

AMERICAN RIVER BASIN STUDY
MEMORANDUM OF AGREEMENT

By and Between

U.S. Department of the Interior,
Bureau of Reclamation, Mid-Pacific Region

and

The Placer County Water Agency
The El Dorado County Water Agency
The Sacramento Regional Water Authority
The City of Sacramento
The City of Roseville
The City of Folsom

The United States Department of the Interior, Bureau of Reclamation, the Placer County Water Agency (PCWA), the City of Roseville (Roseville), the El Dorado County Water Agency (EDCWA), the City of Sacramento (Sacramento), the City of Folsom (Folsom), and the Sacramento Regional Water Authority (RWA) agree to work collaboratively to perform the American River Basin Study (ARBS) as part of the WaterSMART Basin Study Program. This Memorandum of Agreement (MOA) establishes the terms that will guide the performance of the Study.

This MOA is intended to facilitate cooperative efforts for mutual provision of services and support, and technical assistance by the Parties in the conduct of meeting the objectives and scope of this MOA.

The purpose of the ARBS is to evaluate existing and potential future imbalances between water supplies and demands in American River Basin and propose a range of strategies which may be employed to alleviate or mitigate identified imbalances. Along with other strategies, the ARBS will include an evaluation of integrated water management strategies to improve regional water supply reliability within the American River Basin and to improve Reclamation's flexibility in operating Folsom Reservoir to meet flow and water quality standards, and protect fish species listed under the Federal Endangered Species Act in the Lower American River and the Sacramento-San Joaquin Delta.

The ARBS area encompasses the entire American River Watershed which covers 2,140 square miles from Sacramento Valley to the peaks of the northern Sierra Nevada mountains west of

Lake Tahoe; together with the adjacent North American and South American Groundwater Sub-basins as designated in the California Department of Water Resources Bulletin 118.

The Plan of Study (POS) for the ARBS is included as Attachment A. The POS has been prepared pursuant to Reclamation's Basin Study Directives and Standards and includes a detailed work program, budget(s) and schedule. The Plan of Study may be updated from time-to-time with all substantive revisions being approved by consensus of the Partners and Reclamation

ARTICLES

I. Definitions

- A. Reclamation - United States Department of the Interior, Bureau of Reclamation.
- B. Non-Federal Partners - Non-Federal Partners means PCWA, Roseville, EDCWA, Sacramento, Folsom, and RWA.
- C. Parties - Reclamation and the Non-Federal Partners.
- D. In-Kind Services - Services provided by a Non-Federal Partner that substantially contributes to the completion of the work task or task identified.
- E. Confidential Information - Privileged or confidential trade secrets or commercial or financial information under the meaning of 5 USC 552(b)(4).
- F. Intellectual Property - Any invention that is legally protected through patents, copyrights, trademarks, and trade secrets, or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.
- G. Key Personnel - Reclamation and Non-Federal Partner Agency representatives to the ARBS Executive Steering Committee; Reclamation and Non-Federal Partner Agency representatives to the ARBS Project Management Team as identified in Section V, Article 14 – Notices and Key Personnel.
- H. Subject Invention - Any invention or other Intellectual Property conceived or first reduced to practice under this MOA which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC 2321, et seq., or under the patent laws of a foreign country.

II. Authorities and Financial Obligations

- A. Reclamation's authority to enter into this MOA:
 - 1. Reclamation Act of June 17, 1902 (ch. 1093, 32 Stat. 388; 43 U.S.C. 372, et seq.) and acts amendatory thereof and supplementary thereto.

2. Title IX, Section 9503 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, 123 Stat. 991).

B. Non-Federal Partner's statutory authority to enter into this MOA:

1. PCWA is authorized to enter into this MOA by Board of Directors Resolution 17-05 dated January 19, 2017.
2. Roseville is authorized to enter into this MOA by City Council Resolution 17-06 dated January 18, 2017.
3. EDCWA is authorized to enter into this MOA by Board of Supervisors Resolution WA-1-2017 dated February 8, 2017.
4. Sacramento is authorized to enter into this MOA by City Council Resolution 2017-0033 dated January 19, 2017.
5. Folsom is authorized to enter into this MOA by City Council Resolution 9863 dated January 10, 2017.
6. RWA is authorized to enter into this MOA by Board of Directors Resolution 2017-02 dated January 12, 2017.

C. Cost Sharing: The costs of the SRCBS will be shared between Reclamation and the Non-Federal Partners in the following amounts:

1. Reclamation: Not to exceed \$830,000
2. Non-Federal Partners: Not to exceed \$1,856,000

The Non-Federal Partners' financial contributions will be in the form of in-kind products and services, predominately modeling analyses and staff participation. Reclamation's financial contribution to the Basin Study shall not exceed 50 percent of the total cost. All or part of the Non-Federal Partners' share may be provided as in-kind services. Valuation of in-kind services shall be in accordance with 2 CFR Part 225, Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A-87).

D. Financial Obligations: This MOA is not a funding document and does not authorize the obligation or transfer of funds. If a subsequently identified activity or project is identified that may require Reclamation to expend funds received from the Non-Federal Partners for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the Reclamation law, a Contributed Funds Agreement, pursuant to the Sundry Civil Expenses Appropriations Act for 1922 (43 USC 395) will be required. Funds contributed by Non-Federal Partner(s) will only be used to pay for costs incurred by Reclamation or its contractors associated with completing the tasks described in this MOA or modifications to this MOA.

- E. Anti-Deficiency Act: All activities, responsibilities, and commitments made under or pursuant to this MOA are subject to the availability of appropriated funds and each Agency's budget priorities, as determined by each Agency, and neither the Non-Federal Partners nor Reclamation are obligated in any way under this MOA to expend appropriations or to enter into any contract, assistance agreement, Contributed Funds Agreement, or other financial obligation. No provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341.

III. Publications, Reports, and Confidentiality

- A. Publications: The Parties understand and agree that this MOA may be disclosed to the public in accordance with the Freedom of Information Act or California Public Records Act. Subject to the requirements of Section III, Article C - Confidentiality and preservation of rights in Subject Inventions, a party may publish information developed for the ARBS prior to its official release PROVIDED:
1. The other Parties are allowed to review the manuscript at least sixty (60) days prior to submission for publication, and
 2. The publication shall acknowledge this MOA and the contributions of each party's personnel.
- B. Reports: The results of this MOA and science, engineering, and technology data that are collected, compiled, and evaluated under this MOA shall be shared and mutually interchanged by Non-Federal Partners and Reclamation. A final report summarizing all data shall be submitted to Reclamation and the Non-Federal Partners through the key contacts identified in Section V, Article D - Notices and Key Personnel within the performance period of this MOA, as defined in Section IV, Article – Term. The final report will be in the public domain, and will be published on Reclamation's Basin Study website.
- C. Confidentiality: Any Confidential Information used in this MOA or ARBS shall be clearly marked "CONFIDENTIAL" or "PROPRIETARY" by the submitter and shall not be disclosed by the Recipient without permission of the owner. To the extent a party orally submits its Confidential Information to the other Parties, the submitting party will prepare a document marked "CONFIDENTIAL" embodying or identifying in reasonable detail such orally submitted Confidential Information and provide the document to the other Parties within thirty (30) days of disclosure.

No party shall be bound by confidentiality if the Confidential Information received from another party:

Is already available to the public or known to the recipient

Becomes available to the public through no fault of the recipient

Is non-confidentially received from another party legally entitled to it

Is required to be released pursuant to the Freedom of Information Act

It shall not be a breach of this MOA if the Non-Federal Partners are required to disclose the Confidential Information by a valid order of a court or other government body, or as otherwise required by law, including without limitation the California Public Records Act, or as necessary to establish the rights of a party under this MOA; PROVIDED THAT the Non-Federal Partner(s) shall provide prompt prior notice thereof to Reclamation to enable Reclamation to seek a protective order or otherwise prevent such disclosure, and PROVIDED FURTHER THAT the Confidential Information otherwise shall continue to be confidential.

- D. Intellectual Property: Unless otherwise agreed by the Agencies, custody and administration of inventions made as a consequence of, or in direct relation to, the performance of activities under this MOA shall remain with the respective inventing party. In the event that an invention is made jointly by employees of the Parties or an employee of a Party's contractor, the Parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

4 Term and Termination

- A. Term: This MOA shall take effect upon the approval of the Parties and, unless terminated per Section IV, Article C - Termination, will expire three (3) years and six (6) months from the date of the last signature to this MOA. Any Contributed Funds Agreement(s) entered into pursuant to this MOA will be limited to an initial period of performance not to exceed the term of this MOA, although they may be renewed for additional periods of performance not to exceed the term of this MOA for any renewal period as mutually agreed to by the Parties to this MOA and the subject Contributed Funds Agreement.
- B. Amendment: If a party desires a modification in this MOA, the Parties shall confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed, and dated by the authorized representatives of the Parties.
- C. Termination: A party may terminate its participation in this MOA prior to its expiration at any time, with or without cause, and without incurring any liability or obligation to the other Parties, by giving the other Parties at least ninety (90) calendar days prior written notice of termination.

7. General

- A. Authorities not altered: Nothing in this MOA alters the statutory authorities or any other authorities of the Non-Federal Partners or Reclamation. This MOA does not supersede or void existing agreements between the Non-Federal Partners and Reclamation.

- B. Liability: It is understood and agreed that no party to this MOA shall be responsible for any damages or injuries arising out of the conduct of activities governed by this MOA, except to the extent that such damages and/or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents, or officers. Reclamation's liability shall be limited by the Federal Tort Claims Act, 28 USC 2671, *et seq.*
- C. Limitations: This MOA sets out the Parties' intentions and objectives and does not direct or apply to any person outside the Non-Federal Partner(s) and Reclamation. This MOA is not intended to, and does not create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person.
- D. Notices and Key Personnel: Notices between the Parties and copies of correspondence among the scientific and/or technical representatives of each party that interpret or may have a bearing on the legal effect of this MOA's terms and conditions shall be sent to the key personnel below. Reclamation's key personnel are authorized to perform scientific and/or technical activities falling within the Scope of this MOA.

Non-Federal Partner Key Personnel:

Mr. Andy Fecko
Director of Resource Development
Placer County Water Agency
144 Ferguson Road
Auburn, CA 95604
afecko@pcwa.net
(530) 308-4507

Mr. Ken Payne
Interim General Manager
El Dorado County Water Agency
4110B Business Drive
Cameron Park, California 95682
kpayne@municipalcon.com
(916) 425-0734

Mr. Marcus Yasutake
Environmental and Water Resources
Director
City of Folsom
50 Natoma St.
Folsom, CA 95630
myasutake@folsom.ca.us
(916) 351-3528

Mr. Richard D. Plecker, P.E.
Environmental Utilities Director
City of Roseville
2005 Hilltop Circle
Roseville, CA 95747
rplecker@roseville.ca.us
(916) 774-5714

Mr. James Peifer
Policy and Legislation Manager
City of Sacramento
1395 35th Avenue
Sacramento, CA 95822
jpeifer@cityofsacramento.org
(916) 808-1416

Mr. Rob Swartz
Manager of Technical Services
Regional Water Authority
5620 Birdcage Street, Suite 180
Citrus Heights, CA 95610
rswartz@rwah2o.org
(916) 967-7692

Reclamation:

Regional Planning Officer
Bureau of Reclamation
2800 Cottage Way, MP-700
Sacramento, CA 95826
916-978-5060

- E. Subcontracting Approval: A party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other Parties, including details of the contract or other arrangement. This requirement is to assure that confidentiality is not breached and rights in Subject Inventions are not compromised.
- F. Assignment: No party has the right to assign this MOA or any of its responsibilities hereunder.
- G. Endorsement: The Non-Federal Partner(s) shall not in any way state or imply that this MOA or the results of this MOA is an endorsement by the Department of the Interior, Federal Government, or Reclamation of its organizational units, employees, products, or services except to the extent permission is granted by an authorized representative of Reclamation.

- H. Regulatory Compliance: The Parties acknowledge and agree to comply with all applicable laws and regulations of the state, Federal, and local environmental, cultural, and paleontological resource protection laws and regulations as applicable to the activities or projects for this MOA. These regulatory compliance requirements may include but are not limited to, the National Environmental Policy Act (NEPA) including the Council on Environmental Quality, the Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected Tribes, and consultation with the State Historic Preservation Office.
- I. Disputes: Any dispute arising under this MOA, which cannot be readily resolved, shall be submitted jointly to the key personnel officials, identified in Section V, Article D.15 - Notices and Key Personnel. Each party agrees to seek in good faith to resolve the issue through negotiation or other forms of nonbinding dispute resolution processes mutually acceptable to the Parties. Pending the resolution of any dispute or claim pursuant to Section V, Article I, the Parties agree that performance of all obligations shall be pursued diligently.
- J. Force Majeure: No party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party:
1. Which causes the party to be unable to perform its obligations under this MOA; and
 2. Which it has been unable to overcome by the exercise of due diligence.
 3. This includes, but is not limited to, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, failure or sabotage of the party's facilities or any order or injunction made by a court or public agency.
- K. Relationship between the Parties: The Parties are and shall remain independent contractors and nothing herein shall be construed to create a partnership, agency, joint venture, or teaming agreement between the Parties.
- L. Severability: The illegality or invalidity of any provision of this MOA shall not impair, affect, or invalidate the other provisions of this MOA.
- M. Governing Law: The construction, validity, performance, and effect of this entire MOA shall be governed by the laws applicable to the Government of the United States of America in accordance with applicable Federal Law as interpreted by Federal Courts.
- N. Waiver: The failure of a party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.
- O. Invalid Provision: In the event any provision of this MOA is determined to be invalid or unenforceable under any controlling law, the invalidity or unenforceability of that

provision shall not in any way affect the validity or enforceability of the remaining provisions of this MOA.

- P. Counterparts: This MOA may be executed in counterparts and each such counterpart shall be equally effective.

IN WITNESS WHEREOF, the Parties have caused this MOA to be executed.

Non-Federal Partners:

Name
Placer County Water Agency

Date

Name
El Dorado County Water Agency

Date

Name
Sacramento Regional Water Authority

Date

Name
City of Sacramento

Date

Name
City of Folsom

Date

Name
City of Roseville

Date

Reclamation:

Regional Director
Mid-Pacific Region

Date

ATTACHMENT A

PLAN OF STUDY

AMERICAN RIVER BASIN STUDY

WBR:ANickel/KDuncan/28 Feb 2017/916-978-5061

I:\ASTONLY\Correspondence\Agreements, etc\AGREEMENTS AND OTHER DOCS -
2017\ANickel - MOA - American River Basin Study [13a].docx