

**WATER PURCHASE AND SALE AGREEMENT
BY AND BETWEEN WESTLANDS WATER DISTRICT
AND GEORGETOWN DIVIDE PUBLIC UTILITY DISTRICT
FOR 2020 TEMPORARY WATER PURCHASE**

THIS AGREEMENT is entered into this 19th day of May, 2020, by and between Georgetown Divide Public Utility District, hereinafter referred to as "Seller" or "GDPUD," and Westlands Water District, hereinafter referred to as "Buyer" or "WWD." GDPUD and WWD may be referred to herein individual as "Party" or jointly as "Parties."

RECITALS

A. WHEREAS, GDPUD is a public agency created and existing pursuant to the provisions of the California Public Utility Act (Government Code Sections 15501, *et seq.*), and is empowered to enter into contracts to sell water for use outside of El Dorado County; and

B. WHEREAS, WWD, a public agency formed and operating under the California Water District Act, Water Code §§ 34000 *et seq.*, and is empowered to purchase water from GDPUD as provided for in this Agreement; and

C. WHEREAS, GDPUD owns and operates Stumpy Meadows Reservoir and holds water rights for that project pursuant to permits issued on Application(s) A005644A by the State Water Resources Control Board; and

D. WHEREAS, GDPUD is willing to release 2,000 acre-feet of water stored in its Stumpy Meadows Reservoir and to make such water available for transfer to WWD in 2020, subject to the terms and conditions set forth herein; and

E. WHEREAS, WWD is willing to make the specified payments to GDPUD for the water that GDPUD releases and makes available under a schedule acceptable to WWD; and

F. WHEREAS, in order for the purchase and sale to occur, the Parties require the approval of the State Water Resources Control Board, and agreements with the United States Bureau of Reclamation.

AGREEMENT

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

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

(a) "Agreement" means this Water Purchase and Sale Agreement.

- (b) “CADFW” means the Department of Fish and Wildlife of the State of California.
- (c) “Short-term” and/or “Temporary” means one (1) year or less.
- (d) “Transfer Water” means the water released by GDPUD for delivery to WWD pursuant to this Agreement.
- (e) “NMFS” means the National Marine Fishery Service
- (f) “SWRCB” means the California State Water Resources Control Board.
- (g) “USBR” means the U.S. Bureau of Reclamation of the Department of Interior.
- (h) “USFWS” means the U.S. Fish and Wildlife Service of the Department of Interior.
- (i) “Point of Delivery” means the point at which GDPUD is responsible for delivering Transfer Water, which is Folsom Reservoir, a USBR facility.

2. Term.

- (a) This Agreement will become effective upon its execution by both Parties.
- (b) 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 GDPUD setting forth conditions for the operation of the Stumpy Meadows Reservoir related to the conveyance of Transfer Water to WWD via the Point of Delivery;
 - (ii) Execution of a Warren Act Contract between WWD and USBR covering the storage and conveyance of the Transfer Water from the Point of Delivery;
 - (iii) Execution of a Conveyance Agreement with the Department of Water Resources;
 - (iv) Approval by the SWRCB of a Petition for Temporary Change in Place of Use for GDPUD Water Right Permit authorizing Transfer Water to be put to beneficial use within the designated WWD service area, acceptable to both Parties.
- (c) Unless otherwise cancelled pursuant to Article 8, this Agreement will terminate on May 31, 2021 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.

3. Approvals and Environmental Compliance.

Water Code section 1729 provides that a temporary change in the point of diversion, place of use, or purpose of use due to a transfer 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.

4. Administrative and Litigation Expenses.

- b. Buyer shall be solely responsible for arranging for and shall pay all costs incurred for: the conveyance of Transfer Water (by either DWR/USBR) from the Point of Delivery to the Westlands Water District boundaries, including any rates, charges, or assessments; all costs associated with a Warren Act Contract with USBR, and supporting NEPA documentation, for the conveyance and/or storage of Transfer Water, if necessary.
- c. Litigation, Attorneys' Fees and Third-Party Challenges.
 - i. Subject to subsections 4.c.ii and 4.c.iii, in the event of litigation or an administrative challenge related to this Agreement, Seller and Buyer will promptly meet and confer to perform a risk assessment of the litigation/challenge, and cooperate in good faith to determine whether to terminate the Agreement due to the litigation/challenge. Either Party may elect to terminate the Agreement due to any such litigation/challenge. If Buyer so elects to terminate the Agreement due to any such litigation/challenge, Buyer shall still be obligated to pay for all of the water made available at the Delivery Point prior to such termination; for Seller's administrative expenses in accordance with Article 4.a; for any litigation expenses in having the proceeding dismissed or otherwise resolved. If Seller so elects to terminate the Agreement, Buyer shall still be obligated to pay for all of the water made available at the Delivery Point prior to such termination; for Seller's administrative expenses in accordance with Article 4.a; and for any litigation expenses in having the proceeding dismissed or otherwise resolved. Regardless of whether the agreement is terminated, and except as set forth in Article 4, subsections 4.c.ii. and 4.c.iii, below, if litigation is pending Buyer shall have primary responsibility for defending against such litigation on behalf of both Buyer and Seller, either as a defendant, respondent, real party in interest or intervenor; and Seller shall participate in defending against such litigation to the extent it deems necessary or appropriate, in Seller's sole discretion. Buyer shall bear its own costs of litigation and shall pay any monetary award, the costs of any remedial actions, and any award of challenger's attorneys' fees associated therewith, whether levied against Buyer or Seller. Buyer shall also reimburse 100% of Seller's actual out-of-pocket expenses Seller incurs for defending this Agreement and against any related litigation under this Article 4.c.i.



- ii. As to claims solely challenging Seller's conduct in Seller's jurisdiction, Seller shall have primary responsibility for defending such claims on behalf of both Seller and Buyer, and Buyer shall participate in defending against such claims to the extent it deems necessary or appropriate, in Buyer's sole discretion. Buyer shall bear its own fees and costs of defending against such claims. Except as provided in Article 4.a regarding general cost reimbursement, Seller shall bear its own fees and costs of defending against such claims. Seller shall pay all monetary awards associated with claims challenging Seller's conduct in Seller's service area.
- iii. To the extent litigation includes multiple claims, the Parties agree to meet and confer in good faith to determine whether or not the action includes claims described under Article 4.c.i and 4.c.ii. The Parties agree that any claim identified as subject to Article 4.c.ii shall be defended as provided in Article 4.c.ii and the balance of such claims shall be defended as provided in Article 4.c.i.

5. 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 July 1, 2020 GDPUD will release from its Stumpy Meadows Reservoir, in addition to normal operating requirements, 2,000 acre-feet of additional water, for delivery to WWD in accordance with GDPUD's operations schedule.

(b) The amount of water transferred under this Agreement will be the difference between releases from Stumpy Meadows Reservoir with and without transfer, as reported to WWD by GDPUD's statement of releases pursuant to Article 6 (Reporting and Verification of Water Releases).

(c) GDPUD will assume losses, if any, between Stumpy Meadows Reservoir and the Point of Delivery, not to exceed 5%. WWD shall bear all other losses, including without limitation Folsom Reservoir storage loss, Delta carriage water loss and California Aqueduct/Delta-Mendota Canal conveyance losses imposed on Agreement-Water between Seller's Point of Delivery and WWD's delivery to WWD's members within WWD's service area.

(d) GDPUD will reduce or terminate release of Transfer Water 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, Transfer Water previously released from the Stumpy Meadows Reservoir that is beyond the control of GDPUD - will be considered transferred to WWD pursuant to this Agreement. GDPUD will resume release of Transfer Water 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 shall be confirmed in writing, with copies to WWD. Nothing in this Article 5(c) will reduce the amount of water made available to WWD under this Agreement.



6. Reporting and Verification of Water Releases.

(a) Beginning on July 1, 2020 and continuing until GDPUD has released the amount of water requested by WWD, GDPUD will measure releases from Stumpy Meadows Reservoir which the parties agree will document the daily release of water to support the transfer of water to WWD and meet the needs of GDPUD's customers/contractors. GDPUD will provide WWD and USBR with a statement within 15 days of the last day of each month (July 31st, August 31st, September 30th) that includes daily operations records for the month showing storage in Stumpy Meadows Reservoir, flows at intermediate control points, deliveries to GDPUD and its customers/contractors at diversion points below Stumpy Meadows Reservoir, and deliveries being made for transfer to WWD pursuant to this Agreement. GDPUD's monthly statement will be mailed to WWD and USBR and will be attached to invoices for payment when applicable.

7. 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 shall be \$350, for each acre-foot of water delivered by GDPUD 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 GDPUD the sum of \$40,000 for the exclusive option of purchasing 2,000 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 GDPUD fails to perform.

(2) *Call Payment:* On or before the later of June 1, 2020, or 7 days after the satisfaction of all conditions set forth in Article 2(b) above, WWD will notify GDPUD in writing of the amount of Transfer Water it desires to purchase and have delivered (the "Call Notice"), together with a "Call Payment" of \$40 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 4 hereof, for each acre-foot that GDPUD fails to deliver.

(3) *Delivery Payment:* Within thirty (30) days of receipt of each monthly invoice statement received from GDPUD, and upon confirmation from USBR that GDPUD has delivered the water to Folsom Reservoir pursuant to Article 6 (Reporting and Verification of Water Releases), WWD will pay to GDPUD the remainder of the Purchase Price per acre-foot for water released by GDPUD for transfer to WWD.

(4) If GDPUD fails to deliver all of the water WWD has requested in its Call Notice, **despite all the requirements of paragraph 2(b) hereinabove having**

been satisfied, GDPUD will promptly refund to WWD a prorated amount of the total sum due under this Agreement based on the portion of the 2,000 acre-feet (or such lower amount as requested by WWD in the Call Notice) that remains undelivered as of December 31, 2020, together with interest equal to that paid by the Local Agency Investment Fund in El Dorado County, for each acre-foot not delivered. It is expressly recognized by the parties that the need for water within GDPUD's service area shall supersede GDPUD's obligation to deliver the Transfer Water to WWD, *provided, however*, that in the event that GDPUD determines that it cannot provide all of the water specified in the Call Notice due to the needs of GDPUD customers it shall notify WWD in writing within three days of such determination, which shall serve as a Cancellation, and shall refund to WWD all sums it has paid for Transfer Water not delivered pursuant to this Article 6, excluding the Option Payment.

(b) Seller shall provide Buyer with detailed invoices supporting all expenses incurred pursuant to Article 4 and Buyer shall pay those invoices per Article 7.a.3.

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

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

8. Cancellation.

This Agreement may be canceled by GDPUD or WWD within five business days of the last of the approvals in 2(b) if either Party reasonably determines that any term or condition of the approvals 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 terms that have been identified. 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, shall be promptly refunded by GDPUD. In the event WWD forfeits the Option payment by not purchasing any water under this agreement, the amount of the Option payment will be credited in any transfer agreement the parties enter into during the next two (2) calendar years. WWD understands and agrees that there is no guarantee that GDPUD will have water available in future years for transfer to WWD.

9. Water Rights Protection.

(a) WWD and GDPUD 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 appropriate, public trust or other right to water on any person or entity.

9. Water Quality.

Seller makes no warranty or representations as to the quality or fitness for use of the transferred water. Buyer, at its own expense, shall be responsible for all necessary measures for the testing, treatment, and other steps required for the intended uses of the transferred water by Buyer.

10. Disputes.

In the event of a dispute between the Parties as to any right, alleged right, obligation or alleged obligation under this Agreement, the Parties shall make a good faith effort to resolve the dispute. In the event that a resolution of the dispute cannot be reached despite these efforts, either Party may declare an impasse and its intent to submit the matter to arbitration. Any such arbitration shall be held and conducted before one arbitrator who shall be selected by mutual agreement of the Parties. If agreement is not reached on the selection of an arbitrator within fifteen (15) days after a Party has notified the other Party of its election to submit to arbitration, then such arbitrator shall be appointed by the presiding judge of the Superior Court of El Dorado County upon application of either Party hereto. The award or decision of the arbitrator shall be final and judgment may be entered thereon. The provisions of Title 9 of Part 3 of the California Code of Civil Procedure, including §1283.05, and successor statutes, permitting expanded discovery proceedings shall be applicable to all disputes which are arbitrated pursuant to this paragraph.

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 2020 water year and the specified Agreement term.

12. Notices.

Except as provided in Article 5 (Schedule and Release of Water) and Article 7 (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: Russ Freeman, Deputy General Manager-Resources
Westlands Water District

Post Office Box 6056
3130 N. Fresno Street
Fresno, CA 93703-6056

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

To GDPUD: Jeff Nelson, General Manager
Georgetown Divide Public Utility District
P. O. Box 4240
Georgetown, CA 95634
Telephone: (530)333-4356

With Copy to: Barbara Brenner, Esq.
Churchwell White LLP
1414 K Street, 3rd Floor
Sacramento, CA 95814

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. Counterparts.

This Agreement may be executed in counterparts. GDPUD will deliver its executed counterpart to WWD, and WWD will deliver a fully-conformed counterpart to GDPUD. 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.

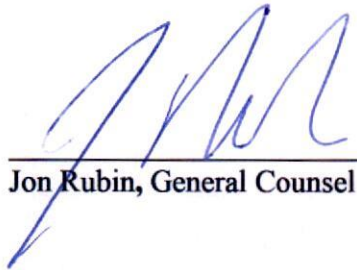
The waiver at any time by either Party of its right with respect to default or other matter arising in connection with this Agreement will not be deemed a waiver by that Party with respect to any subsequent default or matter.

21. Governing Law.


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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written.

Approved as to legal form:



Jon Rubin, General Counsel

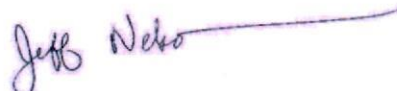
Westlands Water District


Jose Gutierrez, Chief Operating Officer

Georgetown Divide Public Utility District

Barbara A Brenner

Barbara Brenner, General Counsel



Jeff Nelson, General Manager