

***Mendocino County Russian River Flood Control  
& Water Conservation Improvement District***

**STAFF REPORT**

To: Board of Trustees  
From: E. Salomone, General Manager  
Meeting: Monday, September 12, 2022  
RE: Agenda Item 6: Redwood Valley County Water District Water Supply

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**The Strategic Plan** relevant priorities are to: (a) **Use** water resources to the highest and most beneficial use, monitoring in responding to regional water needs; and (b) **Administer** water resources in alignment with the District's Mission Statement to proactively steward the water resources of the upper Russian River for the benefit of the people and environment of Mendocino County.

**Board will consider:**

- (1) Ratification of Customer Uniform Water Supply & Purchase Agreement Amendments(s) supporting Emergency Water Supply Agreement(s);
- (2) Ratification of Emergency Water Supply Agreement with Redwood Valley County Water District; and
- (3) Further direction to General Manager.

**Background**

**Surplus Water**

Stipulated Judgement No. 42059 defines the terms under which the Mendocino County Russian River Flood Control & Water Conservation Improvement District (RRFC) supplies Redwood Valley County Water District (RVCWD) with surplus water. The RRFC Declaration #21-03: Water Shortage Emergency states "the Board declares **no surplus water**, defined by Judgement No. 42059 as that portion of the District's water right not put to beneficial use within lands situated in the District, **is available for purchase by Redwood Valley County Water District**." It is expected that RRFC will be unable to supply surplus water to RVCWD under the current or intensified drought conditions. (Declaration found on [www.rfc.net](http://www.rfc.net))

**Emergency Water Supply Request**

On August 4, 2022 the Redwood Valley County Water District (RVCWD) requested to divert 30 acre feet of water under RRFC's license to fill the storage reservoir for emergency fire protection storage (letter **attached**.) RRFC approved the request for emergency water supply (not "surplus") and the Board directed GM Salomone to formalize the approval with the **attached** correspondence that encourages RVCWD to seek alternatives to water supply issues.

In developing the letter, several promising opportunities were identified and RRFC explored these further with its own legal counsel. RRFC immediately took steps to implement. Status updates, requested Board actions, and next steps are described below.

**Emergency Water Supply Agreement**

In 2015, Millview County Water District (Millview) entered into an Amendment to Water Supply Agreement with RRFC that provided terms for Millview to forbear a designated allocation of its contract quantity and direct it to RVCWD. Subsequently, RVCWD and RRFC entered into an Emergency Water Supply Agreement which provided this allocation of water from Millview to RVCWD.

(Continued...)

Using this Emergency Water Supply Agreement precedent and in consultation with Legal Counsel, on August 31, 2022, RRFC issued an Amendment to the Uniform Water Supply & Purchase Agreement with Rogina Water Company for 400 acre feet (af) to be reallocated to RVCWD as emergency water supply for September through December 2022. The Amendment was executed on September 7, 2022 and the Board is being asked to ratify this Amendment. Rogina has altered its projected use of contracted water quantity for 2022 and that change will be reflected in the necessary analysis and communications.

[Note: In March 2022, Rogina verbally requested to reduce its 800 af contract to 400 af for 2022. The contract change was not yet complete, making it possible for Rogina to enter into a short term amendment to its contract for 800 af that made emergency water available for RVCWD. Discussions continue to confirm the amount of water in the Rogina contract for 2023 onward.]

On September 1 2022, RRFC issued an Emergency Water Supply Agreement with RVCWD for the 400 af allocated by Rogina Water Company. The Agreement was executed on September 6, 2022 and the Board is being asked to ratify this Agreement.

### **Additional Emergency Water Supply for RVCWD**

RRFC asked RVCWD if this allocation of emergency water supply was sufficient to provide for all the water it needs for the remainder of 2022. No response was received as of September 9 2022. If additional water supply is needed, RRFC recommended RVCWD negotiate with its URRWA partners, Millview and Willow County Water District (Willow), for additional water supply to be made available under their RRFC contracts. Additionally, RRFC offered to assist with other current RRFC contract customers to make some additional amount of emergency water available to RVCWD. Any such amendments to current RRFC customer contracts would alter the projected water user for 2022 and will be reflected in the necessary analysis and communications.

### **RRFC Customer Uniform Water Supply & Purchase Agreement Amendments**

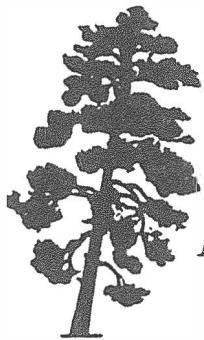
RRFC legal counsel has confirmed that the Redwood Valley County Water District place of use can be added to a current RRFC customer's place of use and its Lake Mendocino intake can be added as a point of diversion. This would allow the RRFC customer to provide an allocation of its current contract quantity to RVCWD under the customer's RRFC contract, to be negotiated between the customer and RVCWD. [Note: there is currently a moratorium on increasing contract quantities through the Declaration.]

As noted in the August 29, 2022 letter to RVCWD, RRFC is willing and prepared to assist in expediting steps to provide RVCWD with emergency water supply where possible. Due to quick response from Rogina and RVCWD, 400 acre feet was made available as of September 1<sup>st</sup> and additional emergency water could be allocated.

### **Recommended Actions:**

Note: With approval of the following, customer water use projections for 2022 will increase.

- Move to approve ratification of the Rogina Water Company Amendment to Water Supply & Purchase Agreement executed on September 7, 2022 by the General Manager of RRFC.
- Move to approve ratification of the Redwood Valley County Water District Emergency Water Supply Agreement executed on September 6, 2022 by the General Manager of RRFC.



# Redwood Valley County Water District

Post Office Box 399 • Redwood Valley, CA 95470 • (707) 485-0679

August 4, 2022

Russian River Flood Control & Water Conservation Improvement District  
304 N. State St, #2  
Ukiah, CA 95482

RE: Request for Stored Water in Lake Mendocino to fill Redwood Valley CWD's Storage Reservoir

Dear RRFC & WCID,

This is a request to divert water from Russian River Flood Control & Water Conservation Improvement District out of Lake Mendocino to fill Redwood Valley CWD's storage reservoir. As you are aware, this storage reservoir serves three main purposes: 1) To store water that can be used for domestic purposes after being treated through the surface water treatment plant. 2) To store water for customers to use for agricultural purposes. 3) To store water for human health and safety as it is the main source of fire protection in Redwood Valley.

With all current domestic water coming from Millview CWD and all Ag water services being shut off, this request is simply to satisfy #3, for fire protection only. I anticipate no more than 30 acre feet would be needed to fill the reservoir.

Thank you for the consideration of this request for the entire community of Redwood Valley.

Regards,

*Jared Walker*

Jared Walker  
General Manager

## BOARD OF DIRECTORS

Tom Schoeneman  
Ken Todd  
Bree Klotter  
Adam Gaska

**Mendocino County**

**Russian River Flood Control & Water Conservation Improvement District**

304 N. State Street #2, Ukiah, CA 95482 707.462.5278 Website: RRFC.net [DistrictManager@rrfc.net](mailto:DistrictManager@rrfc.net)

August 29, 2022

Redwood Valley County Water District  
Att: Board of Directors & General Manager  
151 Laws Avenue  
Ukiah, CA 95482

Dear Directors and GM Walker,

**RE: August 4, 2022 Redwood Valley County Water District Request for Water**

Thank you for the letter of August 4, 2022 requesting to divert water in 2022 under the water rights of the Russian River Flood Control & Water Conservation Improvement District (RRFC). RRFC recognizes that Redwood Valley County Water District (RVCWD) continues to implement a restriction of 55 gallons per capita per day on its domestic use customers due to limitations of size in the intertie from Millview County Water District (CWD) and that all agricultural water service remains suspended. Your letter notes RVCWD would like to use the requested water for human health and safety, particularly fire protection in Redwood Valley.

Upon careful consideration of the intended use of the requested water as exclusively for emergency storage for fire protection, the RRFC Board has approved RVCWD's one-time emergency request of 30 acre feet, which was conveyed to RVCWD General Manager Walker in early August.

Approval of this emergency water supply to RVCWD in no way changes the current RRFC Declaration #21-03: Water Shortage Emergency which states "the Board declares **no surplus water**, defined by Judgement No. 42059 as that portion of the District's water right not put to beneficial use within lands situated in the District, **is available for purchase by Redwood Valley County Water District.**" It is expected that RRFC will be unable to supply surplus water to RVCWD under the current or intensified drought conditions.

It is challenging for RRFC to provide water on an emergency basis to RVCWD while its water supply is impacted by a third consecutive year of drought and drastic reductions of inter-basin diversions by PG&E through the Potter Valley Project. Lake Mendocino reservoir is at 63% of target water supply storage curve and falling. Sonoma Water is operating reservoir releases under a Temporary Urgency Change Order. RRFC customers are voluntarily reducing demand in recognition of the California Governor's call to prepare for water supply shortages of 20% or more. The Upper Russian River Water Sharing Program is currently suspended due to insufficient water supply and RRFC is meeting the majority of customer demand with stored water.

(Continued...)

Therefore, RRFC requests that RVCWD take action to seek alternative water supply solutions such as:

- Enter discussions with Millview CWD to include RVCWD point of diversion and place of use in RRFC/Millview Uniform Water Supply & Purchase Agreement for 1,171.15 acre feet annually.
- Enter discussions with Millview CWD, Rogina Mutual Water Company, Willow CWD, and/or other current RRFC customers toward an Emergency Water Supply Agreement such as the one attached from 2014.
- Explore water purchase from Pre 1914 water right holders such as the City of Ukiah and Millview CWD.
- Impose and enforce State Water Board Water Conservation Emergency Regulations.
- Impose human health & safety limits to commercial and industrial consumers.
- Explore a combined Uniform Water Supply & Purchase Agreement of the Upper Russian River Water Agency members to include RVCWD place of use and point of diversion.
- Work with the State Water Resources Control Board to establish a human health & safety allocation from direct diversion (not stored water.)
- Expand capacity of the intertie from Millview CWD.
- Continue efforts of the Upper Russian River Water Agency toward consolidation.

RRFC is willing and prepared to assist in expediting steps to accommodate an amendment to Millview CWD's Uniform Water Supply & Purchase Agreement and/or an Emergency Water Supply Agreement with RVCWD. If RVCWD is prepared to act quickly, water could be made available to RVCWD as early as September 2022.

Yours Sincerely,



Elizabeth Salomone, General Manager  
On behalf of the Board of Trustees

Enc:

- 2014 Fully Executed Emergency Water Supply Agreement

**President**  
Christopher Watt

**Vice President**  
Alfred White

**Treasurer**  
Matthew Froneberger

**Trustee**  
Tyler Rodrigue

**Trustee**  
John Reardan

## EMERGENCY WATER SUPPLY AGREEMENT

This EMERGENCY WATER SUPPLY AGREEMENT ("Agreement") is entered into this 23<sup>rd</sup> day of May, 2014 ("Effective Date") by and between Mendocino County Russian River Flood Control & Water Conservation Improvement District ("Mendocino") and Redwood Valley County Water District ("Redwood").

**1. Recitals.**

- a. Mendocino holds an appropriate right to 8,000 acre feet of water from Lake Mendocino pursuant to Permit 12947B issued by the State Water Resources Control Board.
- b. Mendocino currently provides water service to Redwood pursuant to Mendocino County Superior Court Judgment No. 42059 ("Judgment"), which provides that Mendocino must provide surplus water to Redwood, defined as "that portion, if any, of said 8,000 acre feet which is not put to beneficial use within the land situated in the Mendocino district."
- c. Calendar year 2013 was the driest year on record and 2014 is projected to be critically dry as well, and Mendocino has no surplus water available, and is imposing a 25% reduction in supply upon its customers. Consequently, Redwood does not have sufficient water supply to provide human health and safety municipal uses with its boundaries.
- d. In an attempt to provide assistance to Redwood, Mendocino has negotiated an agreement with its customer, the City of Ukiah ("Ukiah"), wherein Ukiah has agreed to use alternate sources of water in order to free up water under its Water Supply Contract with Mendocino. In the agreement Ukiah agrees not to use Project water it is authorized to divert under its Water Supply Contract in order to make that water available to Redwood and others.
- e. The purpose of this Agreement is to detail the circumstances under which Mendocino will supply Redwood with Project water made available by Ukiah ("Project Water").

**2. Agreement.** Mendocino hereby agrees to make available to Redwood up to 355 acre feet of Project Water pursuant to the terms and conditions of this Agreement.

**3. Term.** The term of this Agreement shall begin on March 1, 2014 and shall terminate by its own terms upon the earlier of Redwood's use of all Project Water available under this Agreement, or December 31, 2014.

**4. Costs.** As consideration for this Agreement, Redwood will pay to Mendocino the following amounts (collectively "Water Costs"):

- a. Fifty-Eight Dollars and 75/100 (\$58.75) for each acre foot of Project Water made available to Redwood pursuant to this Agreement ("Purchase Price"). Project Water shall be deemed delivered under this Agreement when it is measured at the Redwood's meter.
- b. In addition to the Purchase Price, Redwood shall be responsible for all attorney's fees and administrative costs of implementing this Agreement, and the agreement with Ukiah.

**5. Payment of Costs.** Mendocino will invoice Redwood monthly, in arrears, for Water Costs. Redwood shall pay Mendocino within fifteen (15) days of the receipt of any invoice.

6. Reporting. Redwood shall submit monthly reports to Mendocino by the last day of each month documenting the amount of Project Water diverted from Lake Mendocino during the prior thirty (30) days. No later than December 31, 2014, Redwood shall submit to Mendocino a report detailing all water diverted from Lake Mendocino pursuant to this Agreement during the term.

7. Scheduling. Redwood shall submit schedules for use of Project Water at least ten (10) days in advance of the need for delivery and provide a written schedule for the requested delivery. No later than December 31, 2014, Redwood shall submit to Mendocino a report detailing all water diverted from Lake Mendocino pursuant to this Agreement.

8. Measurement. Project Water shall be measured at Redwood's meter. Mendocino shall be allowed to access to Redwood's meter at all times.

9. Restrictions On Use. Redwood agrees that all Project Water provided pursuant to this Agreement will be used (1) within the boundaries of Redwood, (2) only for human health and safety municipal uses, and (3) be placed to a public use that is reasonable and beneficial. Redwood shall maintain books and records sufficient to enable it to furnish Mendocino with reports and statements with regard to the use of any and all water provided pursuant to this Agreement to enable Mendocino to make proof of reasonable and beneficial use of said water. Consistent with the provisions of Water Code Sections 475 and 1244, the parties agree that this Agreement is not evidence of the availability of surplus water beyond the terms of this Agreement or lack of beneficial use of the water involved in this Agreement, and they shall not contend otherwise. No Project Water will be served outside of Mendocino's Place of Use.

10. Water Quality. Mendocino makes no warranty or representations as to the quality or fitness for use of Project Water sold and delivered to Redwood pursuant to this Agreement. Redwood shall be responsible for all necessary measures at its own expense for the testing, treatment, and other steps required for the intended uses of Project Water.

11. CEQA Compliance. The parties acknowledge that they have completed any review required under the California Environmental Quality Act for implementation of this Agreement.

12. General Indemnity. Redwood agrees to protect, defend, indemnify, and hold harmless the other party, its officers, agents, servants, employees, and consultants from and against any and all losses, claims, liens, demands and causes of action of every kind and character on account of personal injuries or death or damages to property and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by the indemnifying party hereunder.

13. Force Majeure. Except as otherwise provided herein, Mendocino's obligations under this Agreement shall be suspended so long as, and to the extent that, the performance thereof shall be prevented by earthquakes, fires, tornadoes, facility failures, floods, drowning, strikes, other casualties or acts of God, orders of court or governmental agencies having jurisdiction over the subject matter thereof or other events or causes beyond the control of the parties hereto.

14. Temporary Nature/Judgment not Affected. This Agreement is not intended to establish a precedent, and the parties agree that the delivery of Project Water under this Agreement shall not give Redwood a continued right to acquire Project Water beyond the term of this Agreement other than pursuant to the Judgment. Nothing in this Agreement is intended to alter the terms of the Judgment.

15. **Notices.** All notices that are required, either expressly or by implication, to be given by any party to the other under this Agreement shall be in writing, delivered in person or mailed, United States first-class postage prepaid, addressed as follows:

MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL & WATER  
CONSERVATION IMPROVEMENT DISTRICT

Attention: Sean White  
151 Laws Avenue, Suite D  
Ukiah, CA 95482  
Phone: 707.462.5278  
Facsimile: n/a  
Email: rrfc@pacific.net

REDWOOD VALLEY COUNTY WATER DISTRICT

Attention: Bill Koehler  
P.O. Box 399  
Redwood Valley Ca. 95470  
Phone: 707.485.0679  
Facsimile: 707.485.5148  
Email: gmrv cwd@pacific.net

Notice shall be deemed given (a) two calendar days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, or (c) upon actual receipt of notice when personally delivered, whichever is earlier. The parties shall promptly give written notice to each other of any change of address, and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

16. **Miscellaneous.**

a. *No Waiver.* A waiver by either party of a breach of any of the covenants under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement. No waiver of a condition under this Agreement shall be valid unless it is in a writing signed by the party for whose benefit the condition exists.

b. *Modifications.* Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. In no event shall any amendment or other modification to this Agreement be implied by or construed from oral statements or from the conduct of any person or entity.

c. *Severability.* If any term, provision, condition or covenant of this Agreement or its application to, any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

d. *Time of Essence.* Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

e. *Other Documents; Cooperation of Parties.* Each party agrees to sign any other and further instruments and documents as may be reasonably necessary or proper in order to accomplish the intent of this Agreement, provided that those instruments and documents are consistent with the terms of this Agreement.

f. *Attorneys Fees.* If legal action or other proceeding is commenced as a result of a dispute which arises under or relates to any provision of this Agreement, the losing party shall pay the prevailing party's actual attorneys' fees, costs, expert witness fees and other expenses incurred in preparation for and conduct of that action or proceeding, appeal of judgment, and enforcement and collection of judgment or award.

g. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely execute counterparts shall be sufficient proof of this Agreement.

MENDOCINO COUNTY FLOOD CONTROL &  
WATER CONSERVATION IMPROVEMENT  
DISTRICT

By: Randy Oberndorf  
Its: VICE PRESIDENT

ATTEST:

By: Jean F. Wiles  
Secretary

REDWOOD VALLEY COUNTY WATER  
DISTRICT

By: Jr  
Its: President

ATTEST:

By: W.M.L. Koenig  
Acting Secretary

**AMENDMENT TO  
WATER SUPPLY AGREEMENT**

THIS AGREEMENT, entered on August 31, 2022 ("Effective Date") between the Rogina Water Company (hereafter "Customer") and the Mendocino County Russian River Flood Control and Water Conservation Improvement District (hereafter "District"), amends for the 2022 contract year only, the Uniform Water Supply & Purchase Agreement ("Water Supply Contract") between Customer and District, dated December 18, 2020. Except as expressly amended by this Agreement, the Water Supply Contract remains in full force and effect between the parties, unless further amended in the future by mutual agreement of Customer and District.

**Customer and District agree as follows:**

1. Due to the severe drought and its impact on Redwood Valley County Water District (CWD) District, which has severely limited water rights and supply, Customer agrees for the term September 1, 2022 to December 31, 2022 ("Term") not to divert or use 400 acre feet of the Contract Quantity of Project Water it is authorized to divert and use under Exhibit A of the Water Supply Contract ("Contract Quantity"), except as otherwise specifically provided in this Agreement in order to provide emergency water supply to Redwood Valley CWD.
2. Notwithstanding Article 6 of the Water Supply Contract, Customer shall have no obligation to pay District for the 400 acre feet designated as emergency water supply for Redwood Valley County Water District as required by Article 6 of the Water Supply Contract for the Term.
3. Notwithstanding Article 5 of the Water Supply Contract, Customer's failure to divert or use all or part of the Customer's Contract Quantity in the Term shall have no effect on Customer's right to divert and use such water in compliance with the Water Supply Agreement in years subsequent to the Term.
4. If, at any time during the Term, Customer, in the sole exercise of its discretion, determines that it has insufficient water under its independent water rights to supply the

demand on its water system, it may divert and use Project Water up to the amount it is authorized to divert under Exhibit A of the Water Supply Contract, reduced by the amount of the Customer's Contract Quantity which has already been diverted or used by Customer and Redwood Valley CWD. If the Customer diverts and uses any portion of the Customer's Contract Quantity, it shall pay the fees required by Article 6 of the Water Supply Contract.

5. The parties acknowledge that their performance under this Agreement could be preempted in whole or in part by state agencies with jurisdiction over the exercise of water rights or the allocation of water.

6. **Execution and Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF** the Customer and District have entered this Agreement on the Effective Date.

**MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL AND WATER  
CONSERVATION IMPROVEMENT DISTRICT**

By:

  
President of the Board of Trustees

9-7-22

Date

ATTEST:

  
Secretary of the Board of Trustees

9/7/22

Date

**CUSTOMER**

By:

  
Wayne Rogina  
Rogina Water Company  
PO Box 310  
Talmage, CA 95481  
drogina@pacific.net

9-7-22

Date

## EMERGENCY WATER SUPPLY AGREEMENT

This EMERGENCY WATER SUPPLY AGREEMENT (“**Agreement**”) is entered into this 1st day of September, 2022 (“**Effective Date**”) by and between Mendocino County Russian River Flood Control & Water Conservation Improvement District (“**Mendocino**”) and Redwood Valley County Water District (“**Redwood**”).

1. Recitals.

a. Mendocino holds an appropriate right to 7,940 acre feet of water from Lake Mendocino pursuant to Permit 12947B issued by the State Water Resources Control Board.

b. Mendocino currently provides water service to Redwood pursuant to Mendocino County Superior Court Judgment No. 42059 (“**Judgment**”), which provides that Mendocino must provide surplus water to Redwood, defined as “that portion, if any, of said 8,000 [7,940] acre feet which is not put to beneficial use within the land situated in the Mendocino district.”

c. The State of California is in the midst of an historic drought, and Mendocino has no surplus water available.

d. In an attempt to provide assistance to Redwood, Mendocino has negotiated an agreement with its customer, Rogina Mutual Water Company and (“**Customer**”), wherein Customer has agreed to use alternate sources of water in order to free up water under its Uniform Water Supply & Purchase Agreement (“**Contract**”) with Mendocino. In the agreement, Customer agrees not to use Project water it is authorized to divert under its Contract in order to make that water available to Redwood.

e. The purpose of this Agreement is to detail the circumstances under which Mendocino will supply Redwood with Project water made available by Customer.

2. Agreement. Mendocino hereby agrees to make available to Redwood up to 400 acre feet of water pursuant to the terms and conditions of this Agreement (“**Project Water**”).

3. Term. The term of this Agreement shall begin on September 1, 2022 and shall terminate by its own terms upon the earlier of Redwood’s use of all Project Water available under this Agreement, or December 31, 2022.

4. Costs. As consideration for this Agreement, Redwood will pay to Mendocino Forty Seven Dollars and no/100 (\$47.00) for each of the 400 acre feet of Project Water made available to Redwood pursuant to this Agreement (“**Purchase Price**”) regardless of whether such water is actually used by Redwood. In addition to the Purchase Price, Redwood shall be responsible for all attorney’s fees and administrative costs of implementing this Agreement, and the agreement with Customer. Mendocino will invoice Redwood monthly for the Purchase Price and additional costs. Redwood shall pay Mendocino within thirty (30) days of the receipt of any invoice.

5. Restrictions On Use. Redwood agrees that all Project Water provided pursuant to this Agreement will be used (1) within the boundaries of Redwood, (2) be placed to a public use that is reasonable and beneficial. Redwood shall maintain books and records sufficient to enable it to furnish Mendocino with reports and statements with regard to the use of any and all water provided pursuant to this Agreement to enable Mendocino to make proof of reasonable and beneficial use of said water. Consistent with the provisions of Water Code Sections 475 and 1244, the parties agree that this Agreement is not evidence of

the availability of surplus water beyond the terms of this Agreement or lack of beneficial use of the water involved in this Agreement, and they shall not contend otherwise. No Project Water will be served outside of Mendocino's Place of Use.

6. Water Quality. Mendocino makes no warranty or representations as to the quality or fitness for use of Project Water sold and delivered to Redwood pursuant to this Agreement. Redwood shall be responsible for all necessary measures at its own expense for the testing, treatment, and other steps required for the intended uses of Project Water.

7. CEQA Compliance. The parties acknowledge that they have completed any review required under the California Environmental Quality Act for implementation of this Agreement.

8. General Indemnity. Each party agrees to protect, defend, indemnify, and hold harmless the other party, its officers, agents, servants, employees, and consultants from and against any and all losses, claims, liens, demands and causes of action of every kind and character on account of personal injuries or death or damages to property and, without limitation by enumeration, all other claims or demands of every character occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by the indemnifying party hereunder.

9. Force Majeure. Except as otherwise provided herein, Mendocino's obligations under this Agreement shall be suspended so long as, and to the extent that, the performance thereof shall be prevented by earthquakes, fires, tornadoes, facility failures, floods, drowning, strikes, other casualties or acts of God, orders of court or governmental agencies having jurisdiction over the subject matter thereof or other events or causes beyond the control of the parties hereto.

10. Temporary Nature/Judgment not Affected. This Agreement is not intended to establish a precedent, and the parties agree that the delivery of Project Water under this Agreement shall not give Redwood a continued right to acquire Project Water beyond the term of this Agreement other than pursuant to the Judgment. Nothing in this Agreement is intended to alter the terms of the Judgment.

11. Notices. All notices that are required, either expressly or by implication, to be given by any party to the other under this Agreement shall be in writing, delivered in person or mailed, United States first-class postage prepaid, addressed as follows:

MENDOCINO COUNTY RUSSIAN RIVER FLOOD CONTROL & WATER  
CONSERVATION IMPROVEMENT DISTRICT  
Attention: General Manager  
304 N. State Street #2  
Ukiah, CA 95482  
Phone: 707-462-5278

REDWOOD VALLEY COUNTY WATER DISTRICT  
Attention: General Manager  
151 Laws Avenue  
Ukiah, CA 0482  
Phone: (707) 485-0679

Notice shall be deemed given (a) two calendar days following mailing via regular or certified mail, return receipt requested, (b) one business day after deposit with any one-day delivery service assuring "next day" delivery, or (c) upon actual receipt of notice when personally delivered, whichever is earlier. The

parties shall promptly give written notice to each other of any change of address and mailing or shipment to the addresses stated herein shall be deemed sufficient unless written notification of a change of address has been received.

12. Miscellaneous.

a. *No Waiver.* A waiver by either party of a breach of any of the covenants under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement. No waiver of a condition under this Agreement shall be valid unless it is in a writing signed by the party for whose benefit the condition exists.

b. *Modifications.* Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party. In no event shall any amendment or other modification to this Agreement be implied by or construed from oral statements or from the conduct of any person or entity.

c. *Severability.* If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

d. *Time of Essence.* Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

e. *Other Documents; Cooperation of Parties.* Each party agrees to sign any other and further instruments and documents as may be reasonably necessary or proper in order to accomplish the intent of this Agreement, provided that those instruments and documents are consistent with the terms of this Agreement.

f. *Attorneys Fees.* If legal action or other proceeding is commenced as a result of a dispute which arises under or relates to any provision of this Agreement, the losing party shall pay the prevailing party's actual attorneys' fees, costs, expert witness fees and other expenses incurred in preparation for and conduct of that action or proceeding, appeal of judgment, and enforcement and collection of judgment or award.

g. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of counterparts. The parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely execute counterparts shall be sufficient proof of this Agreement.

MENDOCINO COUNTY FLOOD CONTROL &  
WATER CONSERVATION IMPROVEMENT  
DISTRICT

By: Christopher Watt  
CHRISTOPHER WATT, PRESIDENT

ATTEST:

By: Elizabeth Salomone  
ELIZABETH SALOMONE, GENERAL MANAGER

REDWOOD VALLEY COUNTY WATER  
DISTRICT

By: John L. Clark  
TITLE: President of Board

ATTEST:

By: John L. Clark  
TITLE: General Manager