing the terms of this Settlement Agreement to the extent not already addressed in this Settlement Agreement. All issues relating to the implementation of this Settlement Agreement not addressed by this Section VII or elsewhere herein shall be resolved through good faith discussions and mutual agreement among the Parties. If the Parties are unable to agree, the disputed matter shall be referred to and resolved by the Mediator.

A. Non-Reliance on 1995 EIR. DWR and the SWP Contractors who are signatories to this Settlement Agreement agree that they will not approve any new project or activity in reliance on the 1995 EIR, that was not approved, initiated or implemented prior to March 26, 2001, and the approval, initiation or implementation of which would require a separate environmental impact report or negative declaration under CEQA (other than, or in addition to, the 1995 EIR).

B. Attachment A Amendments. Within sixty (60) days after this Settlement Agreement is executed by all of the Parties, each of the SWP Contractors who are parties to this Settlement Agreement shall cause a duly authorized representative to execute an Attachment A Amendment, and deliver the executed Amendment to DWR. Upon approval of this Settlement Agreement by the Superior Court and issuance of the Interim Implementation Order, as discussed in Section VII(C), DWR shall execute the Attachment A Amendments. Thereupon, the Attachment A Amendments shall be deemed effective on an interim basis, and will not thereafter be modified without the written consent of the Plaintiffs, prior to the discharge of the writ of mandate. The Attachment A Amendments shall become

final upon (1) the filing of the Notice of Determination following the completion of the New EIR, (2) discharge of the writ of mandate in the underlying litigation as provided below, and (3) conclusion of all litigation in a manner that does not invalidate any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction.

C. Motion for Order Approving Settlement Agreement and Interim Implementation Order. As soon as practical after the execution of this Settlement Agreement, the Parties shall jointly file with the Superior Court a motion for (1) an order approving this Settlement Agreement, and (2) an order (the "**Interim Implementation Order**") specifically authorizing on an interim basis, pursuant to Public Resources Code Section 21168.9, the administration and operation of the SWP and the KWB Lands, pending discharge of the writ of mandate in the underlying litigation, in accordance with the Monterey Amendments (as limited by Section VII(A) above), as supplemented by the Attachment A Amendments and the other terms and conditions of this Settlement Agreement, including the provisions in Section V(B) regarding the KWB Lands. Said motion shall include the proposed Section 21168.9 order attached hereto as Exhibit 3-A, and the proposed writ of mandate referenced therein and attached hereto as Exhibit 3-B. The parties shall jointly move the Superior Court for approval of said order and writ. Subject to Section VII(J), and except as provided in Section VII(I), Plaintiffs shall not seek any further order or writ concerning the Monterey Amendments or the New EIR.

D. Implementation of New Policies, Procedures and Guidelines. DWR has issued a [draft] Report of State Water Project Supply Reliability in response to paragraph 1 of the Attachment B Principles. Upon the Superior Court's approval of this Settlement Agreement, DWR shall issue Contractors' Memos on (1) the Attachment C Guidelines and (2) the Attachment D Principles. After the Superior Court's approval of this Settlement Agreement, and in no event later than January 1, 2004, DWR shall issue Contractors' Memos on the remainder of the Attachment B Principles (i.e., paragraphs 2 and 3). DWR may rely on DWR publications previously issued to comply with paragraph 2 of the Attachment B Principles, if appropriate.

E. Dismissal of Validation Cause of Action. Upon the execution of this Settlement Agreement by all the Parties and execution of the Attachment A Amendments as set forth in Section VII(B) and issuance by DWR of the Contractor Memos referenced in the second sentence of Section VII(D), Plaintiffs shall file a request for dismissal without prejudice of the Validation Cause of Action. So long as such conditions are timely met, Plaintiffs covenant and agree not to refile the Validation Cause of Action, nor any new cause of action relating thereto, nor a new claim challenging the validity of any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction.

F. Tolling of Statute of Limitations. As between Plaintiffs, DWR and the SWP Contractors who are signatories to this Settlement Agreement, it is agreed that the statute of limitations relating to the Validation Cause of Action shall be tolled as

to Plaintiffs until the date that is forty-five (45) days after the filing of the Notice of Determination for the New EIR.

G. Notice of Determination, Return to Writ and Motion for Order Discharging Writ. Upon completion of the New EIR, DWR will file with the Superior Court (1) a Notice of Determination including a copy of the New EIR, (2) a return to writ of mandate (the "**Return to Writ**"), (3) a request for an order discharging the writ of mandate previously issued by the Superior Court in the underlying case and (4) any other information required by the Superior Court for a discharge of writ.

H. Consent to Entry of Order Discharging Writ.

1. *Obligation to File.* Concurrent with DWR's filings referenced in Section VII(G), subject only to Sections VII(H)(2) and (3), and provided Plaintiffs have not challenged the Return to Writ (under the procedures set forth in Section VII(I)), Plaintiffs shall file with the Superior Court a pleading consenting to entry of an order discharging the writ of mandate (the "**Consent to Entry of Order Discharging Writ**").

2. *Conditions Precedent to Filing.* Plaintiffs' obligation to file the Consent to Entry of Order Discharging Writ shall be subject to, and conditioned upon, satisfaction of the requirement set forth in Section VII(B).

3. *Earliest Effective Date of Discharge of Writ.* The discharge of the writ of mandate shall not be effective until at least forty-five (45) days after the filing of the Notice of Determination for the New EIR.

I. Subsequent CEQA Challenge.

1. *Limited Basis for Challenge.* Plaintiffs may only challenge the Return to Writ if, during the preparation and review of the New EIR, (a) Plaintiffs objected to the Mediator based on one or more Mediation Issues, (b) the Mediator upheld that objection in a written advisory opinion as described in Section III(H), (c) DWR rejected such written advisory opinion in its final decision, either expressly or as evidenced by the contents of the final New EIR, and (d) the challenge that Plaintiffs file to the Return to Writ is on the same ground(s) as the objection upheld by Mediator in the advisory opinion. Where such an objection was made to the Mediator and Plaintiffs file such a challenge to the Return to Writ, DWR shall maintain the advisory opinion as a public record. With respect to clause (c) of this subsection (I)(1), if the Parties dispute whether DWR has rejected the Mediator's advisory opinion, such matter shall be referred to the Mediator and (s)he shall make a final determination with respect thereto in accordance with Article IX.

2. *Stipulation to Continued Operations.* In the event of such a challenge, the challenging party will stipulate that, pending compliance with such writ as the court may issue, administration and operation of the SWP may continue in accordance with the Interim Implementation Order.

3. *Order for New EIR.* If such a challenge results in an order that DWR must prepare a new or supplemental environmental impact report, the provisions set out in Section III (regarding preparation of New EIR) shall be followed, and at the conclusion of the process, the provisions of Section

VII(H) (filing of a Consent to Entry of Order Discharging Writ) and this Section VII(I) shall apply.

J. No Future Challenges. Except as specifically authorized herein, and as a condition to the initial and continuing effectiveness of this Settlement Agreement, Plaintiffs agree not to initiate any future litigation challenging the validity of any Monterey Amendment (or any portion thereof) or the Kern Fan Element Transaction.

K. Mutual Interdependency. On an interim and final basis, the Attachment A Amendments, the Plumas Amendment, the provisions regarding the KWB Lands described in Section V(B), and the continued operations of the SWP based on the Monterey Amendments are mutually interdependent.

L. Implementation Dispute Resolution. Disputes arising in the implementation of this Settlement Agreement shall be addressed in accordance with Section IX.

## VIII. Attorney Fees

Within forty-five (45) days after the execution of this Settlement Agreement by all Parties, the Parties shall engage in arbitration to determine the amount of attorney fees and costs to be paid to Rossmann as Plaintiffs' counsel. Such arbitration shall be conducted pursuant to the following terms and conditions:

A. The arbitrator will be selected by mutual agreement of the Parties. If the Parties cannot agree on the arbitrator, the Mediator will designate the arbitrator. JAMS arbitration rules will apply, providing for limited and focused discovery, but the arbitrator may be anyone the Parties select regardless of his/her professional affiliation.

B. Within five (5) business days after commencement of the arbitration, Rossmann shall file with the arbitrator a petition for fees. The petition for fees shall identify,

in sufficient detail acceptable to the arbitrator, all fees for: (1) past service in the underlying litigation; (2) fees for participation in the settlement mediation to the date thereof; and (3) projected fees for services to be rendered in implementing the Settlement Agreement, including fees incurred in advising Plaintiffs in connection with their participation in, and service on, the EIR Committee.

C. Rossmann may apply for a multiplier on fees earned in the underlying litigation. The award for fees relating to mediation and settlement implementation shall be subject to the lodestar amount and shall not include a multiplier.

D. The costs of the arbitration will be borne one-third (1/3) by Plaintiffs and two-thirds (2/3) by DWR.

E. DWR and CCWA reserve all rights and defenses, except the right to challenge Rossmann's entitlement to fees relating to the mediation and settlement implementation stages.

F. The arbitrator shall determine the amount of the award within thirty (30) days after submission of the fee petition to the arbitrator. The arbitrator's determination shall be binding upon the Parties.

G. DWR shall pay the fee award to Rossmann in accordance with the following schedule:

1. Sixty percent (60%) within thirty (30) days after the award;
2. Thirty percent (30%) within thirty (30) days after the filing of the Return to Writ with the Superior Court; and
3. Ten percent (10%) within thirty (30) days after the Plaintiffs' filing of the Consent to Entry of Order Discharging Writ with the Superior Court.

H. The amount of $100,000 previously paid as attorney fees to Rossmann by DWR will be credited toward the amount owed by DWR hereunder as determined by the arbitrator.

## IX. Dispute Resolution

The Parties agree to cooperate in implementing this Settlement Agreement and to try in good faith to resolve any disputes. In addition, until the conclusion of the underlying litigation, as evidenced by the issuance of an order discharging the writ of mandate, the Mediator will decide all unresolved issues involving the interpretation and implementation of this Settlement Agreement and, to the extent permitted by law, will be authorized to enforce its terms, except for those matters properly reserved to the jurisdiction of the Superior Court. Any party may request a conference before the Mediator on seventy-two (72) hours' advance written notice to the Mediator and the other Parties. The Mediator will have the power to award reasonable attorney fees to the prevailing party in the event of frivolous, harassing or untimely motions. The party who initiates a dispute resolution proceeding with the Mediator pursuant to this Section IX shall be solely responsible for the payment of the Mediator's costs and expenses, except as otherwise provided herein.

## X. Miscellaneous

A. No Admission. By entering into this Settlement Agreement, the Plaintiffs do not endorse or admit the validity of the Monterey Amendments, and neither DWR, KWBA, nor any of the SWP Contractors who are signatories hereto admit any of the Plaintiffs' allegations in the pending litigation including those concerning the Monterey Amendments and/or the Kern Fan Element Transaction.

B. Compliance with Laws. The Parties agree that nothing in this Settlement Agreement is intended to limit the discretion granted by law, including CEQA, to DWR, as lead agency and as the State agency responsible for administration and operation of the SWP, or the duty of DWR to comply with applicable requirements of law, including those of CEQA and the California Water Code.

C. Authority. Each of the Parties represents that: (1) it has the authority to execute and enter into this Settlement Agreement; (2) the individual executing this Settlement Agreement on behalf of the Party has the authority and has been specifically authorized to execute and deliver this Settlement Agreement on behalf of such Party; (3) upon execution by such person on behalf of the Party, this Settlement Agreement shall be valid and enforceable against such Party in accordance with the terms hereof; (4) the Party is authorized to implement this Settlement Agreement, without further action by the Party or its governing body, board of directors, or any other person or entity, as the case may be; and (5) the execution and entry into this Settlement Agreement and the implementation of its terms by the Party is not in violation of any applicable law or any other contract or agreement by which it is bound or to which it is a party. The Parties acknowledge that although DWR plans to make payments required under this Agreement pursuant to its authority under the State Water Resources Development System (Water Code Sections 12930 et seq.), and that under such authority accruals are continuously appropriated without regard to fiscal years (Water Code Section 12938), any such payments may nevertheless be contingent on the annual Budget Act and, under certain circumstances, payments may be

delayed or halted by non-party government authorities. If any payment under this Settlement Agreement is delayed beyond the date it is due, the amount due shall accrue interest at the rate of the State Pooled Money Investment Fund for the first forty-five (45) days after it is due and at eight percent (8%) per annum thereafter. The foregoing does not limit Plaintiff's rights to seek legal or equitable relief in the event of a breach of this Settlement Agreement.

D. Not a General Appearance or Concession to Jurisdiction. The execution of this Settlement Agreement by the SWP Contractors and KWBA does not constitute a general appearance in the underlying litigation, nor does it constitute a concession to jurisdiction of the Superior Court over the SWP Contractors or KWBA other than for the purpose of enforcing the terms of this settlement.

E. Successors and Assigns. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns. No Party may assign their rights under this Settlement Agreement without the prior written consent of the other Parties.

F. Governance. This Agreement shall be construed under and enforced in accordance with the substantive laws of the State of California.

G. Entirety of Agreement; No Amendment. This Settlement Agreement sets forth the entire agreement among the Parties and supersedes all prior oral or written agreements, negotiations, discussions, or understandings concerning the subject matter hereof. The terms of this Settlement Agreement may not be altered, amended, waived or modified, except by a further written agreement signed by all Parties.

H. Mutual Preparation. The Parties each cooperated in the drafting and preparation of this Settlement Agreement. Thus, the language of all parts of this Settlement Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any Party as the drafter thereof.

I. Further Acts. Each Party agrees to make, execute and deliver such other instruments or documents, and to do or cause to be done such further or additional acts, as reasonably may be necessary in order to effectuate the purposes or to implement the terms of this Settlement Agreement.

J. No Waiver. No waiver of any breach of any term or provision of this Settlement Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Settlement Agreement. No waiver shall be binding unless in writing and signed by the Party waiving the breach. With respect to any breach of this Settlement Agreement by Plaintiffs, such breach may only be waived in writing by DWR, KCWA and The Metropolitan Water District of Southern California. With respect to any breach of this Settlement Agreement by the non-Plaintiffs, such breach may only be waived in writing by the Plaintiffs.

K. No Representations or Warranties. Each of Parties represents and declares that in executing this Settlement Agreement, it has relied solely upon its own judgment, belief and knowledge, and on the advice and recommendations of its independently selected counsel, concerning the nature, extent and duration of its rights and claims and that it has not been influenced to any extent whatsoever in executing the same by any representations or statements covering any matters made by any of the Parties or by any person representing them or any of them.

Each Party acknowledges that no other Party nor any of their representatives has made any promise, representation or warranty whatsoever, written or oral, as any inducement to enter into this Settlement Agreement, except as expressly set forth in this Settlement Agreement.

L. Independent Investigations. Each Party has made such investigation of the facts pertaining to this settlement and this Settlement Agreement and of all matters pertaining thereto as it deems necessary.

M. Survival. The representations, warranties and covenants contained in this Settlement Agreement are deemed to and shall survive the execution and delivery of this Settlement Agreement by all of the Parties.

N. Headings. All headings in this Settlement Agreement are included for convenience and reference only and shall not constitute a part of this Settlement Agreement for any purpose.

O. Not Binding on Others. This Settlement Agreement is not intended to, nor shall it (1) bind any non-Party persons or entities as to any claims or defenses they may otherwise now or in the future hold, or (2) waive any claims or defenses any Party hereto may have now or in the future against such non-Party persons or entities.

P. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement, provided each signing Party shall have received a copy of the signature page signed by every other Party.

Q. Voluntary and Knowing Execution. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS THOROUGHLY READ AND CONSIDERED

ALL ASPECTS OF THIS SETTLEMENT AGREEMENT, THAT IT UNDERSTANDS ALL PROVISIONS OF THIS SETTLEMENT AGREEMENT, THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL THROUGHOUT THIS PROCESS AND THAT IT IS VOLUNTARILY ENTERING INTO THIS SETTLEMENT AGREEMENT OF ITS OWN FREE WILL, WITHOUT DURESS OR COERCION OF ANY KIND.

R. Obligations Dependent on Validity of Monterey Amendments. With respect to any obligation in this Settlement Agreement that terminates or is suspended upon a challenge to or final judgment that invalidates any portion of any Monterey Amendment, such termination or suspension of such obligation may be avoided if such invalidity is explicitly and irrevocably waived in accordance with the procedures set forth in Paragraph 29 of the Monterey Amendments.

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**IN WITNESS WHEREOF**, the Parties have executed this Settlement Agreement as of the date first set forth above.

**PLANNING AND CONSERVATION LEAGUE**

By: _____
Name: _____
Title: _____

**PLUMAS COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By: _____
Name: _____
Title: _____

**CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.**

By: _____
Name: _____
Title: _____

[Remainder of Page Intentionally Blank – Additional Signatures Follow]

**STATE OF CALIFORNIA**

**DEPARTMENT OF WATER RESOURCES**

By: _____

Name: _____
Title: Director

**Approved as to legal form and sufficiency**:

By: _____

Name: _____
Title: Chief Counsel

**ALAMEDA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT, ZONE 7**

By: _____

Name: _____

Title: _____

**ALAMEDA COUNTY WATER DISTRICT**

By: _____

Name: _____

Title: _____

**ANTELOPE VALLEY-EAST KERN WATER AGENCY**

By: _____

Name: _____

Title: _____

**CASTAIC LAKE WATER AGENCY**

By: _____

Name: _____

Title: _____

**CITY OF YUBA**

By: _____

Name: _____

Title: _____

**COACHELLA VALLEY WATER DISTRICT**

By: _____

Name: _____

Title: _____

**COUNTY OF BUTTE**

By: _____

Name: _____

Title: _____

**COUNTY OF KINGS**

By: _____

Name: _____

Title: _____

**CRESTLINE-LAKE ARROWHEAD WATER AGENCY**

By: _____

Name: _____

Title: _____

**DESERT WATER AGENCY**

By: _____

Name: _____

Title: _____

**DUDLEY RIDGE WATER DISTRICT**

By: _____

Name: _____

Title: _____

**KERN COUNTY WATER AGENCY**

By: _____

Name: _____

Title: _____

**LITTLEROCK CREEK IRRIGATION DISTRICT**

By: _____

Name: _____

Title: _____

**METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA**

By: _____

Name: _____

Title: _____

**MOJAVE WATER AGENCY**

By: _____

Name: _____

Title: _____

**NAPA COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT**

By: _____

Name: _____

Title: _____

**OAK FLAT WATER DISTRICT**

By: _____

Name: _____

Title: _____

**PALMDALE WATER DISTRICT**

By: _____

Name: _____

Title: _____

**SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT**

By: _____

Name: _____

Title: _____

**SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT**

By: _____

Name: _____

Title: _____

**SAN GORGONIO PASS WATER AGENCY**

By: _____

Name: _____

Title: _____

**SAN LUIS OBISPO COUNTY FLOOD CONTROL & WATER CONSERVATION DISTRICT**

By: _____

Name: _____

Title: _____

**SANTA BARBARA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

By: _____

Name: _____

Title: _____

**SANTA CLARA VALLEY WATER DISTRICT**

By: _____

Name: _____

Title: _____

**SOLANO COUNTY WATER AGENCY**

By: _____

Name: _____

Title: _____

**TULARE LAKE BASIN WATER STORAGE DISTRICT**

By: _____

Name: _____

Title: _____

**VENTURA COUNTY FLOOD CONTROL DISTRICT**

By: _____

Name: _____

Title: _____

**CENTRAL COAST WATER AUTHORITY**

By: _____

Name: _____

Title: _____

**KERN WATER BANK AUTHORITY**

By: _____

Name: _____

Title: _____

**ATTACHMENT A**

**AMENDMENT TO STATE WATER PROJECT CONTRACT**

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**STATE OF CALIFORNIA**
**THE RESOURCES AGENCY**
**DEPARTMENT OF WATER RESOURCES**

**AMENDMENT NO. ____ TO THE WATER SUPPLY CONTRACT BETWEEN THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES AND _____**

This amendment is made this ____ day of _____, 2003, pursuant to the provisions of the California Water Resources Development Bond Act, the Central Valley Project Act, and other applicable laws of the State of California, between the State of California, acting by and through its Department of Water Resources, hereinafter referred to as the "State", and _____, hereinafter referred to as the "District" [or "Agency"].

**RECITALS**

WHEREAS, the State and the District entered into and subsequently amended a water supply contract (the "contract") providing that the State shall supply certain quantities of water to the District and providing that the District shall make certain payments to the State, and setting forth the terms and conditions of such supply and such payments; and

WHEREAS, on December 1, 1994, the State and representatives of certain State Water Project contractors executed a document entitled "Monterey Agreement – Statement of Principles – By The State Water Contractors And The State Of California Department Of Water Resources For Potential Amendments To The State Water Supply Contracts" (the "Monterey Agreement"); and

WHEREAS, the State, the Central Coast Water Authority ("CCWA") and those contractors intending to be subject to the Monterey Agreement subsequently negotiated an amendment to their contracts to implement provisions of the Monterey Agreement, and such amendment was named the "Monterey Amendment"; and

WHEREAS, in October 1995, an environmental impact report ("EIR") for the Monterey Amendment was completed and certified by CCWA as the lead agency, and thereafter the District and the State executed the Monterey Amendment; and

WHEREAS, the EIR certified by the CCWA was challenged by several parties (the "Plaintiffs") in the Sacramento County Superior Court and thereafter in the Third District Court of Appeal, resulting in a decision in *Planning and Conservation League, et al. v. Department of*

*Water Resources*, 83 Cal.App.4th 892 (2000), which case is hereinafter referred to as "PCL v. DWR"; and

WHEREAS, in its decision, the Court of Appeal held that (i) the Department of Water Resources ("DWR"), not CCWA, had the statutory duty to serve as lead agency, (ii) the trial court erred by finding CCWA's EIR sufficient despite its failure to discuss implementation of Article 18, subdivision (b) of the State Water Project contracts, as a no-project alternative, (iii) said errors mandate preparation of a new EIR under the direction of DWR, and (iv) the trial court erroneously dismissed the challenge to DWR's transfer of title to certain lands to Kern County Water Agency (the "Validation Cause of Action") and execution of amended State Water Project contracts for failure to name and serve indispensable parties. The Court of Appeal remanded the case to the trial court, ordering it to take the following five actions: (1) vacate the trial court's grant of the motion for summary adjudication of the Validation Cause of Action; (2) issue a writ of mandate vacating the certification of the EIR; (3) determine the amount of attorney fees to be awarded Plaintiffs; (4) consider such orders it deems appropriate under Public Resources Code Section 21168.9(a) consistent with the views expressed in the Appellate Court's opinion; and (5) retain jurisdiction over the action until DWR, as lead agency, certifies an environmental impact report in accordance with CEQA standards and procedures, and the Superior Court determines that such environmental impact report meets the substantive requirements of CEQA; and

WHEREAS, the State, the contractors, and the Plaintiffs in *PCL v. DWR* reached an agreement to settle *PCL v. DWR*, as documented by that certain Settlement Agreement dated _____, 2003 (the "Settlement Agreement"), and in such Settlement Agreement have agreed that the contracts should be amended, for clarification purposes, to delete terms such as "annual entitlement" and "maximum annual entitlement" so that the public, and particularly land use planning agencies, will better understand the contracts; and

WHEREAS, pursuant to the Settlement Agreement, the State and the District desire to so amend the District's contract, with the understanding and intent that the amendments herein with respect to subsections (m), (n), and (o) of Article 1, subsection (b) of Article 6, and subsection (a) of Article 16, and to Table A of the District's contract are solely for clarification purposes and that such amendments are not intended to and do not in any way change the rights, obligations or limitations on liability of the State or the District established by or set forth in the contract; and

WHEREAS, pursuant to the Settlement Agreement, the State, the contractors and the Plaintiffs in *PCL v. DWR* also agreed that the contracts should be amended to include a new Article 58 addressing the determination of dependable annual supply of State Water Project water to be made available by existing Project facilities, and the State and District desire to so amend the District's contract.

NOW THEREFORE, IT IS MUTUALLY AGREED, as follows:

1. Article 1(n) is amended to read:[1]

(n) **Annual Table A Amount**

"Annual Table A Amount" shall mean the amount of project water set forth in Table A of this contract that the State, pursuant to the obligations of this contract and applicable law, makes available for delivery to the District at the delivery structures provided for the District. The term Annual Table A Amount shall not be interpreted to mean that in each year the State will be able to make that quantity of project water available to the District. The Annual Table A Amounts and the terms of this contract reflect an expectation that under certain conditions the District will receive its full Annual Table A Amount; but that under other conditions only a lesser amount, allocated in accordance with this contract, may be made available to the District. This recognition that full Annual Table A Amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract. Where the term "annual entitlement" appears elsewhere in this contract, it shall mean "Annual Table A Amount." The State agrees that in future amendments to this and other contractor's contracts, in lieu of the term "annual entitlement," the term "Annual Table A Amount" will be used and will have the same meaning as "annual entitlement" wherever that term is used.

2. Article 1(o) is amended to read:

**(o) Maximum Annual Table A Amount**

**"**Maximum annual entitlement" shall mean the maximum annual amounts set forth in Table A of this contract, and where the term "maximum annual entitlement" appears elsewhere in this contract it shall mean "Maximum Annual Table A Amounts."

3. Article 1(m) is amended to read:

**(m) Minimum Project Yield**

**"**Minimum project yield" shall mean the dependable annual supply of project water to be made available assuming completion of the initial project conservation facilities and additional project conservation facilities. The project's capability of providing the minimum project yield shall be determined by the State on the basis of coordinated operations studies of initial project conservation facilities and additional project conservation facilities, which studies shall be based upon factors including but not limited to: (1) the estimated relative proportion of deliveries for agricultural use to deliveries for municipal use assuming Maximum Annual Table A Amounts

[1] The number of the articles is not the same for all the Water Supply Contractors. Article 1(n) is intended to be the article presently entitled "Annual Entitlement", whatever its number may be in each District's contract. The article numbers may have to be changed for each contractor to reflect the numbers in its contract.

for all contractors and the characteristic distributions of demands for these two uses throughout the year; and (2) agreements now in effect or as hereafter amended or supplemented between the State and the United States and others regarding the division of utilization of waters of the Delta or streams tributary thereto.

4. Article 6(b) is amended to read:

**(b) District's Annual Table A Amounts**

Commencing with the year of initial water delivery to the District, the State each year shall make available for delivery to the District the amounts of project water designated in Table A of this contract, which amounts shall be subject to change as provided for in Article 7(a) and are referred to in this contract as the District's Annual Table A Amounts.

5. Article 16(a) is amended to read:

**(a) Limit on Total of all Maximum Annual Table A Amounts**

The District's Maximum Annual Table A Amount hereunder, together with the maximum Table A amounts of all other contractors, shall aggregate no more than 4,185,000 acre-feet of project water.

6 Article 58 is added to read:

58. **Determination of Dependable Annual Supply of Project Water to be Made Available by Existing Project Facilities.**

In order to provide current information regarding the delivery capability of existing project conservation facilities, commencing in 2003 and every two years thereafter the State shall prepare and mail a report to all contractors, and all California city, county, and regional planning departments and agencies within the contractors' project service areas. This report will set forth, under a range of hydrologic conditions, estimates of overall delivery capability of the existing project facilities and of supply availability to each contractor in accordance with other provisions of the contractors' contracts. The range of hydrologic conditions shall include the delivery capability in the driest year of record, the average over the historic extended dry cycle and the average over the long-term. The biennial report will also include, for each of the ten years immediately preceding the report, the total amount of project water delivered to all contractors and the amount of project water delivered to each contractor.

7. Add the following language at the bottom of Table A:

In any year, the amounts designated in this Table A shall not be interpreted to mean that the State is able to deliver those amounts in all years. Article 58 describes the State's process for providing current information for project delivery capability.

8. Except for Article 58, the changes made by this amendment are solely for clarification purposes, and are not intended to nor do they in any way change the rights, obligations or

limitations on liability of the State or the District established by or set forth in the contract, and this amendment shall be interpreted in accordance with this intent.

9. At the time of execution of this Agreement and thereafter, the effectiveness of this Amendment is dependent upon the effectiveness of the District's Monterey Amendment (all provisions therein) and the Kern Fan Element Transaction.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the date first above written.

**STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES**

By: _____
Name: _____
Title: Director

**Approved as to legal form and sufficiency**:

By: _____
Name: _____
Title: Chief Counsel

Attest:

**_____ DISTRICT**

By: _____
Name: _____
Title: _____

## ATTACHMENT B

## PRINCIPLES REGARDING STATE WATER PROJECT AVAILABILITY

*Note: These principles are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.*

1. Commencing in 2003, and every two years thereafter, the Department of Water Resources (DWR) shall prepare and deliver to all State Water Project (SWP) contractors, all city and county planning departments, and all regional and metropolitan planning departments within the project service area a report which accurately sets forth, under a range of hydrologic conditions, the then existing overall delivery capability of the project facilities and the allocation of that capacity to each contractor. The range of hydrologic conditions shall include the historic extended dry cycle and long-term average. The biennial report shall also disclose, for each of the ten years immediately preceding the report, the total amount of project water delivered and the amount of project water delivered to each contractor. The information presented in each report shall be presented in a manner readily understandable by the public.

2. DWR shall develop and, by January 1, 2004, publish guidelines to assist Municipal and Industrial Contractors in providing accurate information to land-use planning agencies with jurisdiction within the Contractors' respective service areas regarding local and regional programs to manage or supplement SWP supplies. DWR shall consult with the plaintiffs and contractors in developing the guidelines.

3. DWR shall provide assistance to enable all Municipal and Industrial Contractors to provide complete and accurate information to relevant land-use planning agencies to assure that local land-use decisions reflect accurate information on the availability of water from state, local, and other sources.

## ATTACHMENT C

## DWR GUIDELINES FOR REVIEW OF PROPOSED PERMANENT TRANSFERS OF STATE WATER PROJECT ANNUAL TABLE A AMOUNTS

*Note: These guidelines are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.*

1. Purpose: The purpose of these guidelines is to describe the process for DWR's review of proposed permanent transfers of SWP Annual Table A Amounts and by so doing, provide disclosure to SWP Contractors and to the public of DWR's process and policy on approving permanent transfer of SWP Annual Table A Amounts. Such disclosure should assist contractors in developing their transfer proposals and obtaining DWR review expeditiously, and assist the public in participating in that review.

2. Coverage: These guidelines will apply to DWR's approval of permanent transfers of water among existing SWP Contractors and, if and when appropriate, to permanent transfers of water from an existing SWP Contractor to a new SWP Contractor.

3. Interpretation: These guidelines are in furtherance of the state policy in favor of voluntary water transfers and shall be interpreted consistent with the law, including but not limited to Water Code Section 109, the Burns-Porter Act, the Central Valley Project Act, the California Environmental Quality Act, area of origin laws, the public trust doctrine, and with existing contracts and bond covenants. These guidelines are not intended to change or augment existing law.

4. Format: The guidelines shall be issued by DWR as a "Notice to State Water Contractors."

5. Revisions: Revisions may be made to these guidelines as necessary to meet changed circumstances, changes in the law or long-term water supply contracts, or to address conditions unanticipated when the guidelines are adopted. Revisions shall be in accordance with the settlement agreement reached in *Planning and Conservation League vs. Department of Water Resources*.

6. Distribution: The transfer guidelines shall be published by DWR in the next available edition of Bulletin 132, and also as part of the biennial disclosure of SWP reliability as described in the PCL v. DWR Settlement Agreement.

7. Contract Amendment: Permanent transfers of SWP water are accomplished by amendment of each participating contractor's long-term water supply contract. The amendment consists of amending the Table A upwards for a buying contractor and downwards for a selling contractor. The amendment shall be in conformity with all provisions of the long-term water supply contracts, applicable laws, and bond covenants. Other issues to be addressed in the contract amendment will be subject to negotiation among DWR and the two participating contractors. The negotiations will be conducted in public, pursuant to the settlement agreement in PCL vs. DWR.

8. Financial issues: The purchasing contractor must demonstrate to the DWR's satisfaction that it has the financial ability to assume payments associated with the transferred water. If the purchasing entity was not a SWP Contractor as of 2001, special financial requirements pertain as described below, as well as additional qualifications.

9. Compliance with CEQA: Consistent with CEQA, the State's policy to preserve and enhance environmental quality will guide DWR's consideration of transfer proposals (Public Resources Code Section 21000). Identification of the appropriate lead agency will be based on CEQA, the CEQA Guidelines, and applicable caselaw, including *Planning and Conservation League vs. Department of Water Resources, 83 Cal. App. 4th 892 (2000).* CEQA requires the lead agency at a minimum to address the feasible alternatives to the proposed transfer and its potentially significant environmental impacts (1) in the selling contractor's service area; (2) in the buying contractor's service area; (3) on SWP facilities and operations; and (4) on the Delta and areas of origin and other regions as appropriate. Impacts that may occur outside of the transferring SWP Contractors' service areas and on fish and wildlife shall be included in the environmental analysis. DWR will not approve a transfer proposal until CEQA compliance is completed. The lead agency shall consult with responsible and trustee agencies and affected cities and counties; and when DWR is not the lead agency, shall provide an administrative draft of the draft EIR or Initial Study/Negative Declaration to DWR prior to the public review period. A descriptive narrative must accompany a checklist, if a checklist is used. The lead agency shall conduct a public hearing on the EIR during the public comment period and notify DWR's State Water Project Analysis Office of the time and place of such hearing in addition to other notice required by law.

10. Place of Use: The purchasing contractor must identify the place and purpose of use of the purchased water, including the reasonable and beneficial use of the water. Typically this information would be included in the environmental documentation. If a specific transfer proposal does not fit precisely into any of the alternatives listed below, DWR will use the principles described in these Guidelines to define the process to be followed. The information to be provided under this paragraph is in addition to the CEQA information described in paragraph 9 of these guidelines.

a) If the place of use is within the contractor's service area, the contractor should disclose the purpose of the transferred water, such as whether the water is being acquired for a specific development project, to enhance overall water supply reliability in the contractor's service area, or some other purpose. If the transferred water is for a municipal purpose, the contractor should state whether the transfer is consistent with its own Urban Water Management Plan or that of its member unit(s) receiving the water.

b) If the place of use is outside the contractor's service area, but within the SWP authorized place of use, and service is to be provided by an existing SWP Contractor: In addition to Paragraph 10(a) above, the contractor should provide DWR with copies of LAFCO approval and consent of the water agency with authority to serve that area, if any. In some instances, DWR's separate consent is required for annexations in addition to the approval for the transfer.

c) If the place of use is outside the SWP authorized place of use and service is to be provided by an existing SWP Contractor, the contractor should provide information in Paragraph 10(a) and 10(b). Prior to approving the transfer, DWR will consider project delivery capability, demands for water supply from the SWP, and the impact, if any, of the proposed transfer on such demand. If DWR approves the transfer, DWR will petition State Water Resources Control Board for approval of expansion of authorized place of use. Water will not be delivered until the place of use has been approved by the SWRCB and will be delivered in compliance with any terms imposed by the SWRCB.

d) If the place of use is outside the SWP authorized place of use and service is not to be provided by an existing SWP contractor, DWR will consider the transfer proposal as a proposal to become a new state water contractor. Prior to adding a new SWP Contractor, DWR will consider project delivery capability, demands for water supply from the SWP, and the impact, if any, of the proposed transfer on such demand. DWR will consult with existing SWP Contractors regarding their water supply needs and the proposed transfer. In addition to the information in Paragraph 10(a), 10(b), and 10(c), the new contractor should provide information similar to that provided by the original SWP contractors in the 1960's Bulletin 119 feasibility report addressing hydrology, demand for water supply, population growth, financial feasibility, etc. DWR will evaluate these issues independently and ordinarily will act as lead agency for CEQA purposes. In addition, issues such as area of origin claims, priorities, environmental impacts and use of water will be addressed. The selling contractor may not be released from financial obligations. The contract will be subject to a CCP 860 validation action initiated by the new contractor. If DWR approves the transfer, DWR will petition State Water Resources Control Board for approval of expansion of authorized place of use. Water will not be delivered until the place of use has been approved by the SWRCB and will be delivered in compliance with any terms imposed by the SWRCB.

11, DWR Discretion. Consistent with the long-term water supply contract provisions, CEQA, and other provisions of law, DWR has discretion to approve or deny transfers. DWR's exercise of discretion will incorporate the following principles:

(a) As required by CEQA, DWR as an agency with statewide authority will implement feasible mitigation measures for any significant environmental impacts resulting from a transfer, if such impacts and their mitigation are not addressed by other public agencies and are within DWR's jurisdiction.

(b) DWR will invoke "overriding considerations" in approving a transfer only as authorized by law, including but not limited to CEQA, and, to the extent applicable, the public trust doctrine and area of origin laws.

## ATTACHMENT D

## PRINCIPLES REGARDING PUBLIC PARTICIPATION PROCESS IN SWP CONTRACT NEGOTIATIONS

*Note: These principles are prepared in connection with the settlement agreement between PCL and DWR and are only effective pursuant to the terms therein.*

**1. Policy:** Given the importance of the State Water Project to the State of California, and the key role that the long-term water supply contracts play in the administration of the State Water Project, DWR agrees that public review of significant changes to these contracts is beneficial and in the public interest.

**2. Types of activities to be covered:** Project-wide contract amendments (i.e., contracts with substantially similar terms intended to be offered to all long-term SWP Contractors) and contract amendments to transfer entitlements between existing SWP Contractors will not be offered to the contractors for execution unless DWR has first complied with the public participation process as described in paragraphs (3), (4), (5) and (6).

**3. The Public Participation Process.**

1) Negotiations will be conducted in public;

2) The public will be provided with advance notice of the time and place of the negotiations; and

3) The public will be provided the opportunity to observe negotiations and comment in each negotiating session

**4. Timing of Public Participation:** Public participation ordinarily will precede the formulation of the project description in the CEQA process in order to assure that the public participation is meaningful. When DWR is a responsible agency, (e.g., when existing SWP Contractors agree to transfer entitlement between themselves), the public participation will be scheduled to facilitate coordination with the lead agency's CEQA process.

**5. Activities that will not be subject to public participation:** Informal discussions prior to exchange of formal drafts and discussion of topics that are authorized to be kept confidential by law will not be subject to the public participation process.

**6. Contract amendments resulting from litigation:** If litigation has been formally initiated, and settlement negotiations result in a proposal to adopt project-wide amendments to settle the litigation, all proposed contract amendments shall be subject to the public participation process before they are approved by DWR.

## ATTACHMENT E

## FINAL PERMANENT TABLE A AMOUNT TRANSFERS FROM KERN COUNTY WATER AGENCY SUBSEQUENT TO MONTEREY AMENDMENTS (January 1, 2003)

*Note: This Exhibit is prepared in connection with the settlement agreement between PCL and DWR.*

| From (Kern County Water Agency Member Unit) | To | Amount (afy) | Year Effective |
|---|---|---|---|
| Berrenda Mesa Water District | Mojave Water Agency | 25,000 | 1998 |
| Belridge Water Storage District | Palmdale Water Agency | 4,000 | 2000 |
| Berrenda Mesa Water District | Alameda County Flood Control and Water Conservation District Zone 7 | 7,000 | 2000 |
| Lost Hills Water District | Alameda County Flood Control and Water Conservation District Zone 7 | 15,000 | 2000 |
| Belridge Water Storage District | Alameda County Flood Control and Water Conservation District Zone 7 | 10,000 | 2001 |
| Belridge Water Storage District and Berrenda Mesa Water District | Solano County Water Agency | 5,756 | 2001 |
| Belridge Water Storage District and Berrenda Mesa Water District | Napa County Flood Control and Water Conservation District | 4,025 | 2001 |

## EXHIBIT 1

## PLAINTIFFS' EXPENSES TRUST ACCOUNT AGREEMENT

This Agreement is entered into this fifteenth day of August 2002, by JAMS and DWR, for the purpose of transferring $300,000 in trust to JAMS for use in accordance with Principles of Settlement in PCL vs. DWR.

WHEREAS, JAMS has acted as mediator between the Department and other parties to the litigation in PCL v. DWR (Superior Court No. 95CS03216).

WHEREAS, the Principles of Settlement as agreed to by the parties on July 22, 2002, provides for the placement of $300,000 in trust with JAMS.

WHEREAS, the money placed in the trust is to be provided to plaintiffs for expenses actually incurred as needed to support plaintiffs' participation in developing the new EIR to be filed as a return to the writ.

WHEREAS, the Principles of Settlement also provides that the funds will be provided based on a budget and participation plan to be submitted by plaintiffs to the mediator specifying the purposes for which the funds will be expended.

The parties agree as follows:

1. JAMS agrees to accept $300,000 in trust in accordance with the Principles of Settlement.

2. JAMS agrees to maintain the monies in trust, and following receipt of a budget and participation plan from plaintiffs, to disburse funds to plaintiffs for actual expenditures incurred for such purpose and pursuant to such schedule, budget, and participation plan, all in conformance with the Principles of Settlement. The funds will be disbursed to the plaintiffs' attorney, Antonio Rossmann, Law Offices of Antonio Rossmann.

3. Costs incurred by JAMS in providing this service will be paid as part of the mediator services as part of the existing contract between JAMS and the California Department of Justice, Office of the Attorney General.

4. This agreement may be amended in writing by agreement of both parties.

5. Funds not disbursed upon termination of the trust shall be returned to DWR.

6. The trust shall terminate upon notice to JAMS by DWR of termination based on the earlier of (a) failure of the parties to the mediation to execute a settlement agreement by January 1, 2003; (b) notice of termination given by the Director of DWR to JAMS and plaintiffs that this trust is terminated, which notice shall not be given without

defendants' consultation with plaintiffs and the mediator; or c) filing of the Notice of Determination on the new EIR.

7. JAMS will incur no liability to DWR arising from any disbursement made pursuant to this agreement.

8. This agreement is not intended to and shall not create any rights in any third party.

APPROVED:

| /s/ Steve Macaulay for | 8/10/02 | /s/ Julie Sager | 8/15/02 |
|---|---|---|---|
| Thomas M. Hannigan<br>Director | Date | Vice President & CFO<br>JAMS | Date |

**EXHIBIT 1**

AMENDMENT NO. 1

PLAINTIFFS' EXPENSES TRUST ACCOUNT AGREEMENT

Paragraph 6 of this Agreement is amended to read as follows:

6. The trust shall terminate upon notice to JAMS by DWR of termination based on the earlier of (a) failure of the parties to the mediation to execute a settlement agreement by May 1, 2003, (b) notice of termination given by the Director of DWR to JAMS and plaintiffs that this trust is terminated, which notice shall not be given without defendants' consultation with plaintiffs and the mediator; or (c) filing of the Notice of Determination on the new EIR.

APPROVED:

| | | | |
|---|---|---|---|
| Thomas M. Hannigan<br>Director | Date | JAMS | Date |

# EXHIBIT 2

## KERN WATER BANK AUTHORITY
## AGREEMENTS AND PERMITS
## WHICH MAY HAVE RELIED ON THE KWBA ADDENDUM

| AGREEMENT/PERMIT | DATE | OTHER PARTIES |
|---|---|---|
| Incidental Take Permit - PRT-828086 | 2-Oct-97 | Department of Interior, U.S. Fish & Wildlife Service |
| Approval/Management Authorization pursuant to California Endangered Species Act for Implementation of Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan | 2-Oct-97 | Calif. Department of Fish & Game |
| Natural Community Conservation Plan/Habitat Conservation Plan Implementation Agreement | 2-Oct-97 | U.S. Fish & Wildlife Service; Calif Dept of Fish & Game; Kern Water Bank Authority |
| Approval, Cultural Resources Assessment and Plan for the KWBA Project | January, 1997 | N/A |
| Memorandum of Understanding Regarding Operation and Monitoring of the Kern Water Bank Groundwater Banking Program | 26-Oct-95 | Numerous |
| Approval of Kern Water Bank Authority Mosquito Abatement Program | 26-Oct-95 | Mosquito Abatement Districts |
| Service Contracts for Operations and Maintenance | 1996 - current | Numerous Vendors |
| Grazing Leases (Sheep and Cattle) | 1997- current | Various Stockmen |
| Minor Amendment No. 1: Hunting/Research to the KWBA HCP/NCCP and Implementation Agreement | 6/30/1998 | California Department of Fish and Game and U.S. Fish and Wildlife Service |
| State of California Standard Agreement for "Improving Wildlife Habitat for Doves" (annual contract) | 1998 - current | Calif. Department of Fish and Game |
| Conservation Credit Certificates | 1998 - current | Conservation Credit Buyers |
| Construction and Service Contracts for Master Plan Construction Project - KWB Canal, Head-works, Aqueduct Turnout, New Wells, Well Rehabilitation, Pipelines | 7/1999 - 8/2002 | Numerous Contractors and Vendors |
| KWB Canal and Buena Vista Main Canal Joint Use Agreement | 7/20/1999 | Buena Vista Water Storage District |

| AGREEMENT/PERMIT | DATE | OTHER PARTIES |
|---|---|---|
| Business Loan Agreement ($21,000,000) | 7/23/1999 | Bank of America, N.A. |
| Agreement for Grant of Easement | September 1999 | State of California Acting Through the Department of Parks and Recreation |
| Agreement for Construction, Operation, and Maintenance of the Kern Water Bank Turnout, a Permanent Turnout Within the California Aqueduct Right of Way | 11/9/1999 | Department of Water Resources |
| License Agreement for Kern River Canal Crossing | 11/17/1999 | City of Bakersfield |
| Loan Contract No. E75002 Under the "Safe, Clean, Reliable Water Supply Act Water Conservation and Ground Water Recharge Sub account ($5,000,000) | March 2000 | State of California, Department of Water Resources, Division of Planning and Local Assistance |
| Reclamation Board Permit No. 17147-A GM Authorizing Construction of Pedestrian Bridge Across the Outlet Canal within the Kern River Designated Floodway | 10/16/2000 | State of California - The Resources Agency, Department of Water Resources |
| Reclamation Board Permit No. 16821 GM (Revised) Authorizing Construction of a 20-foot Wide Unlined Canal and Reinforced Concrete Gated Turnout Structure on the Right (North) Bank of the Designated Floodway and Install a 108-Inch Diameter, 700-foot long, Reinforced Concrete Pipe Across (Under the Kern River | 2/26/2001 | State of California - The Resources Agency, Department of Water Resources |
| Grant Awarded Under the "Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act (Proposition 13) - Groundwater Storage Program ($3,375,000) | Jun-02 | State of California, Department of Water Resources, Division of Planning and Local Assistance |
| Service Contracts for Well Testing and Rehabilitation Under the SB5X Program | 2002 | Various Vendors |

Exhibit 2-2

**EXHIBIT 3-A**

**PROPOSED 21168.9 ORDER**

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

| | |
|---|---|
| PLANNING AND CONSERVATION LEAGUE, a California not for profit corporation, PLUMAS COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California public agency; CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC., a California not for profit corporation,<br><br>Plaintiffs and Petitioners,<br><br>v.<br><br>DEPARTMENT OF WATER RESOURCES, a California State Agency, et al.,<br><br>Defendants and Respondents, | Case No: 95CS03216<br><br>[PROPOSED] ORDER PURSUANT TO PUBLIC RESOURCES CODE SECTION 21168.9 |

On remand from the Third District Court of Appeal on January ___, 2003, in Department 53 of the Sacramento Superior Court, the Honorable Loren E. McMaster, presiding, this proceeding came on for a status report and joint motion. Petitioners and Plaintiffs, Planning and Conservation League, Plumas County Flood Control and Water Conservation District, and Citizens Planning Association of Santa Barbara County ("Petitioners"), appeared through Antonio Rossmann and Roger B. Moore. Respondent and Defendant, Central Coast Water Authority (CCWA), appeared through Susan F. Petrovich of the Law Firm of Hatch & Parent. Respondent and Defendant, Department of Water Resources (DWR), appeared through Deputy Attorney General Marian E. Moe. Robert S. Draper of O'Melveny and Myers, LLP and Clifford W. Schulz appeared, respectively, on behalf of the Metropolitan Water District of Southern California and Dudley Ridge Water District, entities that submitted answers to the First

Amended Complaint subsequent to the Court of Appeal's final determination in this action and prior to any further order of this Court on remand.

In light of the direction from the Third District Court of Appeal on remand in Planning and Conservation League v. Department of Water Resources (2000) 83 Cal.App.4th 892, this Court hereby makes the following findings:

1. The parties to this lawsuit and other public agencies have engaged in extensive settlement negotiations, mediated by retired Judge Daniel Weinstein of JAMS Dispute Resolution, with the intent to avoid further litigation and associated expenses, to provide for an effective way to cooperate in the preparation of a new environmental impact report (EIR), and to make other specified improvements in the administration and operation of the State Water Project.

2. The mediation has resulted in an executed Settlement Agreement for approval by this Court, attached to this Order as Exhibit A.

3. DWR as lead agency has commenced the preparation of the new EIR.

4. As part of the Settlement Agreement, DWR and the State Water Project (SWP) contractors who are signatories to the Settlement Agreement have agreed that, pending DWR's filing of a return in satisfaction of the Writ of Mandate and this Court's dismissal of the Writ of Mandate, they will not approve any new project or activity (as defined in section VII.A of the Settlement Agreement) in reliance on the 1995 Environmental Impact Report for the Implementation of the Monterey Agreement.

5. This Order is made pursuant to the provisions of Public Resources Code section 21168.9 and pursuant to this Court's equitable powers. This Court finds that the actions described in this Order, including actions taken in compliance with the Writ of Mandate, comprise the actions necessary to assure DWR's compliance with Division 13 of the Public Resources Code. This Court further finds that this Order includes only those mandates necessary to achieve compliance with Division 13.

THEREFORE, IT IS HEREBY ORDERED as follows:

1. This Court's Final Judgment denying the petition for writ of mandate, entered August 15, 1996, is reversed in accordance with the directive of the Third District Court of Appeal's decision in Planning and Conservation League v. Department of Water Resources (2000) 83 Cal.App.4th 892.

2. This Court's order granting the summary adjudication on the fifth cause of action, entered June 10, 1996, is vacated.

3. The Settlement Agreement attached as Exhibit A is hereby approved.

4. A Peremptory Writ of Mandate directed to Respondents Central Coast Water Authority and DWR shall issue under seal of this Court in the form attached hereto as Exhibit B.

5. In accordance with the Settlement Agreement and this Order, pending DWR's filing of the return in compliance with the Peremptory Writ of Mandate and this Court's Order discharging the Writ of Mandate, DWR and CCWA shall not approve any new project or activity (as defined section VII.A of the Settlement Agreement) in reliance on the 1995 EIR for the Implementation of the Monterey Agreement.

6. In the interim, until DWR files its return in compliance with the Peremptory Writ of Mandate and this Court orders discharge of the Writ of Mandate, the administration and operation of the State Water Project and Kern Water Bank Lands shall be conducted pursuant to the Monterey Amendments to the State Water Contracts, as supplemented by the Attachment A Amendments to the State Water Contracts (as defined in the Settlement Agreement) and the other terms and conditions of the Settlement Agreement.

7. Plaintiffs and petitioners shall recover such costs and attorney's fees as provided in prior court orders and in an amount as determined in the arbitration procedures agreed to in the Settlement Agreement, or as otherwise agreed to by the parties.

8. Except as provided, the Peremptory Writ of Mandate shall not limit or constrain the lawful jurisdiction and discretion of DWR. This Court retains jurisdiction until DWR files a

return that complies with the terms of the Writ of Mandate, and this Court issues an order discharging the Writ of Mandate.

IT IS SO ORDERED.

Dated: _____, 2003 _____ _____

Judge of the Superior Court

**EXHIBIT 3-B**

**PROPOSED WRIT OF MANDATE**

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

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| PLANNING AND CONSERVATION LEAGUE, a California not for profit corporation, PLUMAS COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a California public agency; CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC., a California not for profit corporation,<br><br>Petitioners,<br><br>v.<br><br>DEPARTMENT OF WATER RESOURCES, a California State Agency, and CENTRAL COAST WATER AUTHORITY, A Joint Powers Agency<br><br>Respondents. | Case No: 95CS03216<br><br>PROPOSED PEREMPTORY WRIT OF MANDATE (Public Resources Code § 21168.9) |

TO: Respondents California Department of Water Resources and Central Coast Water Authority:

The Third District Court of Appeal, in its decision in Planning and Conservation League v. Department of Water Resources (2000) 83 Cal.App.4th 892, having directed this Court to issue a Peremptory Writ of Mandate,

YOU ARE HEREBY COMMANDED to comply with the following:

1. Respondent Central Coast Water Authority shall set aside its October 26, 1995 certification that the Final Programmatic Environmental Impact Report for Implementation of

the Monterey Agreement (the 1995 Monterey Agreement EIR) was completed in compliance with the California Environmental Quality Act [AR 2183].

2. Respondent Department of Water Resources (DWR) shall:

(a) set aside its December 13, 1995 certification, as responsible agency, that the 1995 Monterey Amendment EIR is adequate under the California Environmental Quality Act [AR 1875]; and

(b) as lead agency, prepare and certify a new EIR. in compliance with the Court of Appeal's decision, the California Environmental Quality Act, and the Settlement Agreement.

3. Upon completion and certification of the new EIR, Respondent DWR shall make written findings and decisions and file a notice of determination identifying the components of the project analyzed in the new EIR**,** all in the manner prescribed by sections 15091 – 15094 of the CEQA Guidelines.

4. Respondent DWR shall, upon the filing of a Notice of Determination, submit the new EIR, the written findings, the Notice of Determination, and such additional documents as this Court may order by way of return to this writ of mandate.

5. This Court shall retain jurisdiction over this proceeding until DWR files a return that complies with this Writ of Mandate, and this Court issues an order discharging this Writ of Mandate. Except as provided, this Writ of Mandate shall not limit or constrain the lawful jurisdiction and discretion of the Department of Water Resources.

Dated: _____, 2003

_____

_____

Clerk of the Superior Court

Let the foregoing writ issue:

_____

Judge of the Superior Court

## EXHIBIT 4

## SECTION VI TRUST ACCOUNT AGREEMENT

This Section VI Trust Account Agreement (this "Trust Agreement") is entered into this _____ day of _____ 2003, by JAMS and the State of California Department of Water Resources (the "Department"), for the purposes of establishing and describing the trust account in accordance with that certain Settlement Agreement entered into in *Planning & Conservation League v. Department of Water Resources* ("PCL v. DWR").

WHEREAS, Judge Daniel Weinstein (ret.) of JAMS has acted as mediator between the Department and other parties to the litigation in *PCL v. DWR* (Sacramento Superior Court No. 95CS03216).

WHEREAS, the Settlement Agreement provides for the placement over time of $5,500,000 in trust with JAMS at the specific times and under the conditions in the Settlement Agreement.

The parties agree as follows:

1. JAMS will establish a trust account for receipt and disbursal of funds received from the Department for payment pursuant to the Settlement Agreement.

2. All funds deposited with JAMS pursuant to this agreement shall be placed into a trust account and shall be disbursed only in accordance with this Trust Agreement and the Settlement Agreement. Section VI of the Settlement Agreement provides that the funds shall be used to implement the Settlement Agreement, as determined by Plaintiffs in their reasonable judgment, including watershed restoration projects, follow-up actions arising from the Settlement Agreement, and technical studies.

3. JAMS agrees to maintain the monies in trust, and after receipt of a written statement executed by all Plaintiffs (as defined in the Settlement Agreement), to disburse funds to Plaintiffs in conformance with such statement. JAMS will provide a copy of the written statement to: Chief Counsel, The Office of the Chief Counsel, Department of Water Resources, P.O. Box 942836, Sacramento, CA 95814.

4. Costs incurred by JAMS in providing this service will be paid as part of the mediator services as part of the existing contract between JAMS and the California Department of Justice, Office of the Attorney General, or any successor contract.

5. This agreement may be amended only in writing by agreement of both parties.

6. Funds not disbursed before termination of this Trust Agreement shall be returned to DWR immediately upon termination of this Trust Agreement.

7. This Trust Agreement shall terminate if and when DWR notifies JAMS that the agreement is terminated, which notice shall not be given without DWR's consultation with Plaintiffs and the mediator.

8. JAMS will incur no liability to DWR arising from any disbursement made pursuant to this agreement.

9. This Trust Agreement is intended solely for the purposes of establishing and describing the trust account at JAMS and is not intended to and shall not create any rights in any third party.

APPROVED:

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| Thomas M. Hannigan<br>Director | Date | JAMS | Date |