

**TERM SHEET FOR FRAMEWORK OF SETTLEMENT AGREEMENT  
YUBA SALMON PARTNERSHIP INITIATIVE**

**1. Parties.** This Term Sheet is approved by the National Marine Fisheries Service, the California Department of Fish and Wildlife, Yuba County Water Agency, American Rivers, Trout Unlimited and the California Sportfishing Protection Alliance (Parties). The Settlement Agreement will provide that, with the consent of these Parties, additional entities may sign the Settlement Agreement, and that signing by such an entity after the Effective Date will not change that date.

**2. Purposes.** This non-binding Term Sheet provides a framework for negotiating a Settlement Agreement, which, when it becomes effective, will be intended to expand the Yuba River Watershed's contribution to recovery of Anadromous Salmonids in the Central Valley. The Settlement Agreement will include an Action Plan to achieve reintroduction of Listed Anadromous Salmonids in the North Yuba River upstream of New Bullards Bar Dam, and the enhancement of Anadromous Salmonid habitat in the lower Yuba River. The Settlement Agreement will also settle specified issues related to the New License for the YRDP, as provided for in this Term Sheet.

**3. Recitals.**

**3.1** YCWA believes that there would not be a proper legal or factual basis for the New License to include requirements that YCWA provide for fish passage upstream of the Corps' Englebright Dam. YCWA believes that this position is consistent with FERC's study plan determinations (dated September 30, 2013 and November 13, 2014) in the New License proceeding, which concluded that there is no nexus between YCWA's relicensing proposal and anadromous fish passage upstream of Englebright Dam.

**3.2** Other Parties believe that there is a proper basis for the New License to include requirements that YCWA provide for fish passage upstream of Englebright Dam. This basis includes YCWA's use and operation of Englebright Dam as the afterbay for the YRDP's New Colgate Powerhouse and the forebay for its Narrows II Powerhouse.

**3.3** The Parties do not resolve this issue, and instead propose through this Term Sheet, a solution that does not require resolution of this issue in the regulatory approvals associated with the New License.

**4. Defined Terms.**

**4.1** **Action Plan** means the plan that will be an exhibit to the Settlement Agreement to expand the Yuba River Watershed's contribution to recovery of Anadromous Salmonids in the Central Valley, and specifically, to achieve reintroduction of Listed Anadromous Salmonids in the North Yuba River upstream of New Bullards Bar Dam and the enhancement of Anadromous Salmonids habitat in the

lower Yuba River. The Action Plan will be based on the Concept Plan (March 2015).

- 4.2 **Applicable Laws** means federal and state laws, including rules, regulations and policies, which are applicable to the impacts of the YRDP on Anadromous Salmonids or are necessary to implement the Settlement Agreement. Term 6 specifies Applicable Laws under which the Parties will seek Regulatory Approvals and Other Administrative Actions.
- 4.3 **Anadromous Salmonids** means steelhead, spring-run Chinook salmon and fall-run Chinook salmon.
- 4.4 **CESA** means the California Endangered Species Act, the statute codified at California Fish and Game Code §§ 2050, *et seq.*
- 4.5 **CDFW** means the California Department of Fish and Wildlife.
- 4.6 **Concept Plan** means the YSPI Concept Plan (March 2015), which is Attachment 1. The Concept Plan is a preliminary draft and provides a conceptual framework for the Parties to draw on in developing the Action Plan. Specifics regarding facility type, location, and design will be determined through a design and planning process described in the Action Plan.
- 4.7 **Corps** means the U.S. Army Corps of Engineers.
- 4.8 **Corps Feasibility Study** means the Corps' Yuba River Ecosystem Restoration Feasibility Study.
- 4.9 **Designation** means the designation of Listed Anadromous Salmonids to be released upstream of Englebright Dam as a non-essential experimental population under ESA section 10(j) and subject to a rule under ESA section 4(d) to implement the designation, which is described in Term 6.3.4.
- 4.10 **Effective Date**, in the context of either the Term Sheet or Settlement Agreement, means the date when all of the Parties listed in Term 1 have signed the document.
- 4.11 **ESA** means the Endangered Species Act, the statute codified at 16 U.S.C. §§1531, *et seq.*
- 4.12 **FERC** means the Federal Energy Regulatory Commission.
- 4.13 **FPA** means the Federal Power Act, 16 U.S.C. §§ 791, *et seq.*
- 4.14 **FPA section 4(e)** means 16 U.S.C. § 797(e).

- 4.15 FPA section 15** means 16 U.S.C. § 808.
- 4.16 FPA section 18** means 16 U.S.C. § 811.
- 4.17 HEA** means the amended “Habitat Expansion Agreement for Central Valley Spring-Run Chinook Salmon and California Central Valley Steelhead (FERC Project Nos. 1962, 2100, 2105, and 2107)” (March 2011) for hydroelectric projects on the Feather River. The HEA is anticipated in the “Settlement Agreement for Licensing of Oroville Facilities (FERC Project No. 2100)” (March 2006).
- 4.18 Legislative Action**, whether in singular or plural, means any change to state or federal law to establish or provide the necessary appropriations, authorizations and mechanisms to allow or facilitate implementation of the Settlement Agreement, including durable protections for the Parties and other potentially-affected entities.
- 4.19 Listed Anadromous Salmonids** means certain Anadromous Salmonids that are listed as a threatened species or endangered species under section 4 of the ESA, 16 U.S.C. §1533, and includes subsequent generations of their offspring.
- 4.20 Lower Yuba River** means the reach of the Yuba River from Englebright Dam to the confluence with the Feather River.
- 4.21 New Bullards Bar Reach** means the reach of the North Yuba River from New Bullards Bar Dam to Englebright Dam.
- 4.22 New License** means a new FERC license for the YRDP, succeeding the license that will expire on April 30, 2016. The New License includes any annual licenses issued by FERC after the expiration of the term of the New License.
- 4.23 NMFS** means the National Marine Fisheries Service.
- 4.24 Other Administrative Action** means an action other than a Regulatory Approval necessary to implement the Action Plan, including the Designation.
- 4.25 Parties** means the signatories to this Term Sheet or Settlement Agreement, depending upon the context.
- 4.26 Party** means one of the Parties.
- 4.27 Regulatory Agencies** means agencies that administer Applicable Laws and have the authority to issue or deny Regulatory Approvals.
- 4.28 Regulatory Agency Party** means CDFW or NMFS.

- 4.29 Regulatory Approval**, whether in singular or plural, means any approval of the Action Plan required under Applicable Laws, or for implementation of actions in the Action Plan.
- 4.30 Reintroduction Facilities** means facilities for the reintroduction of Listed Anadromous Salmonids into the North Yuba River upstream of New Bullards Bar Dam, as described in the Concept Plan sections 1 and 5.
- 4.31 Settlement Agreement** means the agreement that is approved and executed by the Parties to implement the Action Plan and settle specified issues related to a New License.
- 4.32 Subsequent License** means a FERC license for the YRDP succeeding the New License.
- 4.33 Subsequent License Proceeding** means the license proceeding which, under FPA section 15(b)(1), will commence before the expiration of the New License.
- 4.34 SWRCB** means the State Water Resources Control Board.
- 4.35 Term Sheet** means this non-binding document, which provides a framework for the Parties to develop the Settlement Agreement.
- 4.36 Third Parties**, whether in singular or plural, means persons or other entities who are not Parties.
- 4.37 USFS** means the United States Forest Service.
- 4.38 YCWA** means Yuba County Water Agency.
- 4.39 Yuba Accord** means the changes to YCWA's water rights that were approved by the SWRCB in Corrected Order WR 2008-0014.
- 4.40 Yuba River Watershed** means the lands and waters tributary to the Yuba River.
- 4.41 YRDP** means the Yuba River Development Project, which FERC has licensed to YCWA as P-2246 under the FPA.
- 4.42 YSPI** means the Yuba Salmon Partnership Initiative.

## **5. Action Plan.**

- 5.1 Development of the Action Plan.** The Parties will use the Concept Plan as the basis for development of the Action Plan, which will be an exhibit to the Settlement Agreement.

- 5.2 General Contents.** The Action Plan will include the following elements: planning concepts, a description of the plan area, biological and habitat goals and related measurable objectives, a project description, a project schedule, estimated costs, identification of potential funding sources for project design, planning, development, construction and implementation (including operation, maintenance and monitoring), and the roles and responsibilities of the Parties for project design, planning, development, construction and implementation (including operation, maintenance and monitoring). The Action Plan will include: (i) objective and sequential milestones in the evaluation and development process; and (ii) initial priorities subject to adaptive management.
- 5.3 Species Scope for Reintroduction and Lower Yuba River Actions.** Reintroduction in the North Yuba River upstream of New Bullards Bar Dam initially will address spring-run Chinook salmon, with a potential program for steelhead incorporated into the phased approach of the program, as described in Term 5.3.1. The Lower Yuba River program described in the Action Plan will primarily focus on spring-run Chinook salmon and steelhead, with consideration of fall-run Chinook salmon, as specified in the goals and objectives of the Action Plan.
- 5.3.1 Steelhead.** Initial actions related to steelhead will be limited to Anadromous Salmonids habitat enhancements in the lower Yuba River, as established in the Action Plan. The Settlement Agreement will include a process to study and resolve biological and genetic risks, as well as related technical and management issues, including impacts to and from angling activities, associated with reintroduction of steelhead into the North Yuba River upstream of New Bullards Bar Dam. The Settlement Agreement will provide that, if the initial spring-run Chinook salmon reintroduction proves successful, and the studies resolve technical issues and demonstrate that reintroduction of steelhead is consistent with the guiding principles stated in Term 5.5, then the Parties will pursue steelhead reintroduction to be phased into the North Yuba River reintroduction program upstream of New Bullards Bar Dam.
- 5.3.2 Green Sturgeon.** The Parties agree that the feasibility of green sturgeon passage improvement actions at Daguerre Point Dam should be developed and funded through the Corps Feasibility Study process in coordination with the actions under the Settlement Agreement.
- 5.4 Geographic Scope of Reintroduction.** The Settlement Agreement will target Listed Anadromous Salmonid reintroduction in the North Yuba River upstream of New Bullards Bar Dam.
- 5.4.1 Potential Reintroduction to the Middle Yuba River.** At some point, Parties (other than YCWA) will consider Anadromous Salmonid reintroduction to the Middle Yuba River upstream of Our House Dam, if

feasible and supported by the best available science. YCWA's role with respect to such consideration for the Middle Yuba River would be as a stakeholder, rather than as a proponent in process or funding. The Action Plan will not include any such consideration or action. Any consideration of reintroduction to the Middle Yuba River upstream of Our House Dam will be consistent with the Guiding Principles, including avoidance of adverse impacts to YRDP operations pursuant to 5.5.3 and consultation with and avoidance of impacts to Third Parties pursuant to 5.5.4.

**5.4.2 Daguerre Point Dam and Englebright Dam.** The Parties expect that the Corps Feasibility Study will consider enhancement actions at Daguerre Point Dam and Englebright Dam. YCWA has offered to be a non-federal sponsor of the Corps Feasibility Study. The Action Plan will not include modifications to Daguerre Point Dam and Englebright Dam. The Parties will coordinate with the Corps and other appropriate entities in the Corps Feasibility Study process whether and how to modify such facilities to protect Anadromous Salmonids and green sturgeon.

**5.5 Guiding Principles.** The Parties will be guided by the following principles as they draw upon the Concept Plan to select and describe the actions to be included in the Action Plan. The Guiding Principles will also be used in any future consideration of reintroduction to the Middle Yuba River pursuant to Term 5.4.1.

**5.5.1 Cost-Effectiveness.** The Parties expect that actions will be cost-effective, feasible and based on the best available science, to achieve the goals and objectives of the Action Plan. The Parties will be fiscally prudent and adhere to approved budgets.

**5.5.2 Yuba Accord Instream Flows.** The Parties expect that actions will not require changes to flows under the Yuba Accord's flow requirements, except those that the Parties agree are necessary to implement the Action Plan. Otherwise, the Settlement Agreement will be silent on Yuba Accord flow requirements, and the Parties will be free to advocate regarding lower Yuba River flows in regulatory proceedings.

**5.5.3 Avoidance of Impacts to YRDP Operations.** The Parties expect that actions will cause no more than *de minimis* impacts to YRDP facilities and operations (including water supplies, water transfers, flood management and power generation, including peaking and ancillary services, and recreation), except as otherwise agreed to by YCWA in the Settlement Agreement.

**5.5.4 Consultation with and Avoidance of Impacts to Third Parties.** The Parties expect that actions will cause no more than *de minimis* impacts to Third Parties, including the USFS, and upstream and downstream water users, anglers and landowners in the Yuba River Watershed, except as

otherwise disclosed in the Settlement Agreement. The Parties will consult with Third Parties, through the public review and outreach process pursuant to Term 11, to assure that such impacts are exceeded by benefits or are otherwise acceptable to such Third Parties.

**5.5.5 Biological and Habitat Goals and Objectives.** The Parties expect that actions selected in the Action Plan will be based on their ability to meet biological and habitat goals and related measurable objectives.

**5.6 Implementation.** The Action Plan will:

**5.6.1** Provide for near-term implementation of certain actions, as generally described in Concept Plan section 2.3.2;

**5.6.2** Provide for long-term implementation of other actions, as generally described in Concept Plan section 2.3.3;

**5.6.3** Specify responsibilities of, or opportunities for, other parties who are not Parties to the Settlement Agreement to assist in project design, planning, development, construction and implementation (including operation, maintenance and monitoring);

**5.6.4** Establish procedures to assure that the expenditure of funds occurs in a cost-effective manner to optimize the public benefits resulting from performance of actions under the Action Plan, and that such expenditures are limited to actions contained in the Action Plan;

**5.6.5** Include monitoring and adaptive management guided by biological and habitat goals and related measurable objectives, as generally described in Concept Plan section 4.3.3;

**5.6.6** Include detailed procedures for governance of project design, planning, development, construction and implementation (including operation, maintenance and monitoring), as generally described in Concept Plan section 2.3.6; and

**5.6.7** Include a related process for resolving disputes between the Parties, such as referral to a technical committee and a management committee.

**5.7 Funding.** The Settlement Agreement will include a comprehensive plan to secure funding for all aspects of project design, planning, development, construction and implementation (including operation, maintenance and monitoring).

**5.7.1 YCWA's Obligations.** As described in Concept Plan section 8.0, YCWA will commit to a not-to-exceed contribution between \$50 million and \$100 million for actions contained in the Action Plan, depending on the term of

the New License, on a schedule and for purposes provided in the Settlement Agreement. These funds, and other funds contributed to implement the Action Plan, will be disbursed and accounted for by the Parties under the governance structure to be described in the Action Plan. The Parties intend that such governance structure will include mechanisms for joint decision-making about funding disbursements, where appropriate.

- A. YCWA will receive credits toward its total funding commitment for funds contributed by it as a non-federal sponsor of: (i) Corps Feasibility Study, for which YCWA's share is expected to be up to \$1.5 million; and (ii) any action taken by the Corps as identified in that study, if the Parties agree that the action is consistent with the Guiding Principles and appropriate for inclusion in the Action Plan.
- B. Any unexpended funds available from YCWA's total funding commitment will be available for other habitat enhancement actions (outside of the Action Plan) that are approved by the Parties.

**5.7.2 Other Funding Commitments.** YCWA will not be required to pay for all costs associated with the Action Plan. The Parties will undertake to secure funding commitments from other sources in the course of developing the Settlement Agreement. YCWA's total funding commitment will not increase due to deficiencies in anticipated or actual funding from other sources.

- A. The Settlement Agreement will specify anticipated funding commitments that represent a fair allocation of costs for design, planning, development, construction and implementation (including operation, maintenance and monitoring), including upfront funding to accelerate project development and implementation.
- B. The Settlement Agreement will specify any anticipated funding commitments by entities other than YCWA.
- C. The Parties will collaborate in identifying and securing other available funding sources for Action Plan actions.
- D. The Settlement Agreement will state the Parties' mutual intent to support some or all actions, including reintroduction, in the Action Plan as actions eligible for a funding contribution under the HEA, provided that the actions satisfy the requirements stated in the HEA and the parties to the HEA have followed the procedures stated in the HEA to determine eligibility for a funding.



Specifically, the Parties will specify Action Plan actions that: (i) are not "Existing Requirements and Commitments;" and (ii) are "Eligible Habitat Expansion Actions," as those terms are used in HEA sections 3 and 4. This provision does not purport to modify the requirements and procedures of the HEA, or to pre-determine the rights and obligations thereunder for those Parties who are also signatories to the HEA.

- E. The Settlement Agreement will state the Parties' mutual intent that actions in the Action Plan will qualify for funding under Water Code section 79737 (Chapter 6 of Proposition 1) as permissible purposes under Water Code section 79732 that are "greater than required applicable environmental mitigation measures or compliance obligations" of any of the Parties.

**5.7.3 Dispute Resolution Procedures.** Expenditure of funds pursuant to Term 5.7.1 – 5.7.2 will be subject to dispute resolution procedures described in Term 7.2.

**5.7.4 Support for Funding Requests.** The Parties will support actions by any Party to request a funding authorization for that Party's obligations under the Settlement Agreement, provided that such requests are not contingent on actions or funding unrelated to the YSPI that are unacceptable to the supporting Parties.

**6. Implementation of the Action Plan.** The Settlement Agreement will specify the Regulatory Approvals, Other Administrative Actions and Legislative Actions necessary to implement the Action Plan. It will specify the Parties' respective rights and obligations in such implementation. These rights and obligations will be durable and long-term, provided that certain of such rights or obligations may be conditioned, modified or otherwise affected by withdrawal or termination pursuant to Terms 7 and 8, respectively.

**6.1 Obligations of the Parties.** The Settlement Agreement will include the following provisions.

**6.1.1 Support for Regulatory Approvals.** The Parties will support the application for and granting of Regulatory Approvals and Other Administrative Actions that will be consistent with the Settlement Agreement. The preceding sentence does not apply to the Regulatory Agency Party exercising its authority to issue an approval or take some other action.

- A. **Reintroduction upstream of Englebright Dam.** In the New License proceeding, and other related legislative, regulatory and judicial venues, no Party will advocate that the Term Sheet or Settlement Agreement, Concept Plan or Action Plan, is evidence of

the reasonable foreseeability of the reintroduction of Anadromous Salmonids in the Yuba River Watershed. For the purpose of this Term 6.1.1, “advocate” (or “advocating”) includes require, propose, assert, or support.

**B. Lower Yuba.** In the New License proceeding, the Parties are free to advocate for or against Anadromous Salmonid habitat enhancements in the Lower Yuba River that are within FERC’s jurisdiction, excepting reintroduction, which will be resolved by the Settlement Agreement.

**C. New Bullards Bar Reach.**

- (i). As long as the Settlement Agreement is in effect, a Party will not advocate for (but may supply information regarding) reintroduction of Anadromous Salmonids in the New Bullards Bar Reach (Obligation), provided:
  - (a). The Obligation will not apply to a Party subsequent to its withdrawal pursuant to Term 7.5;
  - (b). The Obligation will not prevent a Party from advocating for terms for the reintroduction of Anadromous Salmonids in the New Bullards Bar Reach during the Subsequent License Proceeding or the Subsequent License, so long as such proposal is conditioned on its withdrawal or suspension if the term of the Settlement Agreement is extended (as provided in Term 9) or the term of the Obligation is extended (as provided in this term) for the duration of such an extension; and
  - (c). The Parties expect that the Settlement Agreement will provide that the Parties will meet and confer by the start of the Subsequent License Proceeding to determine whether to continue or terminate operation and maintenance of the Reintroduction Facilities. The Obligation will be an obligation under Term 8 that continues beyond the term of the Settlement Agreement if and so long as necessary funding is provided for, and NMFS and CDFW support, the continued operation and maintenance of the Reintroduction Facilities after the expiration of the term of the Settlement Agreement. A contribution by YCWA for such funding will be in

addition to YCWA's funding obligation under Term 5.7.1.

(d). This provision will not be construed to mean a Regulatory Agency has circumscribed its statutory obligations.

(ii). Regardless of a Party's withdrawal from or the termination of the Settlement Agreement, the existence of Anadromous Salmonids reintroduced upstream of Englebright Dam will not be a basis for a Party advocating for reintroduction of Anadromous Salmonids in the New Bullards Bar Reach. This obligation will be an obligation under Term 8 that continues beyond the term of the Settlement Agreement.

**6.1.2 Support for Implementation.** The Parties will support full implementation of the Action Plan upon receipt of all necessary Regulatory Approvals and the exhaustion of any judicial review.

**6.1.3 No Increase in YCWA's Financial or Legal Obligations.** No Party will advocate that YCWA has a financial or legal obligation besides YCWA's commitment in the Settlement Agreement to fund implementation of the Action Plan, with respect to any of the following:

A. Fish passage past any facilities owned or operated by YCWA or the Corps in the Yuba River Watershed;

B. Reintroduction of Anadromous Salmonids in the Yuba River Watershed upstream of Englebright Dam; or

C. Anadromous Salmonid habitat improvements in the Lower Yuba River necessary for reintroduction, which will be resolved by the Settlement Agreement.

**6.1.4 Performance of Obligations.** Each Party will timely implement each of its obligations under the Settlement Agreement in good faith and with due diligence.

**6.1.5 Subsequent License Proceeding.** The rights and obligations of the Parties related to the New License, including those stated in Terms 6.2-6.3, will continue after the term of the New License if the Parties, having met and conferred at the start of the Subsequent License Proceeding, agree to extend the term of the Settlement Agreement as provided in Term 9.

## 6.2 New License - General.

**6.2.1 Action Plan not Part of License.** The Settlement Agreement will provide that the Action Plan, including reintroduction and specified Lower Yuba River actions, will not be included in the New License as jurisdictional measures. YCWA will file the Settlement Agreement with FERC for informational purposes, asking that the terms of the Settlement Agreement not be incorporated into the New License or related Regulatory Approvals. Pursuant to Term 3, agreement by the Parties that the Action Plan will not be part of the New License does not constitute agreement whether there would or would not be a proper basis for the New License to include requirements that YCWA provide for fish passage upstream of Englebright Dam.

- A.** The Settlement Agreement will provide, as a precondition for full implementation of the Action Plan, that the New License will not require: (i) that YCWA implement the measures in the Action Plan or other measures that are for the purpose of reintroduction of Anadromous Salmonids in the North Yuba River; (ii) that YCWA implement actions in the Lower Yuba River that are necessary for the purpose of reintroduction of Anadromous Salmonids in the North Yuba River; or (iii) reintroduction of Anadromous Salmonids into the New Bullards Bar Reach.
- B.** As of the Effective Date of the Term Sheet, the Parties have not determined whether any facilities or actions under the Action Plan will be located on YRDP lands and waters. The Settlement Agreement will provide that, regardless of location, these facilities and actions will not be included in the New License, but will be subject to appropriate project-level review and permitting.
- C.** The Settlement Agreement will specify whether non-federal Parties will pursue a Legislative Action and whether they will support an Administrative Action to implement the intent of this section that: (i) the Action Plan will not result in YCWA being obligated under the New License or otherwise for managing, operating or maintaining essential fish habitat; and (ii) FERC will not have jurisdiction under the New License or otherwise of facilities or actions under the Action Plan. Such Legislative Action would not be intended to amend the Magnuson-Stevens Fisheries Conservation and Management Act.

**6.2.2 ESA Section 7 Consultation.** The Parties expect that consultation required under section 7 of the ESA as necessary to implement the Action Plan will be carried out separate from the ESA Section 7 consultation for the New License. This Term Sheet does not predetermine, and the Settlement Agreement will not predetermine, the results of such consultations.

### **6.3 Reintroduction of Listed Anadromous Salmonids in the Yuba River Watershed.**

- 6.3.1 Federal Power Act Section 18 Fishway Prescription.** The Settlement Agreement will provide that NMFS will issue a condition reserving its FPA section 18 authority to prescribe a fishway. The reservation will provide that NMFS may exercise that authority if the Settlement Agreement terminates, and that NMFS will not exercise that authority as long as the Settlement Agreement is in effect. YCWA and the other Parties will not waive their respective rights to support or challenge the existence or exercise of such reserved authority.
- 6.3.2 Federal Power Act section 4(e) Condition.** The Settlement Agreement will propose that the USFS issue a condition reserving its FPA section 4(e) authority, to the extent that the USFS determines that it has such authority, to establish reasonable terms and conditions related to reintroduction of Anadromous Salmonids into the waters of the Plumas and Tahoe National Forests. The Settlement Agreement will propose that the reservation provide that the USFS may exercise that authority if the Settlement Agreement terminates, and that the USFS will not exercise that authority as long as the Settlement Agreement is in effect. YCWA and the other Parties will not waive their respective rights to support or challenge the existence or exercise of such reserved authority.
- 6.3.3 Clean Water Act Section 401 Water Quality Certification for New License.** The Settlement Agreement will propose that the SWRCB issue a condition reserving its Clean Water Act section 401 authority, to the extent that the SWRCB determines that it has such authority, to require reintroduction of Anadromous Salmonids in the Yuba River Watershed or enhancement of Anadromous Salmonids habitat in the lower Yuba River in the New License. The Settlement Agreement will further propose that the reservation provide that the SWRCB may exercise that authority if the Settlement Agreement terminates, and that the SWRCB will not exercise that authority as long as the Settlement Agreement is in effect. YCWA and the other Parties will not waive their respective rights to support or challenge the existence or exercise of such reserved authority.
- 6.3.4 Non-Essential Experimental Population Designation.** The Settlement Agreement will propose that the Designation be pursuant to the procedures and requirements stated below.
- A.** To meet the purposes stated in Term 2, the Designation must meet all of the following requirements:

- (i). Reintroduction of Listed Anadromous Salmonids upstream of Englebright Dam will begin only after the Designation is in effect.
- (ii). The Designation will apply to all populations of Listed Anadromous Salmonids that are reintroduced upstream of Englebright Dam.
- (iii). “Take” (as defined in the ESA and CESA) of such Listed Anadromous Salmonids that is unintentional, not due to negligent conduct, incidental to and for the purpose of carrying out an otherwise legal activity, and within the boundary of the Designation, will be subject to an exception from take prohibitions under ESA section 9 and the CESA.
- (iv). The Designation will provide that the reintroduction of Listed Anadromous Salmonids upstream of Englebright Dam will not cause: (i) more than *de minimis* impacts to YRDP facilities and operations; or (ii) impacts to upstream and downstream water users, anglers and landowners in the Yuba River Watershed that such designation was designed to avoid. The Parties intend that the Designation will not be changed in a manner that would cause: (i) more than *de minimis* impacts to YRDP facilities and operations; or (ii) impacts to upstream and downstream water users, anglers and landowners in the Yuba River Watershed that such designation was designed to avoid. Any other change in the Designation will be a basis for withdrawal from or termination of the Settlement Agreement pursuant to Term 7 or 8, respectively.
- (v). The Designation will include a statement of intent that it remain in effect until the donor Evolutionarily Significant Unit/Distinct Population Segment (ESU/DPS) is delisted under the ESA. YCWA will have the right, in its sole discretion, to terminate the Settlement Agreement, and to cease any reintroduction or related management activities for the Listed Anadromous Salmonids, if such Designation does not remain in effect. The Designation will remain in effect at least as long as the Listed Anadromous Salmonids exist upstream of Englebright Dam or until the donor ESU/DPS is delisted under the ESA.

**B.** In the interval between the Effective Date of the Term Sheet and the Effective Date of the Settlement Agreement:

- (i). NMFS intends to coordinate with the other Parties and to draft a proposed Designation under existing authority.
- (ii). Non-Federal Parties will draft a proposed Legislative Action directing NMFS to publish a Designation. The proposal will be similar to Section 10011(a) – (d) in H.R. 146 (2009), Title X, Subsection A, Part I, “San Joaquin River Restoration Settlement Act,” as modified to be consistent with the provisions of Term 6.3.4.A above.
- (iii). The Parties will meet and confer, and will consult with other appropriate entities, to evaluate the most-effective sequence for administrative actions (described above) and Legislative Action leading to a Designation. The Settlement Agreement will state the sequence, and will attach proposed actions, each of which will be mutually agreeable to the Parties.

**6.3.5 CESA.** The Settlement Agreement will propose a Legislative Action to provide the equivalent of the Designation under CESA. The proposal is intended to be in the form similar to Fish and Game Code sections 2080.2-2080.4 for the San Joaquin River.

**6.4 Wild and Scenic River.** The Settlement Agreement will provide that the non-federal Parties will pursue a Legislative Action to state that implementation of the Action Plan will not be precluded by a proposed designation under the Wild and Scenic Rivers Act.

**7. Amendment, Dispute Resolution, Other Remedies and Withdrawal.** The Settlement Agreement will include provisions for resolution of disputes among the Parties, amendment and withdrawal by a Party.

**7.1 Amendment.** The Settlement Agreement will provide that the Parties may amend the Settlement Agreement by unanimous consent and in written form.

**7.2 Dispute Resolution.** The Settlement Agreement will provide that all disputes among the Parties regarding implementation will be subject to detailed dispute resolution procedures. The Settlement Agreement will specify such procedures.

**7.3 Responses to Certain Contingencies.** The Settlement Agreement will describe potential responses to certain contingencies that may foreseeably arise in the implementation of the Action Plan, as follows.

- 7.3.1 Third Parties do not timely provide funding adequate to implement some or all of the elements of the Action Plan that will not be funded by YCWA, as anticipated in Term 5.7.2.
- 7.3.2 A Legislative Action, Regulatory Approval or other Administrative Action necessary to implement the Action Plan is not timely secured.
- 7.3.3 A condition in a Legislative Action, Regulatory Approval or other Administrative Action is materially inconsistent with the Settlement Agreement. For this purpose, “material inconsistency” means that the disputed condition materially diminishes the bargained-for benefits of a Party in that Party’s reasonable judgment.
- 7.3.4 A Party is in material breach of any of its obligations under the Settlement Agreement. For this purpose, “material breach” means that the action or inaction of the breaching Party is inconsistent with one of its obligations under the Settlement Agreement and materially diminishes the bargained-for benefits of another Party in that objecting Party’s reasonable judgment.
- 7.3.5 New information shows that implementation of the Action Plan may no longer be consistent with the Guiding Principles stated in Term 5.5.

The Settlement Agreement will describe potential responses to these contingencies designed to limit the risks of withdrawal by an objecting Party. The Parties will use dispute resolution procedures to establish the actual response to such a contingency.

- 7.4 **Other Remedies.** The Settlement Agreement will specify any remedies (other than those stated in Terms 7.2 and 7.3) arising under Applicable Law or otherwise, for a Party’s material breach of its contractual obligations under the Settlement Agreement.
- 7.5 **Withdrawal.** An objecting Party may withdraw from the Settlement Agreement if all reasonable efforts to address a contingency started in Term 7.3 have been exhausted and have failed to resolve the dispute to the reasonable satisfaction of the objecting Party. The Settlement Agreement will specify which obligations continue, and which end, as to the withdrawing Party.

**8. Termination.** The Settlement Agreement will provide for termination of the Settlement Agreement if: (i) one of the contingencies stated in Term 7.3 occurs and, following exhaustion of dispute resolution procedures; (ii) the Parties agree to such termination; or (iii) YCWA or a Regulatory Agency Party withdraws. The Settlement Agreement will specify which obligations continue, and which end, in the event of termination of the Settlement Agreement.

**9. Effective Date and Term.** This Term Sheet will take effect on its Effective Date. The Settlement Agreement will take effect on its Effective Date and will terminate on the expiration



of the New License, provided that the continued effectiveness of certain obligations will be subject to Terms 7 and 8, respectively. The termination date of the Settlement Agreement may be extended by further agreement of the Parties.

**10. Reservation of Authorities.** Each Party represents that it believes that the terms proposed in the Term Sheet, if incorporated into a Settlement Agreement, will be consistent with its statutory, regulatory or other legal obligations for conservation, use or management of affected resources.

**10.1** In signing the Term Sheet, the Parties do not take any action or commit to take any action, other than negotiation of the Settlement Agreement.

**10.2** This Term Sheet does not create any right, claim or remedy between the Parties or for any Third Party as beneficiary.

**10.3** The Settlement Agreement will include a detailed reservation of authorities.

**11. Public Review and Outreach, and Next Steps.** The Parties will undertake an informal process for public review and public outreach concerning the Term Sheet. The Parties will consider comments received during the public review process, and other information, and will make best efforts to complete and approve the Settlement Agreement and Action Plan by December 15, 2015.

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

\\

**NATIONAL MARINE FISHERIES SERVICE**

Dated: March \_\_\_\_, 2015

\_\_\_\_\_  
William W. Stelle, Jr.  
Regional Administrator  
West Coast Region

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

Dated: March \_\_\_\_, 2015

\_\_\_\_\_  
Charlton H. Bonham  
Director

**YUBA COUNTY WATER AGENCY**  
A Political Subdivision of the State of California

Dated: March \_\_\_\_, 2015

\_\_\_\_\_  
Chairman of the Board of Directors

**AMERICAN RIVERS, INC.**

Dated: March \_\_\_\_, 2015

\_\_\_\_\_  
Wm. Robert Irvin  
President

**TROUT UNLIMITED**

Dated: March \_\_\_\_, 2015

\_\_\_\_\_  
Brian Johnson  
California Director

**CALIFORNIA SPORTFISHING PROTECTION ALLIANCE**

Dated: March \_\_\_\_, 2015

\_\_\_\_\_  
Bill Jennings  
Executive Director