



AGENDA
SPECIAL MEETING OF THE BOARD OF DIRECTORS
EL DORADO IRRIGATION DISTRICT
District Board Room, 2890 Mosquito Road, Placerville, California
April 1, 2015 ~ 2:00 P.M.

Board of Directors

BILL GEORGE
BOARD PRESIDENT
Division III

GEORGE W. OSBORNE
BOARD VICE PRESIDENT
Division I

Greg Prada
Board Director
Division II

Dale Coco, MD
Board Director
Division IV

Alan Day
Board Director
Division V

**General Manager and
Executive Staff**

JIM ABERCROMBIE
GENERAL MANAGER

THOMAS D. CUMPSTON
GENERAL COUNSEL

Jennifer Sullivan, Clerk to the Board

Mary Lynn Carlton,
Communications/Customer Service

Jose Perez, Human Resources

Tom McKinney, Operations

Brian Mueller, Engineering

Mark Price, Finance

**Tim Ranstrom, Information
Technology**

In accordance with the Americans with Disabilities Act and California law, it is the policy of the El Dorado Irrigation District to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including individuals with disabilities. If you are a person with a disability and require information or materials in an appropriate alternative format; or if you require any other accommodation for this meeting, please contact the EID ADA coordinator at 530-642-4045 or e-mail at adacoordinator@eid.org at least 72 hours prior to the meeting. Advance notification within this guideline will enable the District to make reasonable accommodations to ensure accessibility.

PUBLIC COMMENT: *Anyone wishing to comment about items not on the Agenda may do so during the public comment period. Those wishing to comment about items on the Agenda may do so when that item is heard and when the Board calls for public comment. **Public comments are limited to five minutes per person.***

PUBLIC RECORDS DISTRIBUTED LESS THAN 72 HOURS BEFORE A MEETING: *Any writing that is a public record and is distributed to all or a majority of the Board of Directors less than 72 hours before a meeting shall be available for immediate public inspection in the office of the Clerk to the Board at the address shown above. Public records distributed during the meeting shall be made available at the meeting.*

CALL TO ORDER

Roll Call
Pledge of Allegiance
Moment of Silence

ADOPT AGENDA

PUBLIC COMMENT

ACTION ITEMS

- 1. Office of the General Counsel / Office of the General Manager (Cumpston/Abercrombie)**
Consideration of a Water Purchase Agreement with Westlands Water District for a transfer of water in 2015.

Option 1: Approve the Water Purchase Agreement and authorize the General Manager to execute it.
Option 2: Take other action as directed by the Board.
Option 3: Take no action.

Recommended Action: Option 1.

REVIEW OF ASSIGNMENTS

Board direction to staff

ADJOURNMENT

EL DORADO IRRIGATION DISTRICT

SUBJECT: Consideration of a Water Purchase Agreement with Westlands Water District for a transfer of water in 2015.

Board Action:

- January 26, 2015 – Board heard an informational presentation on water transfers and District opportunities.
- March 23, 2015 – Board approved a change order to the February 2, 2015 professional services agreement for water transfer consulting services with Tully & Young, Inc.
- Various dates in 2015 – Board held closed sessions regarding real property negotiations involving potential water rights transfers.

Board Policies (BP), Administrative Regulations (AR), and Board Authority:

BP 3050: The District will be run in a fiscally responsible and prudent manner.

NP 5010: The Board is committed to provide a water supply based on the principles of reliability, high quality, and affordability in a cost-effective manner with accountability to the public. It is the General Manager’s responsibility to ensure that the tenets of this policy are carried out in an open, transparent manner through sound planning, to assure preparedness under varying conditions, and effective management.

Summary of Issue:

District staff and consultants have negotiated a proposal to transfer water in 2015 from the District to Westlands Water District in the San Joaquin Valley. The proposed transaction has three components – reductions in the District’s potable water demands attributable to the delivery of recycled water; reduction in demands attributable to water conservation programs, and the re-operation of Weber Reservoir. Based on documented water savings in 2013 and the capacity of Weber Reservoir, the maximum transfer amount is 6,595 acre-feet, although the actual amount is likely to be considerably less, due to timing constraints and the need for regulatory approvals.

The proposed agreement includes an assurance that the transfer will not deprive District customers of water supplies they need. If at any time the District determines that water to be transferred is needed for EID customers, the District can reduce or cancel the transfer on short notice and return all refundable payments already made for the cancelled water.

Payments are structured in installments – a non-refundable option payment due within 30 days of signing, a second “call” payment when regulators have approved the transaction and Westlands orders a specific quantity of water, and final payments following delivery of the water to Folsom Reservoir for Westlands’ receipt. The total price reflects the very favorable market conditions that exist for sellers in an extraordinary drought year.

This is a one-year agreement for a 2015 transfer. If the Board approves it, and the parties can successfully implement it, it will establish a template for future one-year transfer agreements. Westlands has indicated that it is interested in water transfers in every year, including very wet years.

The District’s staff and General Manager recommend that the Board approve the proposed agreement as presented. We expect to receive Westlands’ signature on the agreement prior to the Board’s consideration.

Staff Analysis/Evaluation:

In December 2014, the District obtained access to 8,500 acre-feet (AF) of additional water supplies in Folsom Reservoir, enhancing the District’s water-supply security (particularly in El Dorado Hills) and creating a surplus of available supplies in Folsom Reservoir. These achievements prompted the District to begin assessing the prospect of marketing water not needed to serve our customers. Short-term water transfers present the opportunity to maximize the beneficial use of the District’s water rights, while also generating one-time revenue.

As presented to the Board on January 26, the new 8,500 AF water supply in Folsom Reservoir is reliable even in drought years. Combined with existing supplies, it has created a surplus of 6,000 AF to 10,000 AF over El Dorado Hills’ average demands in dry years, and even more in normal years. Through transfers, the District hopes to maximize the beneficial use of its water supplies and gain as much benefit as possible from that surplus. If not used, the surplus water defaults to downstream users with no benefit to the District’s customers.

The District retained a consulting firm with expertise in water transfers to assist staff in identifying various transfer concepts and assessing the feasibility of pursuing them. This analysis revealed obstacles to pursuing some options previously under consideration, but also expanded the range of transfer possibilities.

Some transfer concepts were judged to be infeasible because they were too likely to run afoul of the state’s requirements that water transfers cause no injury to any other legal user of water. Others might have exposed the District’s water supplies to unacceptable risks during 2015’s drought conditions. The 25% allocation promised for the District’s Central Valley Project contract water, combined with constraints on transferring it beyond the American River basin, limited its marketability.

Staff therefore chose three concepts and packaged them as components of a single transfer of marketable size. The three components are:

- Up to 2,820 AF of documented, already-existing reductions in the District’s potable water demands attributable to the District’s innovative and well-established recycled water program;
- Up to 2,675 AF of documented, already-existing reductions in the District’s potable water demands attributable to the District’s diligent and decades-long pursuit of water conservation; and
- Up to 1,100 AF of water released through the re-operation of Weber Reservoir.

Please see attachment B for a more detailed description of these three components.

Each of the three components of the proposed transfer has support in California law. To encourage water recycling and conservation, sections 1010 and 1011 of the California Water Code provide that agencies like the District retain ownership of the potable water these activities free up, and that the freed-up water may be transferred for others to use. Although little-used, these laws clearly support the proposed transfer. The re-operation of Weber Reservoir is a conventional method of making water available for transfer. Placer County Water Agency has used reservoir re-operation to transfer water to Westlands several times. Foresthill Divide Public Utility District has an agreement with Santa Clara Valley Water District to transfer water this year using the same method.

The three components of the proposed transfer also protect our customers by preserving the supplies the District will need to serve our customers in 2015. The recycled and conserved water components are leveraging water demand reductions that District customers had already achieved before the drought, and the Weber Reservoir component is more than adequately “backstopped” by the new 8,500 acre-foot supply available to the District at Folsom Reservoir.

Additionally, District staff negotiated the following provision of the proposed agreement include the following provision. It puts our customers first by ensuring that the District will not be required to transfer any water that our customers will actually need in 2015:

It is expressly recognized by the parties that the need for water within El Dorado County shall supersede EID’s obligation to deliver the Transfer Water to WWD, *provided, however*, that in the event that EID determines that it cannot provide all of the water specified in the Call Notice due to the needs of El Dorado County, it shall notify WWD in writing within three days of such determination, and shall refund to WWD all sums it has paid for Transfer Water not delivered pursuant to this Article 6, excluding the Option Payment.

[Article 6(a)(i)(4)]

The agreement requires Westlands to make a non-refundable option payment of \$131,900 (\$20/AF on the maximum contract amount) by May 1, and also to reimburse the District for up to \$20,000 of its water transfer consultant costs. The parties will cooperatively seek all necessary regulatory approvals for the transfer, which will include proceedings before the State Water Resources Control Board and negotiations with the United States Bureau of Reclamation. Each party bears the costs of the approvals it needs. Upon receiving and agreeing to the terms of the approvals, Westlands makes a “call” for the amount of water it wants – presumably the entire amount that the regulatory agencies approve – and pays an additional \$110 per AF. EID is deemed to have delivered the transfer water when it resides in Folsom Reservoir; Westlands is responsible for conveyance from Folsom to Westlands’ customers. Upon delivery, EID invoices Westlands for a final payment that makes the total price for the water \$700/AF.

Because the transfer water attributable to recycled water use and conservation is accounted for on a monthly basis, the timeliness of regulatory approvals will significantly affect the contract total. Also, Westlands is unable to get water conveyed through the Delta after September. Finally, there is always uncertainty associated with state and federal environmental review, and about whether and on what terms the regulators will approve the transfer. Therefore, the actual amount of water transferred is likely to be considerably less than the maximum contract total of 6,595 AF, and could even be zero.

Because of these uncertainties, and because this is one-time revenue, it would not be prudent for the District to assume any water transfer proceeds this year. To the extent they are realized, however, they will provide extra revenue to retire debt, fund needed capital projects, or make up for lost hydroelectric power revenues in 2015. Further, the transfers will facilitate and increase the District’s beneficial use of the new 8,500 AF supply at Folsom Reservoir, helping to perfect the Permit 21112 water rights. They will also provide a template for transfers in future years.

Given these expected benefits, and the strong protections the transfer provides to the District’s first priority – our customers’ needs – staff and the General Manager recommend that the Board approve the contract as presented.

Board Decisions/Options:

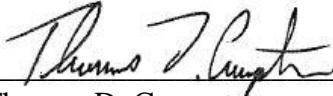
- Option 1:** Approve the Water Purchase Agreement and authorize the General Manager to execute it.
- Option 2:** Take other action as directed by the Board.
- Option 3:** Take no action.

Staff/General Manager’s Recommendation:

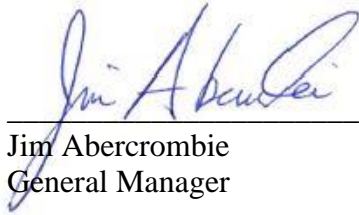
Option 1.

Support Documents Attached:

- A. Proposed Water Purchase Agreement between Westlands Water District and EID for 2015 Temporary Water Purchase
- B. Proposed Water Transfer from EID to WWD (project description)



Thomas D. Cumpston
General Counsel



Jim Abercrombie
General Manager

**WATER PURCHASE AGREEMENT
BETWEEN
WESTLANDS WATER DISTRICT
AND
EL DORADO IRRIGATION DISTRICT
FOR
2015 TEMPORARY WATER PURCHASE**

THIS AGREEMENT is made as of the 1st day of April, 2015, between Westlands Water District (“WWD”), a public agency in the State of California, and El Dorado Irrigation District (“EID”), a public agency in the State of California.

RECITALS

A. WWD is a public agency formed and operating under the California Water District Act, Water Code §§ 34000 *et seq.*, that delivers water to its landowners for agricultural and municipal uses within the district; and

B. Due to drought and constraints on the annual water supply available to it, WWD will be water short in 2015 and wishes to acquire supplemental supplies; and

C. EID is a public agency created and existing pursuant to the provisions of the Irrigation District Law, Water Code §§ 20500 *et seq.*, and is empowered to enter into contracts to sell water for use outside of El Dorado County; and

D. EID has up to 2,820 acre-feet of water available for transfer pursuant to Water Code § 1010 (use of recycled water); and

E. EID has up to 2,675 acre-feet of water available for transfer pursuant to Water Code § 1011 (water conservation efforts); and

F. EID owns and operates Weber Reservoir, capacity 1,100 acre-feet, holds water rights for that project pursuant to a license issued on Application 1692 by the State Water Rights Board, predecessor to the State Water Resources Control Board, and is willing to release water stored in Weber Reservoir and make it available for transfer; and

G. WWD is willing to make the specified payments to EID for the water that EID makes available for transfer to WWD in 2015, subject to the terms and conditions set forth herein and under a schedule acceptable to WWD.

AGREEMENT

In consideration of the foregoing recitals and the terms and conditions contained herein, WWD and EID agree to the following:

1. Definitions. When used in this Agreement, the following definitions will apply:

- (a) **“Agreement”** means this Water Purchase Agreement.
- (b) **“CADFW”** means the Department of Fish and Wildlife of the State of California.
- (c) **“WWD”** means Westlands Water District.
- (d) **“Parties”** means WWD and EID.
- (e) **“EID”** means El Dorado Irrigation District.
- (f) **“Short-term”** and/or **“Temporary”** means one (1) year or less.
- (g) **“Transfer Water”** means the water made available for transfer by EID up to 6,430 acre-feet, for delivery to WWD pursuant to this Agreement.
- (h) **“NMFS”** means the National Marine Fishery Service
- (i) **“SWRCB”** means the California State Water Resources Control Board.
- (j) **“USBR”** means the U.S. Bureau of Reclamation of the Department of Interior.
- (k) **“USFWS”** means the U.S. Fish and Wildlife Service of the Department of Interior.
- (l) **“Point of Delivery”** means the point at which EID is responsible for delivering Transfer Water which is Folsom Reservoir, a USBR facility.

2. Term.

(a) This Agreement will become effective upon the date set forth above.

(b) Except as provided in Articles 6.a.(i)(1) and 6.a.(ii) below, the Parties will have no obligation to deliver or to pay for delivery of water under this Agreement until the last of the following has occurred, unless the occurrence has been waived in writing by both Parties:

(i) Execution of a Refill Agreement between USBR and EID setting forth conditions for the operation of Weber Reservoir related to the conveyance of Transfer Water to WWD via the Point of Delivery;

(ii) Execution of an agreement between WWD and USBR scheduling the release of the Transfer Water from the Point of Delivery;

(iii) Approval by the SWRCB on terms acceptable to both Parties of temporary changes in places of use and purposes of use, as necessary, of the Weber Reservoir licensed water right, and any other post-1914 appropriative water rights to which transfers under Water Code sections 1010 and 1011 are attributed, to the area served by the Transfer Water.

This Agreement will terminate on April 1, 2016 or one year following the occurrence of the last of the conditions described in Article 2(b) hereinabove or when all obligations under this Agreement have been performed, whichever occurs last, unless this Agreement is cancelled pursuant to Article 7 (Cancellation).

3. Approvals and Environmental Compliance.

(a) Water Code section 1729 provides that temporary changes due to transfers pursuant to Water Code section 1725, *et seq.*, are exempt from the requirements of the California Environmental Quality Act (CEQA, Public Resources Code section 21000, *et seq.*). Water Code section 1727(a)(2) requires that before the SWRCB can approve temporary changes, it must find that the proposed changes would not unreasonably affect fish, wildlife or other instream beneficial uses. In accordance with Water Code section 1727(a)(2), EID will, in consultation with CADFW and USBR and with WWD's cooperation, develop and submit to SWRCB operations plans and other documentation as necessary for approval of a temporary water transfer under this Agreement.

(b) WWD shall be solely responsible for arranging for and shall pay all costs incurred for the conveyance of Transfer Water from the Point of Delivery to the Westlands Water District boundaries, including a Warren Act contract with USBR, and supporting NEPA documentation, for conveyance and/or storage of Transfer Water, if necessary.

4. Schedule and Release of Water.

(a) Subject to satisfaction of the requirements of Article 2(b) and the other provisions of this Agreement, commencing on or after April 1, 2015 EID will release from its Weber Reservoir, in addition to normal operating requirements, up to 1,100 acre-feet, for delivery to WWD in accordance with EID's operations schedule.

(b) The amount of water transferred from Weber Reservoir under this Agreement will be the difference between releases from Weber Reservoir with and without transfer, as reported to WWD by EID's statement of releases pursuant to Article 5 (Reporting and Verification of Water Releases), less 15% conveyance loss pursuant to Exhibit C of EID's long-term Warren Act Contract with USBR (Contract No. 06-WC-20-3315).

(c) EID will reduce or terminate release of Transfer Water from Weber Reservoir for this Agreement as soon as possible after telephone notification by USBR that the transfer is having, or is about to have, an adverse effect on a listed threatened or endangered species. However, water previously released from Weber Reservoir will be considered transferred to WWD pursuant to this Agreement. EID will resume release of Transfer Water from Weber Reservoir as soon as possible after telephone notification by USBR that the transfer will no longer cause adverse effects on a listed threatened or endangered species. All telephone notifications will be confirmed in writing, with copies to WWD. Except for water previously released from Weber Reservoir that is actually unavailable for transfer to WWD pursuant to this Article 4(c), nothing in this Article 4(c) will reduce the amount of water made available to WWD from Weber Reservoir under this Agreement.

(d) Subject to satisfaction of the requirements of Article 2(b) and the other provisions of this Agreement, on each calendar day commencing on or after January 1,

2015, EID shall be deemed to have made available the following amount of Transfer Water for this Agreement pursuant to Water Code §§ 1010 and 1011 at the Point of Delivery: the monthly Grand Total Transferable quantity for the then-current calendar month, divided by the number of days in that month, as shown in a version of Exhibit A hereto that has been approved by USBR and SWRCB pursuant to Article 2(b).

5. Reporting and Verification of Water Releases.

(a) Consistent with the minimum instream flow obligations imposed by License 2184, EID will draw down the storage in Weber Reservoir to 80 acre-feet (minimum pool) by December 31, 2015. Transfer Water shall be measured upon its release from Weber Reservoir and shall be deemed delivered to WWD at Folsom Reservoir, subject to a 15% conveyance loss borne by EID in accordance with Exhibit C to Warren Act Contract No. 06-WC-20-3315.

(b) Beginning on April 1, 2015 and continuing until EID has released the amount of water requested by WWD, EID will measure flows at lower Weber Creek gage (W-5), less flows at Hangtown Creek and Weber Creek gages (H-1 and W-4, respectively), less 15% contractual conveyance loss, which the parties agree will document the daily transfer of water to WWD. EID will provide WWD and USBR with a statement within 15 days of the last day of each month that includes daily operations records for the month showing storage in Weber Reservoir, flows at gages W-5, W-4, and H-1, and deliveries being made for transfer to WWD pursuant to this Agreement. EID's monthly statement will be mailed to WWD and USBR at the address provided in Article 6 (Payments) and will be attached to invoices for payment when applicable.

6. Payments.

(a) WWD agrees to pay for the Transfer Water on a per-acre-foot basis for water delivered as follows:

(i) Price for Delivered Water. The purchase price of the Transfer Water is \$700.00 for each acre-foot of water delivered by EID to WWD. The purchase price will be payable as follows:

(1) *Option Payment:* Within thirty days of the execution of this Water Purchase Agreement by both parties, WWD will pay to EID the sum of \$128,600 for the exclusive option of purchasing up to 6,430 acre-feet of Transfer Water pursuant to the terms of this Agreement, which sum will be credited to amounts due for the purchase. This Option Payment will be non-refundable unless EID fails to perform; *provided, however,* that if the events specified in Article 2(b) have not occurred in time to allow the Transfer Water to be conveyed through the Delta, the Option Payment shall be an offset credited against any Option Payment or other payments from WWD to EID in a future Water Transfer Agreement, beginning in 2016.

(2) *Call Payment:* On or before the later of July 1, 2015 or 7 days after the satisfaction of all conditions set forth in Article 2(b) above, WWD will notify

EID in writing of the amount of Transfer Water it desires to purchase and have delivered prior to June 1, 2016 (the "Call Notice"), together with a "Call Payment" of \$110.00 for each acre-foot of water it desires to purchase. WWD shall not be obligated to purchase any Transfer Water in excess of the amount specified in the Call Notice. The Call Payment shall be credited towards the purchase price of the Transfer Water, and shall be refundable, pursuant to Article 6(a)(i)(4) hereof, for each acre-foot that EID fails to deliver.

(3) *Delivery Payment:* Within thirty (30) days of receipt of each monthly invoice statement received from EID, pursuant to Article 5 (Reporting and Verification of Water Releases), WWD will pay to EID \$570.00 per acre-foot for water delivered to the Point of Delivery for transfer to WWD.

(4) If EID fails to deliver all of the water WWD has requested in its Call Notice, **despite all the requirements of Article 2(b) hereinabove having been satisfied**, EID will promptly refund to WWD \$110.00 per acre-foot for every acre-foot of water requested by WWD in the Call Notice that remains undelivered as of June 1, 2016. It is expressly recognized by the parties that the need for water within El Dorado County shall supersede EID's obligation to deliver the Transfer Water to WWD, *provided, however*, that in the event that EID determines that it cannot provide all of the water specified in the Call Notice due to the needs of El Dorado County, it shall notify WWD in writing within three days of such determination, and shall refund to WWD all sums it has paid for Transfer Water not delivered pursuant to this Article 6, excluding the Option Payment.

(ii) Expenses of Water Transfer. EID shall bear all costs, including engineering and technical expenses, filing fees, attorney fees and other related expenses necessary for accomplishing the temporary water transfer pursuant to this Agreement, with the exception of any costs and expenses necessary to convey water from the Point of Delivery to WWD's boundaries, *provided, however*, that WWD shall reimburse EID up to a maximum amount of \$20,000 for EID's documented payments in 2015 to Tully & Young, Inc. for water transfer consultant services, and further provided that WWD and EID shall pay equal shares of all fees and charges imposed by SWRCB for temporary water rights changes specified in Article 2.b.(iii).

(b) Two (2) copies of each invoice for Delivery Payments, together with supporting documentation, will be submitted to the Deputy General Manager for WWD at the following address:

Jose Gutierrez, Deputy General Manager-Resources
Westlands Water District
Post Office Box 6056
3130 N. Fresno Street
Fresno, CA 93703-6056

7. Cancellation.

This Agreement may be canceled by EID or WWD within five business days of the issuance of an order of the SWRCB approving the water transfer if either Party reasonably determines that any term or condition of the order is unacceptable. The Parties will consult with each other and make a good faith effort to amend this Agreement, if necessary, to attempt to address any unacceptable term of the SWRCB order. Cancellation under this Article may be effected by delivering to the other Party written notice of cancellation within the five-day period. Upon any cancellation, all amounts theretofore paid by WWD, except the Option Payment and Tully & Young reimbursement, shall be promptly refunded by EID.

8. Water Rights Protection.

(a) WWD and EID agree that neither Party will assert that any activities under this Agreement affect the validity of any existing water rights or contracts held by either Party to this Agreement. The execution of this Agreement is not intended to indicate any recognition by either Party of water rights claimed by the other Party. Releases of water pursuant to this Agreement will not confer any appropriative, public trust or other right to water on any person or entity.

9. Hold Harmless, Indemnification and Remedies.

(a) To the extent permitted by State law, EID will indemnify, defend and hold WWD and its directors, officers, agents, and employees safe and harmless from any and all claims, judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) that arise from or are related in any way to EID's activities under this Agreement that are under the exclusive control of EID, including but not limited to the release, conveyance, use or distribution of water released by EID from Weber Reservoir for purposes of this Agreement.

(b) To the extent permitted by State law, WWD will indemnify, defend and hold EID and its directors, officers, agents and employees safe and harmless from any and all claims, judgments, damages, penalties, costs, liabilities and losses (including without limitation, sums paid in settlement of claims, actual attorneys' fees, paralegal fees, consultant fees, engineering fees, expert fees and any other professional fees) that arise from or are related in any way to WWD's activities under this Agreement that are under the exclusive control of WWD or USBR, including but not limited to the conveyance, use or distribution of water transferred under this Agreement

(c) WWD acknowledges that the source of the water made available by EID will be from the Sacramento River watershed, which is the same as the source of supplies WWD receives through the CVP, and that EID and its directors, officers, agents and employees will not be responsible for the quality of water released, or for interruptions or

reductions in water releases due to system failures, accidents, inadequate capacity, or any other reason beyond EID's control.

10. Disputes.

Any claim that a Party may have against the other Party regarding the performance of this Agreement including, but not limited to, claims for compensation or extension of time, will be submitted to the other Party. Parties will attempt to negotiate a resolution of such claim and if necessary process an amendment to this Agreement or a settlement agreement to implement the terms of any such resolution.

11. Agreement Not a Precedent.

The Parties intend that the provisions of this Agreement will not bind the Parties as to the provisions of any future agreement between them. This Agreement was developed specifically for the 2015 water year and the specified Agreement term.

12. Notices.

Except as provided in Article 4 (Schedule and Release of Water) and Article 6 (Payments), any notice, demand, or request made in connection with this Agreement must be in writing and will be deemed properly served if delivered in person or sent by United States mail, postage prepaid, to the addresses specified below:

To WWD: Jose Gutierrez, Deputy General Manager-Resources
Westlands Water District
Post Office Box 6056
3130 N. Fresno Street
Fresno, CA 93703-6056

With Copy to: Craig Manson, Esq.
Westlands Water District
400 Capitol Mall
Sacramento, CA 95814
Telephone: (916) 321-4225

To EID: Jim Abercrombie, General Manager
El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Telephone: (530) 642-4055

With Copy to: Tom Cumpston, General Counsel
El Dorado Irrigation District

2890 Mosquito Road
Placerville, CA 95667
Telephone: (530) 642-4144

13. Modification.

This Agreement may be modified only upon the mutual written consent of the Parties.

14. No Third-Party Beneficiaries.

No third-party beneficiaries are intended or created by this Agreement.

15. Severability.

If any term or provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it will not affect the validity of any other provision, which will remain in full force and effect.

16. Complete Agreement.

Other than as specified herein, no document or communication passing between the Parties to this Agreement will be deemed to be part of this Agreement.

17. Counterpart.

This Agreement may be executed in counterpart. EID will deliver its executed counterpart to WWD, and WWD will deliver a fully-conformed counterpart to EID. Facsimile and electronic signatures shall be binding.

18. Assignment.

This Agreement is not assignable either in whole or in part, except upon mutual written consent of the Parties.

19. Time of the Essence.

Time is of the essence in this Agreement.

20. Waiver.

The waiver at any time by either Party of its right with respect to default or other matter arising in connection with this Agreement will not be deemed a waiver by that Party with respect to any subsequent default or matter.

21. Governing Law.

This Agreement is governed by and will be interpreted in accordance with the laws of the State of California.

22. Joint Defense.

In the event of litigation challenging this Agreement, the Parties will cooperate to provide a joint defense to the litigation. Except as otherwise provided in this Agreement, each Party shall bear its own expenses associated with such litigation.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date set forth above.

Westlands Water District

Dave Ciapponi, Secretary and Treasurer

El Dorado Irrigation District

Approved as to Form

Thomas D. Cumpston
General Counsel

Jim Abercrombie
General Manager

Proposed Water Transfer from EID to WWD

El Dorado Irrigation District (EID) proposes to deliver up to 6,595 acre-feet (AF) of non-federal water supplies into the United States Bureau of Reclamation's (Reclamation) Folsom Reservoir by September 30, 2015 for the purpose of transfer to Westlands Water District (WWD). It is further proposed that Reclamation will use temporary excess capacity in its storage and conveyance facilities to convey the water from Folsom Reservoir to the Delta.

The 6,595 AF of water anticipated for transfer includes up to 1,100 AF of water that EID proposes to release from Weber Reservoir that is supplemental to water that it planned to release under scheduled 2015 operations; up to 2,820 AF of water to be made available through use of recycled water within the EID service area; and up to 2,675 AF of water to be made available through conservation efforts that reduced consumptive use within EID.

In order to utilize available capacity, the Federal pumping plant at C.W. Bill Jones will be used to convey the transfer water directly to WWD for irrigation in the summer of 2015. In lieu of direct delivery to water users, the WWD may decide to convey the water to the O'Neill Forebay for storage in the federal share of San Luis Reservoir. The stored water will eventually be released and delivered through federal facilities to WWD for irrigation.

The transfer proposal includes a maximum of 2,820 AF of documented reductions in potable water usage associated with extensive utilization of recycled water by EID. Over the past several decades EID has developed a large recycled water infrastructure system that serves recycled water for outside irrigation to residential homes, commercial property landscaping, common area landscaping, community parks, and golf courses. This program has resulted in a commensurate reduction in demand for potable water supplies that would otherwise be required to meet the needs of EID's customers. In 2013, EID provided 2,820 AF of recycled water to its customers. Under Water Code section 1010(a)(1), reduced use under any water right that results from recycled water use constitutes a reasonable beneficial use of water to the extent of the recycled water use. Under subdivision (b) of that statute, "Water, or the right to the use of water, the use of which has ceased or been reduced as the result of the use of recycled, desalinated, or polluted water as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer." In accordance with State Water Resources Control Board (SWRCB) Order WR 95-09, EID provides annual reports to the SWRCB that document the amount of recycled water generated through its two wastewater treatment plants and provided to its customers.

A second component of the transfer proposal is a maximum of 2,675 AF of documented reductions in water use due to conservation efforts. Under Water Code section 1011(a), reduced use under any water right because of water conservation efforts is also a reasonable beneficial use of water to the extent of the reduction. Under subdivision (b) of that statute, "Water, or the right to use water, the use of which has ceased or been reduced as the result of water conservation efforts as described in subdivision (a),

may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.” EID has annually reported such reductions in water use to the SWRCB and the California Urban Water Conservation Council (CUWCC) for many years.

The majority of the total conserved is 2,000 AF per year in reduced agricultural demand resulting from an Irrigation Management System (IMS) program that EID began offering to its customers in 1976. In 1986, EID submitted a study to the SWRCB, using SWRCB-approved methodology, to document that the IMS program was achieving more than 2,000 AF in annual conservation. Although agricultural pursuits within EID’s service area have expanded since 1986, EID has continued to report 2,000 AF per year of annual savings. In addition to the IMS program, for a decade EID has documented conservation from the implementation of the CUWCC’s Best Management Practices (BMP), using CUWCC’s approved methodology. In 2013, ongoing BMP implementation yielded the following additional cumulative reductions in use, totaling 676 AF:

BMP 1 (residential water audits)	61 af
BMP 2 (plumbing retrofits)	9 af
BMP 5 (large landscape conservation)	52 af
BMP 6 (washer rebates)	29 af
BMP 9 (CII conservation)	444 af
BMP 14 (toilet rebates)	80 af

The final component of the transfer includes a maximum of 1,100 AF made available through reoperation of EID’s Weber Reservoir. For the past decade, EID has made discretionary releases from this reservoir to provide non-federal supplies through a Warren Act Contract at Folsom Reservoir. Due to the availability of other supplies in 2015, EID does not anticipate needing storage currently available in this reservoir during 2015 and would otherwise only make minimum releases as required by law. For the transfer, EID will draw down Weber Reservoir under a schedule approved by Reclamation and deliver this water to Folsom Reservoir for transfer to WWD. Additionally, EID will obtain SWRCB approval of temporary changes to its Weber Reservoir licensed water right under Water Code section 1725, *et seq.* and will enter into a refill agreement with Reclamation so that refill of this upstream reservoir will not negatively impact Folsom storage. The capacity of Weber Reservoir is 1,125 AF. With the proposed transfer, the planned carryover storage will be 80 acre-feet.

**Consideration of a Water Purchase
Agreement with Westlands Water District
for a transfer of water in 2015**

El Dorado Irrigation District

April 1, 2015

PRIOR BOARD ACTION

- o January 26, 2015 – Board heard an informational presentation on water transfers and District opportunities
- o March 23, 2015 – Board approved a change order to a February 2, 2015 professional services agreement for water transfer consulting services with Tully & Young, Inc.
- o Various dates in 2015 – Board held closed sessions regarding real property negotiations involving potential water rights transfers

BOARD POLICIES (BP), ADMINISTRATIVE REGULATIONS (AR), AND BOARD AUTHORITY

- o **BP 3050: The District will be run in a fiscally responsible and prudent manner.**
- o **BP 5010: The Board is committed to provide a water supply based on the principles of reliability, high quality, and affordability in a cost-effective manner with accountability to the public. It is the General Manager's responsibility to ensure that the tenets of this policy are carried out in an open, transparent manner through sound planning, to assure preparedness under varying conditions, and effective management.**

SUMMARY OF ISSUES

- o Proposal to transfer water this year to Westlands Water District
- o Three components –
 - o Potable demand reduction from recycled water
 - o Demand reduction from conservation programs
 - o Weber Reservoir re-operation
- o Maximum amount: 6,430 AF
 - o Based on 2013 water savings, Weber capacity (with conveyance loss)
 - o Likely amount is much less

SUMMARY OF ISSUES

- o Protection for District customers – can reduce or cancel transfer on short notice if water needed locally
- o Installment payments:
 - o Non-refundable option payment in 30 days
 - o “Call” payment after regulatory approval
 - o Final payments after delivery to Folsom Reservoir
- o Total price reflects very favorable market conditions
- o One-year agreement; template for the future
- o WWD interested in transfers every year

STAFF ANALYSIS/EVALUATION

- o **8,500 AF of water newly available in Folsom Reservoir this year**
 - o **Enhances water-supply security, especially in EDH**
 - o **Creates surplus supplies in Folsom Reservoir**
- o **Opportunity: market supplies until needed**
- o **Short-term water transfers:**
 - o **Maximize beneficial use of water rights**
 - o **Generate one-time revenues**

STAFF

ANALYSIS/EVALUATION

- o January 26 public presentation:
 - o New 8,500 AF supply is reliable, even in drought
 - o Folsom supplies now surplus to EDH average demands
 - o 6,000 –10,000 AF surplus in dry years
 - o More in normal /wet years
 - o Transfers can maximize the beneficial use, produce revenues from surplus
 - o Unused surplus defaults to downstream users; no benefit to District customers

STAFF ANALYSIS/EVALUATION

- o Tully & Young, Inc. retained to help define transfer concepts, assess their feasibility
- o Analysis broadened range of possibilities, but identified obstacles to some of them
 - o State law obstacle: no injury to any legal user of water
 - o Drought obstacle: some concepts posed unacceptable risks during this prolonged drought
 - o CVP supply's marketability hurt by low 2015 allocation, constraints on out-of-basin transfers

STAFF

ANALYSIS/EVALUATION

- o **Result: three concepts packaged together to achieve marketable size:**
 - o **Demand reduction via recycled water program: up to 2,820 AF**
 - o Well-documented, already-existing reductions
 - o Recycled program is well-established and expansive
 - o **Reduction via water conservation: up to 2,675 AF**
 - o Also well-documented, already-existing reductions
 - o 2,000 AF/year of IMS savings
 - o **Weber Reservoir re-operation: up to 1,100 AF, less 15%**

STAFF

ANALYSIS/EVALUATION

- o State law supports each component
 - o Water Code § 1010 – recycling
 - o Agency retains ownership of water freed up by recycling
 - o Freed-up water may be transferred for others' use
 - o Water Code § 1011 – same rules for conservation
 - o Statutes little-used, but clear
 - o Weber Reservoir re-operation is a conventional water transfer technique
 - o Basis of several Placer-WWD transfers, including 2014
 - o Basis of Foresthill-Santa Clara transfer this year

STAFF ANALYSIS/EVALUATION

- o This transfer puts District customers' needs first, with practical and legal protections
- o It will not transfer supplies necessary to serve District customers in 2015
 - o Recycled, conservation components leverage water savings already achieved before the drought
 - o New 8,500 AF supply more than enough to "backstop" Weber Reservoir component
 - o District is banking 5,000-6,000 AF in Jenkinson Lake

STAFF ANALYSIS/EVALUATION

- o But if all else fails, contractual “off-ramp” available:

It is expressly recognized by the parties that the need for water within El Dorado County shall supersede EID’s obligation to deliver the Transfer Water to WWD, *provided, however,* that in the event that EID determines that it cannot provide all of the water specified in the Call Notice due to the needs of El Dorado County, it shall notify WWD in writing within three days of such determination, and shall refund to WWD all sums it has paid for Transfer Water not delivered pursuant to this Article 6, excluding the Option Payment.

[Article 6(a)(i)(4)]

STAFF

ANALYSIS/EVALUATION

Transfer milestones

- o May 1: non-refundable option payment of \$128,600 (\$20/AF on maximum contract amount)
 - o Also, up to \$20,000 consultant cost reimbursement
- o Parties will cooperatively seek all necessary regulatory approvals, including
- o SWRCB proceedings
- o Negotiations/agreements with USBR
- o Each party bears its approval costs

STAFF

ANALYSIS/EVALUATION

Transfer milestones (cont.)

- o Acceptance period after approvals
- o Then WWD calls for all water wanted, pays \$110/AF
 - o Likely the entire amount regulators approve
- o Point of delivery – Folsom Reservoir
 - o WWD responsible for conveying to its customers
- o Invoice, final payment after delivery – \$700/AF total

STAFF

ANALYSIS/EVALUATION

- Factors affecting total
 - Recycled, conserved water accounted for monthly; delays will reduce total
 - No conveyance through Delta after September
 - Environmental review uncertainties
 - Uncertainty whether, when, how regulators will approve
- Therefore, actual transfer amount not likely to approach the 6,430 AF maximum amount
 - Could even be zero

STAFF

ANALYSIS/EVALUATION

- o **Given uncertainties, imprudent to assume any revenue**
 - o **Can use any revenue received to retire debt, fund capital needs, help make up for lost hydro revenues**
- o **Transfer would facilitate, increase beneficial use of the new 8,500 AF supply at Folsom Reservoir**
 - o **Helps to perfect Permit 21112 rights**
- o **Transfer would set template for future transfers**
- o **Transfer components, operations (Jekinson Lake banking) and agreement protect District's top priority – our customers' needs**

BOARD DECISION/OPTIONS

- **Option 1: Approve the Water Purchase Agreement and authorize the General Manager to execute it.**
- **Option 2: Take other action as directed by the Board.**
- **Option 3: Take no action.**

**STAFF/GENERAL MANAGER'S
RECOMMENDATION**

OPTION 1



**DISCUSSION AND
QUESTIONS**