

## **Memorandum of Understanding to Create a Partnership between the Department of Water Resources and the County of Yolo**

This Memorandum of Understanding (the “MOU” or “Agreement”) is entered into and effective as of the date of execution by the last signing party (the “Effective Date”) by and between the County of Yolo (“County”) and the California Department of Water Resources (“DWR”) (collectively, the “Parties”).

### **RECITALS**

**WHEREAS**, SB 369 codified the Yolo Bypass-Cache Slough Partnership Memorandum of Understanding, signed in 2016, to support the development and implementation of projects within the Yolo Bypass and Cache Slough region in collaboration with participating federal, state and local agencies, including the Parties; and

**WHEREAS**, DWR is a signatory to the 2019 Voluntary Agreements Memorandum of Understanding, which led to the creation of the Healthy Rivers and Landscapes Program, a comprehensive, multi-year solution that brings together local, state, and federal partners to pool resources and take concrete actions to increase river flows and expand habitat in the Sacramento and San Joaquin Rivers, their tributaries, and the Bay-Delta; and

**WHEREAS**, through these and other efforts, numerous DWR-led multi-benefit projects are anticipated to occur within and near the Yolo Bypass, most of which is within Yolo County; and

**WHEREAS**, the Parties executed the “Memorandum of Understanding between the County of Yolo and the California Department of Water Resources Regarding the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project” (“Big Notch Project”), dated January 4, 2022; and

**WHEREAS**, the Parties wish to maintain the Big Notch Project MOU and develop and build a stronger working relationship with communication pathways for engagement between DWR and the County;

**NOW, THEREFORE**, the Parties hereby agree as follows:

### **AGREEMENT**

#### **I. Ongoing Project Coordination between the Parties**

The Parties agree to do the following in support of developing and maintaining ongoing coordination and consultation.

##### **A. Quarterly Leadership Meeting**

1. Quarterly or Semi-Annual ongoing meetings between DWR (Deputy Director level or higher) and County (one or more County supervisors and key staff) to share project status, discuss opportunities and concerns, and discuss other matters of mutual interest such as project-specific engagement (see subsection B.1, below) and anticipated future projects and related activities that are within the scope of this MOU.

##### **B. Project Specific Engagement for DWR-led Projects**

1. For projects and programs implemented by DWR’s Natural Infrastructure and Ecosystem Resilience Program (“NIER”) and any related program or effort that DWR may later establish to succeed NIER, DWR commits to:
  - a. Early and ongoing engagement with the County, including site visits and sharing

of relevant information during project planning, environmental review, and implementation. The Parties commit to engaging in a substantive and interactive discussion in the project planning and development process. DWR has reasonable discretion in scheduling related meetings and identifying agenda topics.

- b. Good faith discussion with County staff on potential agricultural mitigation measures for consideration by DWR when it is the lead agency under the California Environmental Quality Act, and other topics of mutual interest.
- c. Collaborate with County staff to establish shared outreach expectations for NIER projects and communications with interested parties and residents and landowners within Yolo County.
- d. Develop recommendations from this coordination process which can be used to inform or apply to other projects within DWR.

#### C. Interactive Public Map

1. By the end of 2025, DWR will develop and make publicly available an interactive GIS map that identifies active projects within the Yolo Bypass region that DWR has involvement in, including but not limited to: brief project description, status, and project-specific email address. DWR will update this map periodically over time.

#### D. Local Partner Leadership Meetings

1. On an as-needed basis, anticipated to be twice annually, the Parties shall cooperate to convene a meeting to include DWR, County, and local partner agency/ies (e.g., YCFWCWD, RD 108) to share project status and discuss opportunities, concerns, and other topics of shared interest. The Parties shall jointly determine agenda topics, participants, location, and other meeting specifics. Unless otherwise agreed in connection with each meeting, leadership-level staff (i.e., Deputy Director and equivalent County counterpart) shall participate in the meeting along with other staff, as appropriate.

#### E. Consider Contributing to the Yolo Habitat Conservation Plan & Natural Community Conservation Plan (“Yolo HCP/NCCP”) Conservation Goals

1. For projects DWR’s NIER Program implements or partners to implement within Yolo County, if DWR determines it is feasible and appropriate, DWR will contribute toward conservation goals of the Yolo HCP/NCCP, including recording conservation easements and otherwise working in good faith to attempt to enroll any such easements in the Yolo HCP/NCCP reserve system as appropriate.
2. DWR will consider opportunities to partner with the Yolo Habitat Conservancy and transfer habitat sites in fee title where DWR determines it is appropriate, legal, and feasible.
3. The Yolo Habitat Conservancy is not a party to this MOU, and nothing herein creates or imposes any rights, responsibilities, or obligations on the Conservancy, including, without limitation, any obligation to accept real property interests from DWR.

## II. County-Led Projects

DWR’s NIER Program shall enter into appropriate grant or funding agreements under existing funding programs for a total of at least \$8 million, including but not limited to the Facilitating

Improvement to Systemwide Habitat (FISH) Program and Systemwide Flood Risk Reduction Program, to fund prioritized eligible County projects. Such projects may include the following (Note, of the \$8 million, \$2 – 3 million must be allocated to Project 4, Yolo Fix-in-Place):

A. Proposed Projects

1. Elkhorn Regional Park Habitat Restoration. Restoration work on this 40-acre site along the Sacramento River is anticipated to include enhancing riparian habitat to provide improved refuge and other benefits to endangered or threatened native fish species. If feasible, the Parties may partner in this effort with Healthy Rivers and Landscapes signatories to develop a demonstration project with appropriate public access for educational and other purposes.
2. Yolo Bypass Wildlife Area Fish Passage and Drainage Improvement. This project is proposed to be implemented in partnership with the California Department of Fish and Wildlife to identify and implement drainage improvements throughout the Yolo Bypass Wildlife Area that also improve fish passage through stranding risk reduction. This project may be implemented to also benefit agriculture through improved drainage.
3. Tule Canal Feasibility Study, Management Plan, and Permitting Approach. This project concept envisions partnering with other local entities to develop a management plan aimed at improving drainage capacity and fish passage in the Tule Canal. Drainage and fish passage improvement work will require strategies to address aquatic invasive vegetation, improve agricultural infrastructure, and remove sediment to maintain capacity. The Parties envision developing a “shovel ready” management plan that would, upon implementation, reduce or eliminate the risk of out of bank flows after March 15 to enable upstream properties to efficiently drain while also allowing for successful fish passage upstream through the Big Notch Project.
4. Yolo Fix-in-Place. Funding towards construction of Yolo County levee flood improvements. Yolo County will evaluate its flood risk prone areas and prioritize projects for implementation with the Fix-in-Place funds. County and DWR may coordinate to review and confirm that proposed projects meet program requirements.

- B. The total amount under this Agreement would be at least \$8 million. This term does not limit future efforts between the Parties to continue to coordinate nor preclude the County from applying to other grant programs or opportunities that may be available.
- C. The County will work with DWR to finalize a prioritized list of projects that comply with program guidelines and funding requirements within three months of the Effective Date. Parties shall work collaboratively after projects have been identified to timely execute related grant or funding agreements.
- D. Grant or funding agreements for the projects, where allowable, will include a minimum of 5% for County administration costs for the oversight and management of the projects.
- E. Yolo County will provide updates on these projects and include them on the agendas for discussion in the coordination meetings identified in Sections I.A. and I.D. In efforts to implement these projects, Yolo County will also apply the same engagement principles as outlined in Section I.B.

### III. Dispute Resolution

- A. If, at the Local Partner Leadership Meetings or staff coordination referenced in Sections I.B. and I.D. above, the Parties reach an impasse, County and DWR agree to:
1. Commit to bring up concerns or issues in the Leadership Meetings referenced in Section I.A and I.D.
  2. Unless it is not reasonably possible to do so due to time constraints or other matters beyond a party's reasonable control, meet and confer in good faith before posting, issuing or sending publicly available communications, including but not limited to press releases and comment letters, for projects discussed in the Leadership Meetings or included on the Interactive Public Map maintained by DWR pursuant to this MOU. After meeting and conferring, a party may send any comment letter in its sole discretion.
  3. To meet and confer in good faith with County and DWR leadership (as generally defined in Section I.A.1, above), and (if the Parties mutually agree) Local Partnership Group before pursuing any relief in state or federal court on any project discussed in the Leadership Meetings or included on the Interactive Public Map.

#### **IV. Yolo County Commitments and Adopted Position Statement**

Yolo County agrees to continue providing or coordinating collaborative efforts for the following ongoing projects and efforts.

- A. Yolo County commits to working collaboratively with DWR on the coordination efforts referenced in Section I and other efforts above. These efforts include, but are not limited to, the Managed Floodplain Project (In Progress Item), the Upper Yolo Bypass Alternatives process, and the Yolo Bypass/Cache Slough Partnership's Master Plan. This MOU does not grant DWR any authority to supervise, direct, or control County staff or the allocation and use of County resources. Similarly, this MOU does not grant County any authority to supervise, direct, or control DWR staff or the allocation and use of DWR resources.
- B. Yolo County Position Statement
1. At the December 3, 2024 Board of Supervisors meeting, Yolo County adopted the "Yolo County Position Statement on Regional Water Supply, Flood Protection and Habitat Restoration Projects" (Position Statement). The Parties acknowledge that the County adopted the Position Statement and eight principles for project design, construction, and operation to express the Board's priorities for project implementation.
  2. The Parties agree to consider the principles in the Position Statement in the leadership meetings and project-specific engagement efforts described above, to the extent applicable, recognizing that the Position Statement broadly addresses topics beyond DWR's mission or statutory authority, and that legal, funding, and practical constraints may limit what the Parties can reasonably achieve through such coordination.
  3. Further, DWR acknowledgment of the Position Statement does not constitute its agreement to any course of action with respect to specific project implementation or otherwise, and failure to reach agreement on application of the principles to specific projects, despite reasonable efforts by the Parties, shall not be deemed in bad faith or a breach of this Agreement. Similarly, the County's commitment to collaborate

with DWR pursuant to this MOU does not constitute its agreement to any course of action with respect to specific project implementation or otherwise, and any positions expressed by the County on such matters shall not be deemed in bad faith or a breach of this Agreement.

## **V. Yolo County Commitments to Resolve Pending or Threatened Litigation**

- A. Tolling Agreement on Tide's End: Release and Waiver. Upon the Effective Date of this Agreement, the Agreement to Toll Claims, effective September 20, 2024, as amended through the latest Amendment to Agreement to Toll Claims (collectively, "Tolling Agreement") executed as of the Effective Date, shall be deemed expired and of no further force or effect. The County shall not file suit or otherwise raise any claims that the County could assert against DWR regarding the Tides End Project, including but not limited to claims specifically described in the recitals of the Tolling Agreement (the "Released Claims"), as of the Effective Date.
- B. Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project: Dismissal. Upon the Effective Date of this Agreement, the County shall promptly coordinate with the Deputy Attorney General representing DWR in Marin County Superior Court Case No. CV0002534 and file a request for dismissal of the action in its entirety with prejudice. Each party will bear its own attorneys' fees and costs related to said litigation. The Parties hereby irrevocably authorize and direct their attorneys of record to execute and deliver to the Court any filings to dismiss the action in accordance with this MOU. Further, effective upon dismissal of the action, the County releases and waives all potential existing claims arising out of or related to the approval and implementation of the Big Notch Project through and including that date, including but not limited to claims related to the EIR and addendum documents/approvals. Upon the Effective Date of this MOU, the County also withdraws its pending PRA requests related to the Big Notch Project and DWR's related flowage easement acquisition process. The County agrees to cooperate with DWR to take any actions reasonably necessary to implement the foregoing commitments.

## **VI. Additional Actions Related to the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project**

- A. Big Notch Communication. In coordination with the County, DWR will issue a one-pager explaining Big Notch operations, particularly permitted operations under selected Alternative 1, how the project's physical capacity derived from approved operational flow rates optimized for fish passage at 6,000 cfs, and the process for determining potential changes to future operations. DWR's Public Affairs Office may assist with graphics and design, or other portions, as needed.
- B. Amendment. In connection with the existing Memorandum of Understanding between the County of Yolo and the California Department of Water Resources Regarding the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project, dated January 4, 2022, as a change in terms, DWR agrees to provide two years of position funding, at a rate of \$200,000/year, for a total of \$400,000, to Yolo County in advance of the Project Completion Date (as defined there). In turn, the remaining position funding requirement set forth in section 2.C "County Staff Position Funding" of the existing Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project MOU shall be reduced from 18 years to 16 years. The parties will execute an amendment to that MOU within 30 days of the Effective Date, without modification to any other terms and conditions, and DWR shall pay the additional funding to County within 60 days after

the amendment is fully executed.

## VII. Miscellaneous Provisions

- A. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties and shall not be construed to create any rights in any other person or entity.
- B. Amendments. Subsequent modifications of this Agreement, including but not limited to an extension or amendment of this Agreement, shall not be valid or effective unless set forth in writing and signed by the Parties.
- C. No Funds Encumbered. No funds shall be encumbered against this Agreement. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the Legislature of the State of California, where creating such an obligation would be inconsistent with Section 1 and Section 18 of Article XVI of the California Constitution.

- D. Notice. Notices under this Agreement shall be given as follows:

- 1. To the County, notice shall be given to both the County Administrator and to County Counsel:

County Administrator  
Office of the County Administrator  
625 Court Street, Room 202  
Woodland, CA 95695  
michael.webb@yolocounty.gov

County Counsel  
Office of the County Counsel  
625 Court Street, Room 201  
Woodland, CA 95695  
philip.pogledich@yolocounty.gov

- 2. To the Department, notice shall be given to both the Deputy Director and to Assistant General Counsel:

James Newcomb  
Deputy Director  
Habitat Restoration  
P.O. Box 899  
Sacramento, CA 95812-0001  
james.newcomb@water.ca.gov

Robin Brewer  
Assistant General Counsel  
Office of the General Counsel  
P.O. Box 899  
Sacramento, CA 95812-0001  
robin.brewer@water.ca.gov

- E. Effectiveness. The parties agree that this Agreement shall be effective as of the date of execution by the last signing party.
- F. Authority to Bind. Each of the undersigned hereby represents and warrants that he or she is authorized to execute this Agreement on behalf of the respective Parties to the Agreement and bind said Parties to the terms and conditions set forth herein.
- G. Rules of Construction. The Parties acknowledge that each party and its counsel have reviewed this Agreement and that no rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Agreement.
- H. Counterparts. This Agreement may be executed in counterparts, including facsimile or other electronic counterparts, each of which shall be considered an original and all of which together shall be deemed to constitute one document.
- I. Termination. After this Agreement has been in effect for three (3) years, so long as all

obligations set forth herein have been fully discharged, it may be terminated by either Party upon written notice to the other Party.

- J. Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the matters set forth herein. Any prior understandings, promises, negotiations, or representations between the Parties not expressly stated in this document are not binding.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates specified in the signature block below.

COUNTY OF YOLO

By: \_\_\_\_\_  
Mary Vixie Sandy, Chair  
Yolo County Board of Supervisors

ATTEST:  
Julie Dachtler, Senior Deputy Clerk  
Yolo County Board of Supervisors

By \_\_\_\_\_  
Deputy (Seal)

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Philip J. Pogledich, County Counsel

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES

By: \_\_\_\_\_  
Name: James Newcomb  
Title: Deputy Director – Natural Infrastructure  
& Ecosystem Resilience

Approved as to Form:

By: \_\_\_\_\_  
Name: Robin Brewer  
Title: Assistant General Counsel