

**INTERIM AGREEMENT TO AMEND TERMS AND CONDITIONS OF EL  
DORADO IRRIGATION DISTRICT IMPROVEMENT DISTRICT NO. 97**

This Interim Agreement is made effective this 17th day of October, 2005, by and between the El Dorado Irrigation District, a public agency organized and existing under the Irrigation District Law of the State of California, and all present and future property owners within the boundaries of Improvement District No. 97, as follows:

**WHEREAS**, upon the petition of affected property owners, the El Dorado Irrigation District ("District") adopted Resolution No. 74-147 on November 12, 1974, forming Improvement District No. 97 ("ID 97") pursuant to Sections 23600 and following of the California Water Code; and

**WHEREAS**, before adopting Resolution No. 74-147, the District prepared a Feasibility Report for ID 97 on September 4, 1974; and held a prior public hearing on September 24, 1974; and

**WHEREAS**, both the Feasibility Report and Resolution No. 74-147 state that the purpose of ID 97 "is to maintain the quality, beauty, and other intangible assets of the Clear Creek area by maintaining a certain minimum flow down the Clear Creek channel throughout the year"; and

**WHEREAS**, Resolution No. 74-147 states that the minimum flow shall be 5 cubic feet per second (cfs); that the water released to maintain the minimum flow is for aesthetic use only and not available to adjacent property owners for consumptive use; and that the improvement district shall be charged for water releases only when they are made specifically to meet minimum flow requirements in Clear Creek; that from time to time releases in Clear Creek will be discontinued to determine the amount of water flowing in Clear Creek that is available to satisfy riparian water right requirements; and that ID 97 property owners will be assessed equally, up to \$5 per parcel, and proportionate to Clear Creek frontage, in excess of \$5 per parcel, for the total annual costs of maintaining the minimum flow, subject to the conditions stated in Resolution No. 74-147 and summarized in this recital; and

**WHEREAS**, the feasibility report states that the District will install a flow gaging station, capable of measuring flow rates from 1 to at least 12 cfs, at the intersection of Clear Creek with Sly Park Road; that the District will monitor and log the flow at least once each week; and that the District will make necessary adjustments in its releases to Clear Creek; and

**WHEREAS**, the feasibility report states that if the ID 97 property owners desire a change in the minimum flow rate, they shall petition the Board of Directors of the District for a public hearing on the proposal; and further states that changes in the plan of operation or other features of the improvement district may be made as provided for under the Water Code; and

**WHEREAS**, Water Code Sections 23865 and 23879 require the assent of at least two-thirds of the property owners within an improvement district before additional work, additional lands, or additional assessments are added to an improvement district; and

**WHEREAS**, since August 2003, the following public meetings have been held regarding ID 97: a workshop of the District's Board of Directors on November 17, 2003; a public workshop at the Pleasant Valley Grange on January 26, 2004; and a public meeting of the District's Board of Directors on September 8, 2004; and

**WHEREAS**, as a result of these public meetings, the parties agree that the following facts are established as true and not subject to dispute:

- Until July 7, 2004, the District had not installed a flow gaging station, nor monitored Clear Creek flow at the Sly Park Road crossing, as specified in the feasibility report;
- The District has not discontinued Clear Creek releases from time to time to determine the amount of natural flow available for riparian users, as specified in Resolution 74-147;
- Since 1991, the District's releases to augment natural flow in Clear Creek have averaged 1 to 2 cfs, which at most times is unlikely to have produced or sustained a Clear Creek minimum flow of 5 cfs at the Sly Park Road crossing;
- Between 1982 and 1990, the District's average Clear Creek releases were substantially higher, often in the range of 5 cfs and at times up to 8 cfs;
- The change in the District's average Clear Creek releases coincides with improvements made to the water efficiency of Crawford Ditch, although this does not prove a causal link between the two events;
- There may have been multiple reasons, known and unknown, for decreases in the District's average Clear Creek releases over time, including changes in the actions necessary for the District to meet the consumptive demands of its customers;
- At least since 1998, the District's releases into Clear Creek have been made primarily to meet consumptive demands on the Clear Creek Segment of the Crawford Ditch, downstream of ID 97, rather than to meet its ID 97 obligations;
- Particularly in summer and fall, the District has not consistently maintained any minimum flow in the reach of Clear Creek downstream of the ditch diversion and upstream of the Cosumnes River, by allowing Clear Creek flows to bypass its diversion facilities on the Clear Creek Segment of the Crawford Ditch;
- The existing facilities to control the District's releases to Clear Creek are susceptible to substantial, uncontrollable fluctuations in flow, most notably during periods of high system demands;
- For many years, the District has assessed ID 97 property owners \$2.00 per parcel per year, and in recent years El Dorado County has added a \$0.30 per parcel processing fee for this assessment;

- The District is required to pay the United States Bureau of Reclamation a Habitat Restoration Fee for all water released into Clear Creek, although releases into Sly Park Creek for instream flows are exempt from this requirement;

and;

**WHEREAS**, the ID 97 property owners appointed representatives that met, exchanged information, and negotiated with District staff on numerous occasions between January 26 and September 8, 2004; and

**WHEREAS**, District staff recommended certain actions to the District's Board of Directors on September 8, 2004, the ID 97 representatives supported the recommendations of District staff, and District's Board of Directors ordered that the actions be taken, with some modifications;

**NOW, THEREFORE**, consistent with the September 8, 2004 orders of the District's Board of Directors, the parties hereby agree as follows:

1. That this Interim Agreement shall modify the terms and conditions of ID 97, as currently expressed in Resolution No. 74-147 and the ID 97 Feasibility Report, for so long as this Interim Agreement is in effect. As a modification of ID 97 and Resolution No. 74-147, which are by law binding upon all present and future ID 97 property owners and the District, this Interim Agreement shall likewise be binding upon all present and future ID 97 property owners, whether or not they are signators to this Interim Agreement, and upon the District, for so long as the Interim Agreement is in effect.
2. Except as otherwise provided in paragraph 10 below, the District shall make such releases into Clear Creek as are necessary to meet the parties' mutual intent to maintain a continuous target minimum flow of 3 cfs at the existing staff gage installed immediately upstream of the intersection of Clear Creek and the Sly Park Road bridge crossing.
3. Except as otherwise provided in paragraph 10 below, the District shall install, operate, and maintain physical modifications to the diversion facilities for the Clear Creek Segment of the Crawford Ditch sufficient to maintain a minimum flow of 0.5 cfs in Clear Creek immediately downstream of those diversion facilities.
4. All parties to this Interim Agreement will support and cooperate with the District in obtaining all needed easements or other property rights sufficient to access, operate, and maintain the staff gage identified in paragraph 2 above and the physical modifications identified in paragraph 3 above.
5. As soon as feasible, the District shall complete and publicly publish a rating table for the staff gage identified in paragraph 2 above. The District shall read

and log the staff gage at least once weekly, noting the date, time, and result of the readings, expressed both in terms of gage height and flow. The data obtained from this measuring device shall be public information and made available to the public upon request. In addition, the District shall post the data regularly on the District website.

6. In its sole discretion, the District may install, operate, and maintain physical modifications to the facilities it uses to release water into Clear Creek, in order to reduce fluctuations and increase the control over the amount and rate of water released. The District shall maintain a measuring device capable of recording the releases. The data obtained from this measuring device shall be public information and made available to the public upon request.
7. The District shall seek, and all parties to this Interim Agreement shall support and cooperate with the District in seeking, a waiver of all or some of the Habitat Restoration Fees otherwise owing to the United States Bureau of Reclamation as a result of the District's release of water pursuant to this Interim Agreement. To the extent that the District obtains any waiver of Habitat Restoration Fees, the District shall offset that waiver as a credit against its costs when computing ID 97 annual assessments.
8. The District shall not seek to increase ID 97 annual assessments to more than \$2.00 per parcel, plus County charge, without first complying fully with Articles 13C and 13D of the California Constitution (Proposition 218).
9. It is unlawful for any ID 97 property owner, or any other person, to divert or make any use of any water released by the District pursuant to ID 97 and this Interim Agreement, except for non-consumptive aesthetic purposes, or for use as a District customer in full compliance with District Rules and Regulations. The parties to this Interim Agreement have a mutual interest in preventing the unauthorized use of water released by the District. Therefore, if at any time the District is releasing 4 cfs into Clear Creek, but flow measured at the staff gage identified in paragraph 2 above is less than 3 cfs, the District shall not be obliged to increase its releases until it completes an investigation and abatement of any unauthorized uses, or sixty (60) days, whichever comes first. All parties to this Interim Agreement will support and cooperate with the District in conducting its investigation and abatement of any unauthorized uses.
10. The parties agree that in times of water shortage for the District's consumptive customers, a reasonable balance must be struck between the needs of ID 97 and the needs of the District's consumptive water customers. To accommodate these rare and unforeseeable occurrences, the parties agree that the obligations of paragraphs 2 and 3 above may be modified by reference to the District's "4-Stage Water Supply Matrix and Water Shortage Response Measures" ("Drought Response Plan") as adopted by the District Board of

Directors for the District-wide management of drought conditions or water shortages. A copy of the present Drought Response Plan is attached as Exhibit A. Under the present Drought Response Plan, the obligations of paragraphs 2 and 3 above may be modified as follows:

- a. When a "Stage 2 – Water Warning" is declared, the District shall not be obliged to release more than 2 cfs into Clear Creek.
- b. When a "Stage 3 – Water Emergency" is declared, the District shall not be obliged to release more than 1.5 cfs into Clear Creek.
- c. When a "Stage 4 – Critical Water Emergency" is declared, the District shall not be obliged to release more than 1 cfs into Clear Creek.
- d. Provided, however, that before the District invokes this Item 10, it will provide 30 days' written notice to all ID 97 property owners as listed on the then-current equalized County assessment roll, and schedule the matter for the approval or ratification of its Board at the first available regular Board meeting.

Further, the parties agree that at such time, if any, as the Drought Response Plan is replaced by a successor document adopted by the District Board of Directors, the parties shall meet and confer to consider amending this paragraph 10. The objective of any such amendment would be to modify the obligations of paragraphs 2 and 3 above by reference to the successor document, in a way that does not increase the amount and frequency of diminutions to Clear Creek flows authorized by this paragraph 10.

11. The District may, in its sole discretion, modify releases no more than once annually, and no longer than is necessary, for the sole purposes of: a) calibrating the rating curve for the existing staff gage installed immediately upstream of the intersection of Clear Creek and the Sly Park Road bridge crossing; b) to maintain, modify, or replace the facilities used for making releases; and/or c) obtaining data regarding base flow conditions in Clear Creek. The District shall provide advance notice of its intended actions to any ID 97 property owner who has submitted a written request for such notice. The District shall limit its modification of releases pursuant to this paragraph so that total flow at the staff gage does not fall below 1.0 cfs, and it shall plan the timing of any activities under this paragraph to attempt to eliminate or minimize adverse effects on aquatic species
12. This Interim Agreement represents the entire agreement between the parties. Except as modified by this Interim Agreement, ID 97 and Resolution No. 74-147 remain in full force and effect.

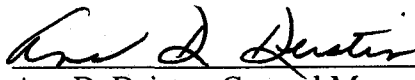
13. In accordance with the ID 97 Feasibility Report and applicable law, this Interim Agreement shall be construed as a petition to modify ID 97 pursuant to Water Code sections 23865 and 23879. As such, it shall not be effective until signed by two-thirds of the property owners presently included within ID 97, as listed in the current equalized County assessment roll, and approved by the District's Board of Directors at a subsequent noticed public hearing.
14. This Interim Agreement cannot be modified except in a writing signed by two-thirds of the property owners then included within ID 97, as listed in the then-current equalized County assessment roll, and approved by the District's Board of Directors at a subsequent noticed public hearing. Provided, however, that the dissolution of ID 97 in accordance with Water Code sections 24100, 24101, 24102, and 24103 (but expressly excluding section 24102.5), as each may be amended from time to time, shall terminate this Interim Agreement.
15. This Interim Agreement is legally binding upon all parties and each party reserves all legal, equitable, administrative, and regulatory remedies to enforce or construe it.
16. This Interim Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Interim Agreement may also be executed by facsimile signature, in which event the facsimile signature shall constitute an original signature for purposes of enforcing this Interim Agreement.

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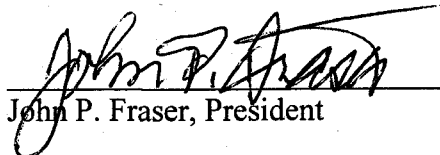
**ID 97 Property Owners:**

**See attached master list and original signatures**

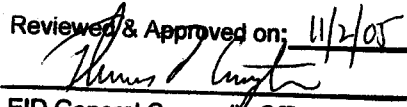
**El Dorado Irrigation District:**

  
Ane D. Deister, General Manager

Date: 11/3/05

  
John P. Fraser, President

Date: 12/1/05

Reviewed & Approved on: 11/2/05  
  
EID General Counsel's Office  
*as to form*