

SECTION ONE: MEMORANDUM OF UNDERSTANDING FOR THE *WATER FORUM AGREEMENT*

The stakeholder representatives have concluded that the best form of the *Water Forum Agreement* is a Memorandum of Understanding (MOU) among all signatories to the *Agreement*. By memorializing the substance of the *Agreement*, this MOU creates the overall political and moral commitment to the *Water Forum Agreement*.

All signatories agree that by signing the MOU, they agree to carry out all the actions specified for them in the *Water Forum Agreement*

A. Preamble

A diverse group of business and agricultural leaders, environmentalists, citizen groups, water managers, and local governments has carefully reviewed the region's water future. They found that unless we act now, our region is looking at a future with water shortages, environmental degradation, contamination, threats to groundwater reliability and limits to economic prosperity. Well intentioned but separate efforts by individual stakeholders have left everyone in gridlock.

Joining together as the Water Forum, these community leaders from Sacramento along with water managers from Placer and El Dorado counties have spent thousands of hours researching the causes for this gridlock, agreeing on principles to guide development of a regional solution, and negotiating the *Water Forum Agreement*.

This diverse group agrees that the only way to break the gridlock is to implement a comprehensive package of linked actions that will achieve two coequal objectives:

Provide a reliable and safe water supply for the region's economic health and planned development through to the year 2030;
and
Preserve the fishery, wildlife, recreational, and aesthetic values of the Lower American River.

B. Recitals

1. *Whereas*, a reliable water supply is needed by current and future residents, businesses and agriculture; and
2. *Whereas*, the Lower American River is recognized as an important natural resource which should be protected and preserved for future generations by all Water Forum stakeholders; and
3. *Whereas*, the Sacramento region has groundwater contamination in some areas and groundwater decline in other parts of the region, both of which could have an impact on future water supply; and

4. **Whereas**, water purveyors and others have for years sought to develop additional safe, reliable water supplies with little success; and
5. **Whereas**, the environmental community and others in the region have for years sought to restore the fishery, wildlife, recreational and aesthetic values of the Lower American River; and
6. **Whereas**, all signatories now recognize the potential benefits of mutually supporting each other's goals and working together, as well as the collective risk of pursuing independent objectives; and
7. **Whereas**, within the framework of an interest-based negotiation process which cannot provide exactly equivalent benefits for all but in most cases does make it possible for stakeholders to get what they really need in a *Water Forum Agreement*; and
8. **Whereas**, the City of Sacramento and the County of Sacramento have prepared and certified an Environmental Impact Report analyzing the impacts of the *Water Forum Agreement*;

Now, Therefore Be It Resolved That:

1. All signatories to this Memorandum of Understanding agree that participation in the *Water Forum Agreement* is in the best interest of water consumers and the region as a whole. Participation in the *Water Forum Agreement* is the most economically feasible method of ensuring that water demands of the future will be met. Furthermore, provisions for groundwater management, conjunctive use, conservation programs, improved pattern of fishery flow releases, Lower American River habitat management, and a reliable dry year supply are in the public interest and represent reasonable and beneficial use of the water resource.
2. All signatories will endorse and, where indicated, participate in implementing the attached *Water Forum Agreement*, including the seven linked elements:

Increased Surface Water Diversions
Actions to Meet Customers' Needs While Reducing Diversion Impacts
in Drier Years
Support for an Improved Pattern of Fishery Flow Releases from Folsom Reservoir
Lower American River Habitat Management Element
Water Conservation
Groundwater Management
Water Forum Successor Effort

3. All signatories agree that, based on existing analyses, successful implementation of the *Water Forum Agreement* will meet the Water Forum's two coequal objectives:

Provide a reliable and safe water supply for the region's economic health and planned development through to the year 2030;

and

Preserve the fishery, wildlife, recreational, and aesthetic values of the Lower American River.

4. All signatories will endorse the diversions and facilities agreed to for each purveyor as specified in the Purveyor Specific Agreements and subject to the caveats in Section Four, I, "Assurances and Caveats," of the attached *Water Forum Agreement*. The diversions are also summarized in the chart entitled "1995 and Proposed Year 2030 Surface Water Diversions" in Section Three, I of the attached *Water Forum Agreement*.

5. Purveyors will implement actions in the drier and driest years to meet their customers' water needs in order to reduce impacts of diversions. These are fully described in the Purveyor Specific Agreements (Section Five, of the attached *Water Forum Agreement*) and are summarized in the chart entitled "1995 and Proposed Year 2030 Surface Water Diversions" in Section Three, I of the attached *Water Forum Agreement*.

6. All signatories will endorse implementation of an Improved Pattern of Fishery Flow Releases from Folsom Reservoir while recognizing over time that this Improved Pattern will be refined to reflect updated understandings of the fishery. This is fully described in Section Three, III of the attached *Water Forum Agreement*.

7. All signatories will endorse, and where appropriate, financially participate in the Lower American River Habitat Management Element. This is fully described in Section Three, IV of the attached *Water Forum Agreement*.

8. All signatories will endorse and, where appropriate, implement the Water Conservation Element. This is fully described in Section Three, V of the attached *Water Forum Agreement*.

9. All signatories will endorse, and where appropriate, participate in the Groundwater Management Element. This is fully described in Section Three, VI of the attached *Water Forum Agreement*.

10. All signatories will continue their support for the *Water Forum Agreement* through participation in the Water Forum Successor Effort to maintain communication among stakeholders, facilitate implementation of this *Agreement*, and allow it to adapt to changing conditions. This is fully described in Section Three, VII of the attached *Water Forum Agreement*.

11. All signatories to the *Water Forum Agreement* agree that an environmentally upgraded Sacramento River diversion to serve the north Sacramento county area and Placer County would provide important benefits to the region. All signatories to the *Water Forum Agreement* agree to work in good faith to develop a project consistent with the provisions and conditions described in Section Four, III of the *Water Forum Agreement*.

12. All signatories intend that land use decisions dependent on water supply from the American River or the three groundwater sub-basins in Sacramento county be consistent with the limits on water supply from the American River and the estimated average annual sustainable yields for those three groundwater sub-basins as negotiated for the *Water Forum Agreement*. Beyond these agreements, limits on water from other sources have not been negotiated as part of the *Water Forum Agreement*. Signatories retain the right to support or oppose water projects that would use water from sources that have not been negotiated as part of the *Water Forum Agreement*.

In Sacramento County only, signatories retain the ability to support or oppose water facilities that would serve new development outside the Urban Services Boundary that was defined in the Sacramento County General Plan, December 1993. All parties also retain the right to support or oppose the sizing of water distribution facilities that would allow service to new development outside of the Urban Services Boundary.

It is recognized that the *Water Forum Agreement* focuses on providing a reliable and safe water supply and protecting the Lower American River. As such it is not an agreement on land use planning. Therefore all signatories retain the ability to support or oppose land use decisions on any basis except water supply availability insofar as these decisions are consistent with the *Water Forum Agreement*.

These agreements are fully described in Section Four, IV of the attached *Water Forum Agreement*.

13. All signatories agree to support, and where appropriate, financially participate in the Folsom Reservoir Recreation Program. This is fully described in Section Four, V of the attached *Water Forum Agreement*.

14. All signatories agree that any solution that provides for our future needs will have costs. New diversion, treatment and distribution facilities, wells, conservation programs, required environmental mitigations, and continuation of the Water Forum will be needed to ensure successful implementation of the *Water Forum Agreement*.

15. All signatories agree that the *Water Forum Agreement* is the least costly method for providing a safe and reliable water supply and preserving the Lower American River.

16. All signatories agree to work in good faith with those organizations whose issues were not fully resolved by the effective date of this initial *Water Forum Agreement* to

negotiate mutually acceptable agreements to resolve remaining issues. As soon as there is agreement on these remaining issues, the *Water Forum Agreement* will be amended to include them. This is fully described in Section Four, VI of the attached *Water Forum Agreement*.

17. All signatories will participate in education efforts and advocate the *Water Forum Agreement* to regulatory agencies, other state and federal agencies, and where appropriate, to the stakeholders' boards.

18. All signatories to the *Water Forum Agreement* agree to assign any of their rights and/or obligations pursuant to the *Agreement* to any future successor or assignee.

C. Assurances and Caveats

Section Four, I of the *Water Forum Agreement* describes assurances needed to ensure that future actions will occur. Some of the assurances will require approvals or implementation by local, state or federal agencies.

One of the most important assurances is an updated Lower American River flow standard. All signatories agree they will recommend to the State Water Resources Control Board an updated American River flow standard and updated Declaration of Full Appropriation to protect the fishery, wildlife, recreational and aesthetic values of the Lower American River. The recommendation will include requirements for U.S. Bureau of Reclamation releases to the Lower American River. In addition, the City of Sacramento's Fairbairn diversion will be required to comply with the diversion limitations of the City's Purveyor Specific Agreement. The *Water Forum Agreement* also includes agreed upon dry year reductions by purveyors upstream of Nimbus Dam. The recommendation for an updated Lower American River standard will be consistent with:

Water Forum Agreement provisions on water diversions including dry year diversions,
and
Implementation of the Improved Pattern of Fishery Flow Releases which optimizes the release of water for the fisheries.

The *Water Forum Agreement* also includes caveats describing actions or conditions that must exist for the *Agreement* to be operative. Major caveats include:

1. Each purveyor's commitment to implementing all provisions of the *Water Forum Agreement* is contingent on it successfully obtaining its water supply entitlements and facilities.
 - a. If a purveyor receives support from the other signatories to the *Water Forum Agreement* for all of its facilities and entitlements as shown on the chart "Major Water Supply Projects That Will Receive Water Forum Support Upon Signing the *Water Forum Agreement*," (Section Three, I) and if it receives all

necessary approvals for some or all of those facilities and entitlements, then the purveyor will fully support and participate in the following provisions of the *Water Forum Agreement*:

- (1) Support for the Improved Pattern of Fishery Flow Releases
- (2) Water Forum Successor Effort
- (3) Water Conservation Element
- (4) Lower American River Habitat Management Element
- (5) Support for the Updated Lower American River flow standard
- (6) Diversion restrictions or other actions to reduce diversion impacts in drier years as specified in its Purveyor Specific Agreement;

and,

b. If a purveyor is not successful in obtaining all necessary approvals for all of its facilities and entitlements as shown on the chart “*Major Water Supply Projects That Will Receive Water Forum Support Upon Signing the Water Forum Agreement*,” that would constitute a changed condition that would be considered by the Water Forum Successor Effort.

2. All signatories agree that business, citizens, and environmental signatories’ obligation to support, and where specified, implement all provisions of the *Water Forum Agreement* is contingent on implementation of those provisions of the agreement that meet their interests.

3. A stakeholder’s support for water supply entitlements and facilities is contingent on adequate assurances, including:

a. Project-specific compliance with the California Environmental Quality Act, and where applicable, the National Environmental Policy Act, federal Endangered Species Act and California Endangered Species Act.

b. Purveyors’ commitment in their project-specific EIRs and CEQA findings to: all seven elements of the *Water Forum Agreement*; support for updating the Lower American River flow standard; commitment by those purveyors that divert from upstream of the Nimbus Dam to entering into signed diversion agreements with the U.S. Bureau of Reclamation; commitment by the City of Sacramento to inclusion of the terms of the diversion provisions of its Purveyor Specific Agreement into its water rights.

c. Signed diversion agreements between purveyors that divert upstream of Nimbus Dam and the U.S. Bureau of Reclamation. Other signatories to the *Water Forum Agreement* shall be third party beneficiaries to the diversion agreements solely for the purpose of seeking specific performance of the diversion agreements relating to reductions in surface water deliveries and/or diversions if Reclamation

fails to enforce any of those provisions. The status of a signatory to the *Water Forum Agreement* as a third party beneficiary to the diversion agreements is dependent on that signatory complying with all the terms of the *Water Forum Agreement*, including support for the purveyor specific agreement for the purveyor's project. This is not to intend to create any other third party beneficiaries to the diversion agreements, and expressly denies the creation of any third party beneficiary rights hereunder for any other person or entity.

- d. Adequate progress on the updated Lower American River standard.
- e. Adequate progress in construction of the Temperature Control Device.
- f. Adequate progress in addressing the Sacramento River and Bay-Delta conditions associated with implementation of the *Water Forum Agreement*.

4. Environmental stakeholders' support for facilities and entitlements is dependent upon the future environmental conditions in the Lower American River being substantially equivalent to or better than the conditions projected in the Water Forum EIR. If the future environmental conditions in the Lower American River environment are significantly worse than the conditions projected in the EIR, this would constitute a changed condition that would be considered by the Water Forum Successor Effort. Significant new information on the needs of the Lower American River fisheries, which was not known at the time of execution of the *Water Forum Agreement*, would also constitute a changed condition that would be considered by the Water Forum Successor Effort.

D. Term of the Memorandum of Understanding

This Memorandum of Understanding shall remain in force and effect until December 31, 2030.

E. Legal Authority

Nothing in this Memorandum of Understanding or attached *Water Forum Agreement* is intended to give any signatory, agency, entity or organization expansion of any existing authority.

F. Non-Contractual Agreement

This Memorandum of Understanding and attached *Water Forum Agreement* are intended to embody general principles agreed upon between and among the signatories but they are not intended to, and do not, create contractual relationships, rights, obligations, duties or remedies enforceable in a court of law by, between, or among the signatories or any third parties.

As described in the attached *Water Forum Agreement*, additional assurances will be provided through an updated Lower American River flow standard, legally enforceable contracts, joint powers authorities, and commitments in project-specific environmental documentation.

G. Changed Conditions and Amendments to this Memorandum of Understanding and the Attached *Water Forum Agreement*

Given the complexity of issues, level of detail, number of signatories, duration of the *Water Forum Agreement*, and changed circumstances that will undoubtedly occur between now and the year 2030, some changes may call for renegotiation of some terms of the *Water Forum Agreement*. However, a request for renegotiation does not necessarily mean the *Water Forum Agreement* will be revised. The *Water Forum Agreement*, including Specific Agreements, can be changed or modified only with the expressed approval and consent of the signatories to the *Water Forum Agreement*.

Any proposal to amend this Memorandum of Understanding or the attached *Water Forum Agreement* would be considered in the context of both of the Water Forum's coequal objectives. Specific procedures for amending the *Water Forum Agreement* consistent with the collaborative decision-making process will be developed by the Water Forum Successor Effort within the first year of its operation.

H. In witness thereof the undersigned parties have executed this Memorandum of Understanding this _____ day of _____, 2000.

_____ Name	_____ Stakeholder Organization
_____ Name	_____ Stakeholder Organization
_____ Name	_____ Stakeholder Organization
_____ Name	_____ Stakeholder Organization
_____ Name	_____ Stakeholder Organization

PROCEDURAL AGREEMENTS FOR THOSE NOT IN THE INITIAL *WATER FORUM AGREEMENT*

A. Background

The initial *Water Forum Agreement* records those agreements among stakeholder organizations that could be entered into as the effective date of this initial *Water Forum Agreement*. However, it is recognized that there are some stakeholder organizations that have remaining issues that could not be resolved by that time.

Therefore this section of the *Water Forum Agreement* describes the process by which those remaining issues will be addressed and how the *Water Forum Agreement* will be amended to include those agreements as soon as they are complete.

B. Specific Agreements

1. All signatories to the *Water Forum Agreement* commit to work in good faith with organizations whose issues were not fully resolved by the effective date of this initial *Water Forum Agreement*. Their goal will be to negotiate mutually acceptable agreements to resolve remaining issues. As soon as these issues are agreed to, the *Water Forum Agreement* will be amended to include them.

2. Mutually agreed upon Water Forum Successor Effort expenses related solely to converting that purveyor's procedural agreement into a Specific Agreement will be reimbursed by that purveyor. As soon as the purveyor has negotiated a Specific Agreement and it signs the *Water Forum Agreement*, it will contribute to the Water Forum Successor Effort on the same basis as other purveyors that have Specific Agreements.

3. Purveyors having Procedural Agreements will participate in the Water Forum Successor Effort, except on these three issues:

- a. Amending the *Water Forum Agreement*;
- b. Decisions regarding any litigation associated with the *Water Forum Agreement* or the Water Forum EIR; and
- c. Decisions regarding expenditures of Habitat Management Funds.

4. Purveyors having Procedural Agreements with the Water Forum agree that if disputes arise over the Water Forum EIR or implementation of the *Water Forum Agreement* they will first attempt to resolve the dispute through mediation in the Successor Effort.

5. Either the purveyor with a Procedural Agreement or the Water Forum Successor Effort may cancel the Procedural Agreement upon sixty days notice to the other party.

_____	_____	_____
Name	Stakeholder Organization	Date

_____	_____	_____
Name	Stakeholder Organization	Date

_____	_____	_____
Name	Stakeholder Organization	Date

_____	_____	_____
Name	Stakeholder Organization	Date