

TERM SHEET FOR FRAMEWORK OF SETTLEMENT AGREEMENT FOR YUBA RIVER WATERSHED HABITAT RESTORATION PLAN

1. Overview.

The National Marine Fisheries Service (NMFS), the California Department of Fish and Wildlife (CDFW) and Yuba Water Agency (YWA) (collectively the Parties) believe that there is an opportunity to develop and implement habitat enhancement measures under a Restoration Plan that would significantly expand the Yuba River Watershed's contribution to the recovery of anadromous fish, while addressing certain issues associated with a new Federal Energy Commission's (FERC) license for the Yuba River Development Project (YRDP), as well as addressing certain other regulatory concerns associated with the operation of the YRDP.

The Restoration Plan (which is described in more detail in Exhibit 1) would include the following measures:

- a.** Construction, operation and maintenance of a nature-like fishway (Fishway) in the lower Yuba River at Daguerre Point for volitional passage of Central Valley steelhead, Chinook salmon, green sturgeon and Pacific lamprey;
- b.** A new screened facility for the Brophy Diversion that meets NMFS and CDFW screening criteria (New Diversion Facilities) for diversion of irrigation water supplies south of the lower Yuba River; and
- c.** A program for reintroducing spring-run Chinook salmon in the North Yuba River upstream of New Bullards Bar Reservoir (Reintroduction Program).

The design concepts for the Restoration Plan elements would be refined based on the findings of future site investigations, results of multidisciplinary engineering and environmental studies, consultation with resource agencies and discussions with river stakeholders.

This Term Sheet sets forth a non-binding framework for developing a Settlement Agreement to implement these measures.

2. Parties. The Parties to this Term Sheet are the NMFS, CDFW and YWA.

3. Prior Collaborations. For many years, the Parties have worked collaboratively in voluntary processes to expand the Yuba River Watershed's contribution to the recovery of anadromous salmonids. For example:

- a.** CDFW and YWA are parties to the Yuba River Accord Fisheries Agreement (2007). NMFS supported approval of YWA's petition to the State Water Resources Control Board (SWRCB) to implement the Yuba River Accord Fisheries Agreement.
- b.** NMFS, CDFW and YWA were participants in the Yuba Salmon Forum (2010).

- c. NMFS, CDFW and YWA were parties to the Yuba Salmon Partnership Initiative (2014).
 - d. NMFS and YWA are project partners in the Hallwood Side Channel and Floodplain Restoration Project (2020).
 - e. NMFS, CDFW and YWA led the development of a Steering Committee and charter to memorialize the Yuba Reintroduction Working Group (2021).
- 4. Implementation of Restoration Plan.** The Parties intend to collaboratively develop and implement the Restoration Plan measures, which are intended to significantly contribute to enhancement of and access to habitat for anadromous salmonids in the Yuba River Watershed to further NMFS' and CDFW's conservation priorities, and consistent with YWA's mission.
- 5. Consistency with Federal and State Policies and Regulations.** The Parties intend that the Restoration Plan measures be consistent with resource management goals and objectives of the respective Parties. For example:
- a. NMFS' Recovery Plan for California's Central Valley Salmonids (NMFS 2014)
 - b. Salmon, Steelhead Trout and Anadromous Fisheries Program Act (2019)
 - c. NOAA Fisheries West Coast Region Guidance to Improve the Resilience of Fish Passage Facilities to Climate Change and Associated Guidelines for Fish Passage in California (2022)
 - d. Opportunities to Accelerate Nature-Based Solutions: A Roadmap for Climate Progress, Thriving Nature, Equity and Prosperity (White House, 2022)
 - e. California Water Resilience Portfolio (State of California, 2020)
 - f. California Climate Adaption Strategy (State of California, 2021)
 - g. NMFS' Final Rule (87 FR 79808, January 27, 2023) Authorizing the Designation of a Nonessential Experimental Population of Central Valley Spring-Run Chinook Salmon in the Upper Yuba River Upstream of Englebright Dam, Authorization for Release, and Adoption of Limited Protective Regulations Under the Endangered Species Act
 - h. Expected CDFW issuance of any determination pursuant to Fish and Game Code sections 2080.5 or 2080.6

- 6. Settlement Agreement.** The Parties intend to negotiate a Settlement Agreement that would:
- a. include development and implementation of the Restoration Plan measures;
 - b. address instream flow, habitat enhancement, fish passage and related issues through an off-license agreement outside FERC's jurisdiction;
 - c. positively contribute to the biological baseline for FERC's upcoming Endangered Species Act Section 7 consultation for the issuance of a new license for the YRDP; and
 - d. provide the SWRCB with an agreed-upon set of conditions for consideration in issuance of any necessary Section 401 water quality certification in the new FERC license proceeding for the YRDP.
- 7. Guiding Principles.** The following principles will guide implementation of this Term Sheet and development of the Restoration Plan and the Settlement Agreement:
- a. Measures will include project design, planning, development, construction, and implementation (including operation, maintenance and monitoring).
 - b. Measures will be cost-effective, feasible and based on the best-available science to achieve the goals and objectives of the Restoration Plan as set forth in the Settlement Agreement. The Parties will be fiscally prudent and adhere to agreed-upon budgets.
 - c. Measures will not require changes to the 2008 Yuba Accord instream flow requirements as described in the Final Environmental Impact Statement (June 2019) for the YRDP, except as otherwise agreed to by YWA in the Settlement Agreement.
 - d. The Parties commit to minimize impacts to YRDP facilities and operations (including water supplies, water transfers, flood management and power generation, including peaking and ancillary services, and recreation), and other lawful activities as reviewed and determined by YWA, except as otherwise agreed to by YWA in the Settlement Agreement.
 - e. Measures will be designed, implemented, and adapted based on their ability to meet biological and habitat goals and related measurable objectives of the Restoration Plan.
- 8. Funding.** The Settlement Agreement will include a comprehensive plan to identify and obtain funding for all aspects of project design, planning, development, construction, and

implementation (including operation, maintenance and monitoring) of the measures in the Restoration Plan.

9. Effective Date and Term. This Term Sheet will take effect on the date when all of the Parties have signed it, and will remain in effect until it is terminated by mutual agreement between the Parties or superseded by the Settlement Agreement, provided that, any Party may remove itself as a Party to the Term Sheet upon 30 days' written notice to the other Parties.

10. Reservation of Authorities. Each Party intends that the terms proposed in the Term Sheet, if incorporated into a Settlement Agreement, would be consistent with its statutory, regulatory, or other legal obligations for conservation, use or management of affected resources. In signing the Term Sheet, the Parties do not take any actions or commit to take any action, including funding.

11. Non-Parties. This Term Sheet does not create any right, claim or remedy of non-Parties.

12. Authority. Each Party's signatory represents that he or she has the authority to sign this Term Sheet.

The foregoing is hereby agreed to by the Parties.

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

By _____

Charlton Bonham, Director

NATIONAL MARINE FISHERIES SERVICE

By _____

Jennifer Quan, Regional Administrator for West Coast Region

YUBA WATER AGENCY

By _____

Willie Whittlesey, General Manager

EXHIBIT 1
PRELIMINARY RESTORATION PLAN CONCEPT

- 1. Nature-Like Fishway and New Diversion Facilities.**
- 2. Reintroduction Program.**