

SETTLEMENT AGREEMENT
BY AND AMONG
SOUTH FEATHER WATER & POWER AGENCY,
DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA
AND
STATE WATER CONTRACTORS, INCORPORATED

This Agreement is made and entered into this the 23rd day of October, 2012, by and between South Feather Water & Power Agency, an irrigation district formed and existing under Division 11 of the California Water Code (“Agency”), the Department of Water Resources of the State of California (“DWR”), and State Water Contractors, Incorporated, a non-profit association formed under the laws of California comprised of 27 public agencies throughout California that purchase water from the DWR contracts with the State Water Project (“SWC”). Agency, DWR, or SWC may be referred to individually by name, as “Party”, or collectively as “Parties”.

RECITALS

- A. DWR constructed and operates the Oroville facilities, Federal Energy Regulatory Commission (“FERC”) Project No. 2100 (“Oroville Project”). The Oroville Project was developed as part of the State Water Project, a water storage and delivery system of reservoirs, aqueducts, power plants, and pumping plants. Along with other facilities that make up the State Water Project, DWR’s Oroville Project provides water to the SWC, flood protection to the areas downstream of Oroville Dam, flows for salinity protection in the Bay-Delta system, recreational benefits, and flows for fishery protection in the Feather River.
- B. In March of 2006 DWR, SWC and other entities and individuals executed a Settlement Agreement for Licensing of the Oroville Facilities (“Settlement Agreement”), the purpose of which was to resolve all issues that have or could have been raised by parties to the Settlement Agreement in connection with the relicensing the Oroville Project with FERC. Appendix A to the Settlement Agreement obligates DWR to adhere to or implement certain environmental protection, mitigation, and enhancement measures to be included in the new license for the Oroville Project. Among other measures, DWR commits upon issuance of the new license to certain water temperature standards for the benefit of fish measured at the Feather River Fish Hatchery and at Robinson Riffle.
- C. Agency constructed and operates the South Feather Power Project, FERC Project No. 2088 (“South Feather Project”). The South Feather Project includes reservoirs, powerhouses, canals, pipelines and other facilities. One component of the South Feather Project is the Kelly Ridge Powerhouse (“KRPH”) which historically discharged water into the Feather River. However, since the construction of the Oroville Project, the point of discharge for the KRPH has become the Thermalito Diversion Pool, a feature of the State Water Project, located downstream of Oroville Dam and upstream of the Feather River Fish Hatchery and Robinson Riffle. Agency is capable of ceasing discharges into the Thermalito Diversion Pool by stopping all

deliveries to the Miners Ranch Reservoir (including deliveries to replenish the Reservoir for withdrawals to its water treatment plant and irrigation system) and, instead, releasing water into Lake Oroville. However, by doing so, Agency is unable to generate hydroelectricity at the KRPB resulting in lost revenue and may subject it to other costs, fees, and possible penalties.

- D. As part of its efforts to relicense the South Feather Project, FERC prepared an environmental impact statement (“EIS”) under the National Environmental Policy Act (“NEPA”). Agency, as the lead agency, incorporated all the mitigation measures analyzed in FERC’s EIS into a mitigated negative declaration (“MND”) prepared and certified under the California Environmental Quality Act (“CEQA”). The EIS and MND conclude that there are no significant environmental temperature impacts as a result of continuing operations at KRPB and releasing water into the Thermalito Diversion Pool.
- E. SWC filed a lawsuit under CEQA challenging Agency’s MND and alleging that discharges of water from the KRPB into the Thermalito Diversion Pool of the Oroville Project may have an adverse impact on the water temperature requirements of the Settlement Agreement (“Lawsuit”). SWC alleges that Agency occasionally releases warm water from KRPB into the Thermalito Diversion Pool which is of a temperature that makes it more difficult for DWR to meet the temperature requirements of the Settlement Agreement at the Feather River Fish Hatchery and Robinson Riffle.
- F. Agency is not a party to the Settlement Agreement and disputes the allegations of the Lawsuit and disputes that it is required to conduct its operations subject to the temperature requirements of the Settlement Agreement or any other law applicable at this time. However, in order to settle the Lawsuit, Agency is willing at the request of DWR to stop the discharge from KRPB by shutting down the powerhouse (which action will require Agency to spill water into Lake Oroville at Agency’s Ponderosa Dam) in exchange for compensation for lost power revenue and other incidental and consequential losses, penalties, fines, or charges incurred by Agency in taking such action.
- G. In exchange for the foregoing, SWC is willing to dismiss the Lawsuit, with prejudice.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby stipulated by the Parties, DWR, Agency and SWC agree as follows:

AGREEMENT

1. Recitals Incorporated. The foregoing recitals are hereby incorporated by reference.

2. DWR Requested Shutdowns of KRPB. DWR may request that discharges from KRPB into the Thermalito Diversion Pool temporarily cease and that an equivalent amount of water be released into Lake Oroville (a “Shutdown”) in accordance with this Article:

2.1. DWR will provide as much advance notice of a request for Shutdown, in accordance with Article 9, as reasonably possible. Notice of Shutdown shall be made in writing via hard copy or electronically transmitted document and confirmation of Shutdown request shall be received from Agency no later than 9 a.m. on the business day immediately preceding the requested Shutdown. Confirmation that the request for Shutdown was received shall come from the Agency’s Power Division Manager or Operations Supervisor via email, facsimile, or other such electronic communication method as may be available. If notice of Shutdown is sent by DWR via email, a “read receipt” will be considered as confirmation of the request.

2.2. When notice of Shutdown is provided, DWR will also provide an estimated length of Shutdown, in days. The length of Shutdown shall not be less than 7 days to allow Agency to coordinate Miners Ranch Canal operations to achieve the drawdown of Miners Ranch Reservoir and to provide the required notifications to Pacific Gas & Electric (“PG&E”) and other third parties. Upon request, Agency shall provide an estimate of Expenses (defined hereafter) resulting from a Shutdown; each Party acknowledges and understands that the actual Expenses payable by DWR pursuant to Article 6 may be more or less than the Agency’s estimate.

2.3. Within a reasonable time after notification of Shutdown, Agency will cease discharges from KRPB into the Thermalito Diversion Pool. The water that would have been discharged from KRPB but for the Shutdown will be spilled into Lake Oroville either concurrently with Shutdown or as soon thereafter as normal Agency operations will allow.

2.4. DWR will reimburse Agency, in accordance with Article 6, for all fees, penalties, charges (including without limitation all CAISO charges described below), lost power revenue (including without limitation reductions in power prices and loss of Eligible Renewable Energy Resource payments associated with KRPB availability), and all other amounts incurred or lost as a result of the Shutdown (collectively “Expenses”), provided that such Expenses are caused in whole or in part by the Shutdown and not associated with other causes. To the extent practicable, Agency will assist DWR in directing Shutdowns, and DWR will exercise its discretion in requesting Shutdowns so as to avoid penalties and charges on the Agency resulting from a Shutdown by, for example, providing sufficient notice of Shutdown to avoid California Independent System Operator (“CAISO”) imbalance charges; provided, such actions by DWR will not in any way limit its obligation to pay for all Expenses provided herein.

2.5. In no event will a Shutdown last longer than 21 days, and no less than 14 days shall elapse between the end of a DWR-requested Shutdown and the start of the next DWR-requested shutdown. During a Shutdown, DWR will release into the Feather River sufficient water from the Oroville Project, not to exceed sixteen (16) cubic feet per second (“cfs”), to meet Yuba City’s right to water purchased from North Yuba Water District and transferred via Agency’s facilities, including KRPB. This obligation shall continue until the termination of this Agreement or the termination of the water transfer agreement between North Yuba Water District and Yuba City, whichever is earlier.

3. Resuming KRPB Operations.

3.1. DWR will notify Agency, in accordance with Article 9, of the date when Shutdown is no longer requested. Upon such notice, Agency will initiate efforts to restart KRPB operations, including ceasing water releases into Lake Oroville and reinitiating discharges into the Thermalito Diversion Pool ("Startup"). Agency will use reasonable efforts to Startup on the date requested by DWR. DWR's notice of Startup shall be given not less than 4:00 p.m. three business days before actual requested Startup date.

3.2. Upon notification of termination of the Shutdown, Agency, if practicable, will complete the full Draw Down and Refill of Miners Ranch Reservoir. Full "Draw Down" is achieved when the water level of Miners Ranch Reservoir reaches 878.00 feet above sea level, which is the minimum elevation for operations of the Miners Ranch Treatment Plant raw water intake pumps. Miners Ranch Reservoir is considered "Refilled" when the surface water elevation reaches 887.00 feet above sea level, at which point KRPB must be brought back online to prevent the potential overflow of Miners Ranch Reservoir.

4. Annual Scheduled KRPB Outages.

4.1. Agency will copy DWR with the provisional annual outage schedule for KRPB no later than 10 days following Agency's delivery of such schedule to CAISO and PG&E.

4.2. Promptly after receipt of the outage schedule, and in no event later than 60 days before the scheduled outage, DWR may request in writing that the annual outage schedule for KRPB be modified, altered, rescheduled to a different time period, or otherwise changed ("Outage Change").

4.3. Agency will use best efforts to accommodate DWR's requested Outage Change by notifying and rescheduling consultants, vendors, contractors, and/or other third parties that may be involved in or assisting the Agency with the outage. Any increased charges or other costs, penalties, fines, or other amounts reasonably and necessarily incurred by Agency as a result of implementing an Outage Change ("Outage Costs") shall be invoiced to and paid by DWR in accordance with Article 6. DWR's request for an Outage Change shall constitute DWR's approval of reimbursement for such Outage Costs. Agency shall not be required to obtain DWR's approval of Outage Costs prior to incurrence. As used herein, "best efforts" is an objective standard that is more exacting than the implied covenant of good faith and fair dealing, but is less exacting than a fiduciary standard; it requires the performance of reasonable, customary actions depending on the circumstances.

4.4. Prior to restarting operations at KRPB following a scheduled outage, Agency will comply with the Miners Ranch Reservoir Draw Down and Refill criteria set forth in Article 3.2, above.

5. Monitoring of Agency Operations.

5.1. Agency will install, maintain and operate a GOES-transmitted temperature monitor at or in the vicinity of KRPH. The temperature monitor shall be installed and operated so that DWR may have real-time temperature data of water being released from KRPH. The temperature data will be captured in one-hour increments and will be uploaded to the California Data Exchange Center (“CDEC”). DWR shall pay for that portion of the purchase cost of the equipment used to actually transmit the temperature data to DWR.

5.2. Agency will install, maintain and operate, at Agency’s expense, flow gauge records of (i) water flow in Miners Ranch Canal; (ii) water withdrawals from Miners Ranch Reservoir for consumptive purposes; and (iii) water flow spilling from Ponderosa Dam into Lake Oroville. Copies of the water flow gauge records will be provided to DWR along with the Agency’s Invoice for Expenses. DWR may inspect the flow gauge(s) and any related facilities and records during normal business hours.

6. Invoicing and Payment.

6.1. Expenses include all costs, charges, penalties, fees, lost revenue, reduced power-purchase price, Outage Costs, or other losses described in this Agreement, including without limitation those referred to in Articles 2.4, 4.3 and 5. DWR will reimburse and pay Agency for its Expenses in accordance with the procedure set forth in this Article 6.

6.2. Agency shall submit invoices and supporting documentation (collectively “Invoice”) to DWR setting forth the amounts due for all Expenses. Provided Agency has submitted an Invoice, DWR shall, within fifteen (15) calendar days of receipt of an Invoice, communicate in writing to Agency any alleged Invoice errors, discrepancies or disputes. If such communication is not made within this 15-day period, the Invoice and Expenses listed therein will be deemed to be approved and shall be paid. If an error, discrepancy, or dispute is timely identified, then the Parties will endeavor to resolve the dispute within fifteen (15) days. If no resolution is made within this time frame, the disputed amount will be excluded from the total Invoice amount, with the Parties endeavoring in good faith to resolve the dispute within thirty (30) calendar days. Disputes not resolved after this subsequent 30-day period will be subject to the dispute resolution process set forth in Article 8. The undisputed balance of the Invoice shall be deemed approved and shall be paid within forty five (45) calendar days after DWR receipt of Invoice. Notwithstanding the foregoing, the reasonableness or amount of charges incurred by Agency from vendors or suppliers, and the reasonableness or amount of any fees, penalties, charges or other amounts incurred by Agency from CAISO, shall not be subject to this dispute resolution procedure.

6.3. Invoice balances not paid within forty five (45) calendar days of receipt of Invoice by DWR shall be deemed delinquent. Such delinquency shall constitute a material breach of this Agreement and grounds for termination. In addition to any other remedy available to Agency in the event of delinquency, Agency may disregard requests for Shutdown until all past due Invoices have been paid.

7. Dismissal of Lawsuit; Further Assurances

7.1. Within five (5) days of execution of this Agreement, SWC will file a dismissal, with prejudice, of the Lawsuit, Butte County Superior Court Case No. 156701.

7.2. DWR and SWC waive any right to comment upon or challenge (i) Agency's EIS prepared under NEPA; (ii) the State Water Resources Control Board's ("Water Board") 401 water quality certification for the relicensing of the South Feather Project; and (iii) any other challenge to matters addressed and resolved by this Agreement.

7.3. The Parties agree to cooperate, support, and defend the terms of this Agreement against any third party claim, comment, or challenge to matters addressed in this Agreement, each party to bear their own costs and fees, including attorneys' fees.

8. Dispute Resolution.

8.1. In the event of dispute regarding interpretation or implementation of this Agreement, a DWR-designated representative and the designated representatives of Agency and SWC shall endeavor to resolve the dispute by meeting within thirty (30) days after the request of any Party to this Agreement. If the dispute is unresolved, the designated Agency and SWC representatives may meet with the Director of DWR or the Director's designee within thirty (30) days after the meeting with the DWR representative. If the dispute remains unresolved for thirty (30) days following such meeting, the matter may be resolved by litigation and any Party may, at its option, pursue any available legal remedy, including but not limited to injunctive or other equitable relief. Without limiting the foregoing, a judicial determination that a Party has materially breached this Agreement shall be grounds for termination hereof, and the other Party shall be relieved of the provisions hereof. Venue for any legal action shall be the Superior Court in and for the County of Butte.

8.2. In the event the Agreement is terminated, notwithstanding Article 7 hereof, the SWC and/or DWR may pursue any rights or remedies each may have before the Water Board, FERC, and/or state or federal courts and shall no longer be required to abide by Articles 7.2 and 7.3 hereof and Agency shall be allowed to raise any available claims or defenses thereto. Nothing in this Agreement is intended or shall be construed to toll the applicable statute of limitation for any claim, lawsuit, remedy, or defense any Party may have if this Agreement is terminated.

9. Notices. Notices of Shutdown must be sent in writing, either hard copy or electronic, and receipt of such notice must be confirmed no later than 9 am on the business day prior to the start of a Shutdown. Confirmation of the receipt of a notice of Shutdown shall be made by either the Power Division Manager or Power Division Operations Supervisor.

South Feather Water & Power Agency
Power Division Manager
2310 Oro Quincy Hwy, Oroville, CA 95966
530-538-8841 office
530-675-0361 fax
kzancanella@southfeather.com

South Feather Water & Power Agency
Power Division Operations Supervisor
530-589-2214 (Woodleaf Powerhouse)
sunderhill@southfeather.com

All other communications or notices in connection with this Agreement shall be in writing and either hand-delivered or sent by United States first class mail, postage prepaid, or electronic mail followed by written notice sent by U.S. mail and addressed as follows:

- 9.1. South Feather Water & Power Agency
General Manager
2310 Oro Quincy Hwy, Oroville, CA 95966
530-533-4578 office
530-533-9700 fax
glaze@southfeather.com
- 9.2. State Water Contractors, Inc.
Terry Erlewine, General Manager
1121 L Street, Suite 1050
Sacramento, CA 95814-3944
916-447-7357 office
916-447-2734 fax
terlewine@swc.org
- 9.3. Department of Water Resources
Oroville Field Division Chief Operations Superintendent
460 Glen Drive
P.O. Box 1191
Oroville, CA 95965
530-534-2323 office

9.4. Notification of changes in personnel, telephone numbers, facsimile numbers and email addresses shall be provided by the Party making the change within 30 days of such change.

10. Term. The term of this Agreement shall commence on the date first listed above and will continue, unless terminated, for the term of the Settlement Agreement or for the length of the new FERC license for the Oroville Project, whichever time period is shorter.

11. No Argument, Admission, or Precedent. This Agreement shall not be offered for or against a Party as argument, admission, or precedent regarding any issue of fact or law in any mediation, arbitration, litigation, or other administrative or legal proceeding, except this Agreement may be used in any future proceeding to interpret or enforce the terms of this Agreement, consistent with applicable law. This Agreement may also be used by any Party in

litigation by or against non-Parties to implement or defend this Agreement. Nothing herein is intended or shall be construed as an admission by any Party that it has waived any claims, contentions or defenses thereto or that they are bound by the terms of the Settlement Agreement.

12. Termination. This Agreement, or the actions contemplated herein, may be terminated by any Party upon notice to the other Parties should any Party fail substantially to perform its material obligations under this Agreement through no fault of the Party initiating the termination; provided, the Party initiating termination has given the other Parties written notice of the deficiency, and allowed that Party a reasonable period of time, not to exceed five (5) working days, to commence and thereafter diligently work to cure the deficiency.

13. Indemnity. Each Party agrees to indemnify, defend and hold the other Parties harmless from and against any direct or indirect loss, liability, lawsuit (including attorneys' and expert witness fees), cause of action, judgment or claim arising out of or in any way related to the acts undertaken pursuant to this Agreement, except to the extent such claim results from the negligence or willful misconduct of any Party.

14. Miscellaneous.

14.1. Time is of the essence with respect to each Party's performance of the terms and conditions of this Agreement.

14.2. Any waiver by any Party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, unless such waiver be so expressed in writing and signed by the Party to be bound.

14.3. The covenants and terms of this Agreement shall apply to, inure to the benefit and burden of and be binding upon the Parties hereto and upon their respective successors and permitted assigns.

14.4. This Agreement represents the entire understanding and agreement between the Parties hereto and supersedes any and all prior agreements, whether written or oral, that may exist between the Parties.

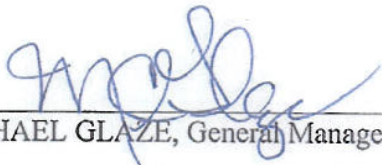
14.5. This Agreement may be amended or modified only by a written amendment to the Agreement signed by all Parties.

14.6. Where the terms of this Agreement provide for a Party's action based upon opinion, judgment, approval, review, or determination, the Parties do not intend, and shall never construe such terms as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

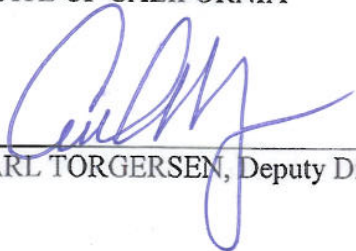
14.7. The Parties agree and acknowledge that they have arrived at this Agreement through negotiation, and that each Party has had a full and fair opportunity to revise the terms of

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement on the date first written above.

SOUTH FEATHER WATER & POWER AGENCY

By: 
MICHAEL GLAZE, General Manager

DEPARTMENT OF WATER RESOURCES OF THE
STATE OF CALIFORNIA

By: 
CARL TORGERSEN, Deputy Director

STATE WATER CONTRACTORS

By: 
TERRY ERLEWINE, GENERAL MANAGER