

CALAVARAS
3RD PHASE
AGREEMENT
(NCPA)

ORD. NO.
1269 INTRO.

Agenda item K-10 - "Approve Calaveras 3rd Phase Agreement- (NCPA)" was introduced by City Manager Glaves. A lengthy discussion followed with questions being directed to Staff.

Councilman Pinkerton asked that the record show his concern about projects with non-elected officials involved.

Council Member Olson then introduced Ordinance No. 1269 - An Ordinance of the City Council of the City of Lodi approving the terms and conditions of a Member Agreement (Calaveras Third Phase) between Northern California Power Agency and Certain Participating Members, and Authorizing the Execution of and Delivery of Said Agreement by Officers of the City; namely, the Mayor and City Clerk. The motion was seconded by Mayor Reid and carried by the following vote:

Ayes:	Council Members - Olson, Snider, and Reid
Noes:	Council Members - Pinkerton
Absent:	Council Members - Murphy

New Business
Final Draft 8/26/82

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**AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING
OF THE NORTH FORK STANISLAUS RIVER
HYDROELECTRIC DEVELOPMENT PROJECT**

Dated as of September 1, 1982

By and Among

NORTHERN CALIFORNIA POWER AGENCY

^ and

City of Alameda
City of Biggs
City of Gridley
City of Healdsburg
City of Lodi
City of Lompoc
City of Palo Alto
City of Redding
City of Roseville
City of Santa Clara
City of Ukiah
Plumas-Sierra Rural Electric Cooperative

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**AGREEMENT FOR CONSTRUCTION, OPERATION AND FINANCING
OF THE NORTH FORK STANISLAUS RIVER
HYDROELECTRIC DEVELOPMENT PROJECT**

This Agreement, dated as of September 1, 1982, by and among Northern California Power Agency, a joint powers agency of the State of California (hereinafter called "NCPA") and the other entities executing this Agreement.

WITNESSETH:

WHEREAS, NCPA and Calaveras County Water District (hereinafter called "CCWD") entered into a Memorandum of Understanding, dated May 31, 1977 and June 2, 1977, amended on November 2, 1978, and further amended on November 19, 1979, under which CCWD agreed to construct and own a hydroelectric project on the North Fork Stanislaus River and to sell capacity and energy of such project to NCPA, which Memorandum of Understanding, as so amended, has terminated or will terminate upon the issuance of the Federal Energy Regulatory Commission license for the Project;

WHEREAS, NCPA and its members entered into a "Member Agreement for Financing of Planning and Development Activities of the Calaveras Hydroelectric Project" made as of June 26, 1980, providing for the financing of certain planning activities in connection with the Project (said Contract, as it may be amended and supplemented from time to time, being hereinafter called the "Second Phase Agreement"); and

WHEREAS, this Agreement is the "Final Power Contract" contemplated in the Second Phase Agreement; and

WHEREAS, NCPA and CCWD entered into the North Fork Stanislaus River Hydroelectric Development Project Power Purchase Contract, dated as of July 6, 1981, providing for the financing, construction, ownership and operation of the Project, the sale of capacity and energy of the Project to NCPA, and the security for Bonds to be issued to finance the Project (said Contract, as it may be amended and supplemented from time to time, being hereinafter called the "Power Purchase Contract"); and

WHEREAS, NCPA and its members have entered into one of three Member Service Agreements, effective February 12, 1981 (said Agreements, as they may be amended and supplemented from time to time, being hereinafter called the "Member Service Agreement"), which provide for services which NCPA shall perform for its members, among other things, and for the provisions to be contained in Second and Third Phase agreements, such as the Second Phase Agreement, and this Agreement; and

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WHEREAS, pursuant to the Power Purchase Contract, NCPA and the Project Participants (as hereinafter defined) now wish to enter into this Agreement to provide further for the construction, operation and financing of the Project, the sale by NCPA of capacity and energy of the Project to the Project Participants, and the security for the Bonds to be issued to finance the Project;

NOW THEREFORE, the parties hereto do agree as follows:

1. **Definitions.** The terms "Project", "FERC", "CCWD Bonds", "Bond Resolution", "NCPA Bonds", "Bonds", "Trustee" and "Full Operation Date" shall have the respective meanings in this Agreement as ascribed thereto in the Power Purchase Contract and, in addition:

(a) "Electric System" means all properties and assets, real and personal, tangible and intangible, of the Project Participant now or hereafter existing, used or pertaining to the generation, transmission, transformation, distribution and sale of electric capacity and energy, including all additions, extensions, expansions, improvements and betterments thereto and equipments thereof; provided, however, that to the extent the Project Participant is not the sole owner of an asset or property or to the extent that an asset or property is used in part for the above described electric purposes, only the Project Participant's ownership interest in such asset or property or only the part of the asset or property so used for electric purposes shall be considered to be part of its Electric System.

(b) "Project Entitlement Percentage" means, with respect to each Project Participant, the percentage set forth opposite the name of such Project Participant in Appendix A hereto, as such Appendix A shall be amended from time to time in accordance with Section 14 of this Agreement.

(c) "Project Participants" means those entities listed in Appendix A hereto and executing this Agreement, together in each case with their respective successors or assigns.

(d) "Revenues" means all income, rents, rates, fees, charges, and other moneys derived by the Project Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing, (i) all income, rents, rates, fees, charges or other moneys derived from the sale, furnishing, and supplying of the electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System, (ii) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System and (iii) the proceeds derived by the Project Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System as permitted hereby, but the term "Revenues" shall not include (y) customers' deposits or any other deposits subject to refund until such deposits have become the

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property of the Project Participant, or (z) contributions from customers for the payment of costs of construction of facilities to serve them pursuant to agreements executed or made prior to the date of this Agreement.

(e) "Significant Transaction" means any transaction pursuant to Section 9(c) of this Agreement which, when combined with any prior or contemporaneous transaction pursuant to said Section 9(c), would result in the Project Entitlement Percentage of any Project Participant being either (i) less than its original Project Entitlement Percentage minus a Project Entitlement Percentage of 4.000%, or (ii) greater than its original Project Entitlement Percentage multiplied by 2.0.

(f) "Temporary Bonds" means Bonds issued for the purpose of financing studies, the acquisition of options, permits and other preliminary costs to be incurred prior to the undertaking of the construction or acquisition of the Project and for the purpose of providing temporary financing of costs of acquisition and construction of the Project and which are designated as Temporary Bonds in the Bond Resolution authorizing the issuance of such Temporary Bonds.

2. Purpose. The purpose of this Agreement is to sell capacity and energy of the Project to the Project Participants, to provide the terms and conditions of such sale and to provide for the financing of the Project.

3. Construction and Operation. NCPA will use its best efforts to cause or accomplish the construction, operation and financing of the Project, the obtaining of all necessary authority and rights, and the performance of all things necessary and convenient therefor, all in accordance with the Power Purchase Contract. Each Project Participant will cooperate with NCPA to that end, and will give any and all clarifying assurances by supplemental agreements that may be reasonably necessary in the opinion of CCWD's and NCPA's respective legal counsel to make the obligations herein more specific and to satisfy legal requirements and provide security for the Bonds.

NCPA may pledge and assign to any Trustee for NCPA Bonds, CCWD and any Trustee for CCWD Bonds, or any of them, all or any portion of the payments received hereunder from Project Participants, and upon notice from NCPA each Project Participant shall make payments due by it hereunder directly to any Trustee for NCPA Bonds, CCWD or any Trustee for CCWD Bonds, or any of them, as the case may be. Such pledge and assignment by NCPA shall be made effective for such time as NCPA shall determine and provide.

4. Sale and Delivery of Capacity and Energy from the Project. (a) Pursuant to the terms of this Agreement, NCPA shall provide to each Project Participant, and each Project Participant shall take, or cause to be taken, such Project Participant's Project

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Entitlement Percentage of the capacity and energy of the Project to which NCPA is entitled under the Power Purchase Contract.

(b) NCPA will remain available to do all things necessary and possible to deliver or cause to be delivered to or for the Project Participants in accordance with their respective Project Entitlement Percentages of the capacity and energy of the Project to which NCPA is entitled under the Power Purchase Contract. A Such delivery shall be at points mutually agreed upon by NCPA and the respective Project Participants. * NCPA will remain available to make or cause to be made all necessary and possible arrangements for transmission of such capacity and energy over the lines of NCPA or others, and for additional capacity and energy required from others as reserves against planned or emergency service interruptions with respect to the Project. Wheeling or delivery services by NCPA with related energy sales to the Project Participants shall be as provided in service schedules as provided in Article III of the Member Service Agreement.

5. Rates and Charges. (a) Commencing on the Full Operation Date, NCPA shall fix charges to the Project Participants under this Agreement to produce revenues to NCPA from the Project equal to the amounts anticipated to be needed by NCPA to meet the total costs of NCPA to provide capacity and energy from the Project, including but not limited to (i) debt service on the Bonds, reserves for the payment of debt service on the Bonds and other payments required under the Bond Resolution other than payments described in (iii) below, (ii) all other payments provided to be made by NCPA under the Power Purchase Contract, (iii) any other operation, maintenance and replacement costs of the Project, a reasonable reserve for contingencies, and all other Project costs other than costs and expenses pursuant to Section 4(b), and (iv) costs and expenses of NCPA for delivering Project capacity and energy pursuant to Section 4(b) of this Agreement. NCPA shall fix charges to the Project Participants to produce revenues to NCPA from the Project to meet the costs described in (i) and (ii) above based on Project Entitlement Percentages and to meet the costs described in (iii) above based on the anticipated energy sales of the Project. If NCPA delivers Project capacity and energy to or for any Project Participant pursuant to Section 4(b) of this Agreement, NCPA shall fix charges to each such Project Participant so as to pay the costs of such delivery without liability to any Project Participant for whom Project capacity and energy is not so delivered by NCPA.

(b) To the extent that the funds provided under Section 5(a) of this Agreement are not sufficient for such purposes, each Project Participant shall pay to NCPA an amount equal to such Project Participant's Project Entitlement Percentage of the total cost to pay all amounts of principal and interest on the Bonds, reserves for the payment of debt service and other payments required under the Bond Resolution and all other payments required to be made by NCPA under

* Such agreement shall not be unreasonably withheld by either NCPA or the respective Project Participants.

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the Power Purchase Contract. The obligation of this Section 5(b) is incurred by each Project Participant for the benefit of future holders of Bonds, and shall commence and continue to exist and be honored by Project Participants whether or not capacity or energy is furnished to them from the Project at all times or at all (which provision may be characterized as an obligation to pay all costs on a take-or-pay basis whether or not such Project capacity or energy is delivered or provided).

(c) Each Project Participant shall make payments under this Agreement solely from the Revenues of, and as an operating expense of, its Electric System; provided, however, that so long as no Bonds other than Temporary Bonds are outstanding, to the extent stated in the Bond Resolution authorizing Temporary Bonds then outstanding, Project Participants shall make payments under this Agreement from the Revenues of such Project Participants' Electric Systems but only after the payment of operating expenses thereof. Each Project Participant hereby pledges its Revenues to the payments required hereunder. Nothing herein shall be construed as prohibiting any Project Participant from using any other funds and revenues for purposes of satisfying any provisions of this Agreement. In the event that payments under this Agreement as an operating expense of a Project Participant's Electric System would violate the provisions of an agreement to which such Project Participant is a party, such Project Participant shall, if so requested by NCPA, with all diligence proceed to comply with the provisions of any such agreement so as to constitute the payments under this Agreement as an operating expense. So long as a Project Participant is in compliance with all its obligations hereunder, such pledge shall not prevent its application of Revenues to other operating expenses of its Electric System or, subject to the payment of such operating expenses, to other lawful purposes, nor impair the rights of any recipient of Revenues lawfully so applied.

(d) Each Project Participant shall make payments under this Agreement whether or not the Project is completed, operable, operating or retired and notwithstanding the suspension, interruption, interference, reduction or curtailment of Project output or the capacity and energy contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether by offset or otherwise, and are not conditioned upon performance by CCWD, NCPA or any other Project Participant under this Agreement or any other agreement.

(e) No Project Participant shall be liable under this Agreement for the obligations of any other Project Participant. Each Project Participant shall be solely responsible and liable for performance of its obligations under this Agreement and for the maintenance and operation of its respective properties not included as part of the Project. The obligation of each Project Participant to make

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payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants.

(f) Each Project Participant covenants and agrees to establish and collect fees and charges for electric capacity and energy furnished through facilities of its Electric System sufficient to provide Revenues adequate to meet its obligations under this Agreement and to pay any and all other amounts payable from or constituting a charge and lien upon any or all such Revenues.

(g) Each Project Participant covenants and agrees that it shall, at all times, operate the properties of its Electric System and the business in connection therewith in an efficient manner and at reasonable cost and shall maintain its Electric System in good repair, working order and condition.

6. Annual Budget and Billing Statement. Prior to the beginning of each NCPA fiscal year, NCPA will adopt an annual budget for such fiscal year for costs and expenses relating to the Project and shall promptly give notice to each Project Participant of its projected share of such costs and expenses. A billing statement prepared by NCPA will be sent to each Project Participant not later than the fifteenth (15th) day after the end of each calendar month showing the amount payable by such Project Participant of costs payable under Section 5(a) of this Agreement for the next preceding calendar month, the amount payable by such Project Participant as its Project Entitlement Percentage of costs payable under Section 5(b) of this Agreement for the next succeeding calendar month, and the amount of any credits. Amounts shown on the billing statement are due and payable thirty (30) days after the date of the billing statement. Any amount due and not paid by the Project Participant within thirty (30) days after the date of the billing statement shall bear interest from the due date until paid at an annual rate to be established by NCPA at the time of adoption of the annual budget.

On or before the day five (5) calendar months after the end of each NCPA fiscal year, NCPA shall submit to each Project Participant a statement of the aggregate monthly costs for such fiscal year. If the actual aggregate monthly costs and the Project Participant's Project Entitlement Percentage thereof pursuant to this Agreement, and other amounts payable for any fiscal year, exceed the estimate thereof on the basis of which the Project Participant has been billed, the deficiency shall be added to the next succeeding billing statement. If the actual aggregate monthly costs and the Project Participant's Project Entitlement Percentage thereof and any adjustment of or credit to the Project Participant's Project Entitlement Percentage thereof or other amounts payable for any fiscal year are less than the estimate on the basis of which the Project Participant has been billed, NCPA shall credit such excess against the Project Participant's next billing statement.

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If a Project Participant questions or disputes the correctness of any billing statement by NCPA, it shall pay NCPA the amount claimed when due and shall within thirty (30) days of its receipt request an explanation from NCPA. If the bill is determined to be incorrect, NCPA will issue a corrected bill and refund any amount which may be due the Project Participant which refund shall bear interest from the date NCPA received payment until the date of the refund at an annual rate to be established by NCPA at the time of adoption of the annual budget. If NCPA and the Project Participant fail to agree on the correctness of a bill within thirty (30) days after the Project Participant has requested an explanation, the parties shall promptly submit the dispute to arbitration under section 1280 et seq. of the Code of Civil Procedure.

7. **Obligation in the Event of Default.** (a) Upon failure of any Project Participant to make any payment in full when due under this Agreement or to perform any other obligation hereunder, NCPA shall make written demand upon such Project Participant, and if said failure is not remedied within thirty (30) days from the date of such demand, such failure shall constitute a default at the expiration of such period. Notice of such demand shall be provided to each other Project Participant by NCPA.

(b) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, NCPA shall use its best efforts to sell and transfer for the defaulting Project Participant's account all or a portion of such Project Participant's Project Entitlement Percentage of Project capacity and energy for all or a portion of the remainder of the term of this Agreement. Notwithstanding that all or any portion of the Project Participant's Project Entitlement Percentage of Project capacity and energy is so sold or transferred, the Project Participant shall remain liable to NCPA to pay the full amount of its Project Entitlement Percentage of monthly costs as if such sale or transfer had not been made, except that such liability shall be discharged to the extent that NCPA shall receive payment from the purchaser or transferee thereof.

(c) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement and causes NCPA to be in default under the Power Purchase Contract or any Bond Resolution, NCPA may (in addition to the remedy provided by subsection (b) of this Section 7) terminate the provisions of this Agreement insofar as the same entitle the defaulting Project Participant to its Project Entitlement Percentage of Project capacity and energy. Irrespective of such termination, the obligations of the Project Participant under this Agreement shall continue in full force and effect.

(d) Upon the failure of any Project Participant to make any payment which failure constitutes a default under this Agreement, and

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except as sales or transfers are made pursuant to subsection (b) of this Section 7, (i) the Project Entitlement Percentage of each nondefaulting Project Participant shall be automatically increased for the remaining term of this Agreement pro rata with those of the other nondefaulting Project Participants and (ii) the defaulting Project Participant's Project Entitlement Percentage shall (but only for purposes of computing the respective Project Entitlement Percentages of the nondefaulting Project Participants) be reduced correspondingly; provided, however, that the sum of such increases for any nondefaulting Project Participant shall not exceed, without written consent of such nondefaulting Project Participant, an accumulated maximum of 25% of the nondefaulting Project Participant's original Project Entitlement Percentage.

(e) If a Project Participant shall fail or refuse to pay any amounts due to NCPA, the fact that other Project Participants have increased their obligation to make such payments shall not relieve the defaulting Project Participant of its liability for such payments, and any Project Participant increasing such obligation shall have a right of recovery from the defaulting Project Participant to the extent of such respective increase in obligation caused by the defaulting Project Participant.

(f) Any Trustee for NCPA Bonds or for CCWD Bonds shall have the right, as a third party beneficiary, to initiate and maintain suit to enforce this Agreement to the extent provided in any Bond Resolution and, in the case of a Trustee for CCWD Bonds, the Power Purchase Contract.

8. Covenant with Respect to Additional Obligations of Project Participant. No Project Participant shall issue bonds, notes or other evidences of indebtedness, or cause indebtedness to be issued on its behalf, or enter into an agreement which secures indebtedness of such Project Participant or another entity and which agreement requires such Project Participant to take or to take-or-pay for capacity and energy from a project, payable from the Revenues of its Electric System on a parity with or superior to the payment of operating expenses of its Electric System, unless payment of such indebtedness or agreement is on a parity with the payment of operating expenses of its Electric System and either: (i) an independent consulting engineer or engineering firm or corporation having a national and favorable reputation for special skill, knowledge and experience in analyzing the operations of electric utility systems shall render and file with NCPA a written opinion that the incurring of any such indebtedness or the entering into any such agreement will not materially adversely affect the capacity of such Project Participant to meet its obligations and covenants under this Agreement; or (ii) the annual payments under such indebtedness or agreement are fixed and the Revenues for the fiscal year next preceding the approval of such indebtedness or agreement are at least (a) 1.25 times the maximum annual amount of such payments pursuant to

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Section 5(b) of this Agreement and under the proposed indebtedness or agreement and all other similar indebtedness and agreements, plus (b) the sum of all other amounts payable from or constituting a charge or lien upon any of the Revenues in such preceding fiscal year.

Notwithstanding the foregoing, none of the provisions contained in this Section 8 shall be construed as affecting the right of Plumas-Sierra Rural Electric Cooperative to issue additional notes under and pursuant to its existing security instruments, as the same may be from time to time amended or supplemented, securing loans made by the United States of America acting through the Administrator of the Rural Electrification Administration and by the National Rural Utilities Cooperative Finance Corporation.

9. Transfers, Sales and Assignments of Capacity. Each Project Participant has full and unfettered rights to make transfers, sales and/or assignments of capacity, energy, and rights thereto except as expressly provided otherwise in this Agreement. (a) No Project Participant shall transfer ownership of all or substantially all of its Electric System to another entity until it has first complied with the provisions of this subsection (a). A consolidation with another governmental entity or change in governmental form is not deemed a transfer of ownership.

(1) Such disposition or transfer shall be under terms and conditions that provide assurance that the obligations of the transferring Project Participant under this Agreement, and that NCPA's obligations under this Agreement, the Power Purchase Contract, and any Bond Resolution, and under other agreements made or to be made by NCPA to carry out the Project, will be promptly and adequately met. NCPA may require that sufficient moneys of the transferring Project Participant to discharge such obligations be irrevocably set aside and maintained in a trust account, as a condition to the transfer of the Electric System, if no other adequate assurance is available.

(2) The transferring Project Participant shall give written notice to NCPA of any proposed transfer pursuant to this subsection (a). Appendix A to this Agreement shall be amended as appropriate to reflect any transaction pursuant to this subsection (a).

(b) Notwithstanding any other provision of this Agreement, no Project Participant shall transfer, assign, sell or exchange any Project capacity and energy, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the NCPA Bonds or CCWD Bonds being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1954, as amended, by reason of

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classification of such Bond as an "industrial development bond" within the meaning of Section 103(b) of said Code.

(c) Prior to the date of issuance of Bonds other than Temporary Bonds, any Project Participant may, subject to subsection (b) of this Section 9, transfer, assign, sell or exchange all or a portion of the Project capacity and energy to which such Project Participant is entitled in accordance with this subsection (c). Such capacity and energy may be offered to other Project Participants. Each such Project Participant shall be limited in its right to such capacity and energy as against any other such Project Participant in proportion to their Project Entitlement Percentages thereof. Any such transferee, assignee, exchangee or vendee shall be entitled to Project capacity and energy to the extent the same are so transferred, assigned, exchanged or sold. The Project Entitlement Percentage of the Project Participant so transferring, assigning, exchanging or selling shall be decreased and the obligations of such Project Participant under this Agreement shall be discharged to the extent Project capacity and energy is transferred, assigned, exchanged or sold; provided, however, that such Project Participant shall remain liable for all obligations of NCPA incurred prior to the date of such transfer, assignment, exchange or sale to the extent of its Project Entitlement Percentage unless such obligations are specifically assumed by the transferee, assignee, exchangee or vendee of such Project Participant. Any such transaction which would discharge or reduce any Project Participant's obligation pursuant to this subsection (c) shall be subject to the prior approval of NCPA and in addition, each Significant Transaction shall be subject to the approval of each Project Participant unless NCPA determines, after consultation with its consulting engineer, that such approval should not be required. Appendix A to this Agreement shall be amended as appropriate to reflect any such transaction pursuant to this subsection (c) changing any Project Entitlement Percentage. Where a transfer, assignment, sale, or exchange is made of Project energy or capacity without decreasing a Project Participant's obligations under this Agreement, no approval is required under this subsection (c).

10. Surplus Capacity and Energy. When a Project Participant has surplus capacity and/or energy from the Project, NCPA shall, if requested by such Project Participant to do so, sell such surplus capacity and/or energy in the following manner:

(a) NCPA shall use its best efforts to sell such surplus capacity and/or energy at a price at least equal to the Project Participant's cost therefor.

(b) Other Project Participants shall have a right of first refusal, and other NCPA members shall have the second right at the sales prices set forth in subsections (c) and (d) of this Section 10.

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(c) If NCPA can purchase equivalent capacity and/or energy from other sources for less than the Project Participant's cost for surplus capacity and/or energy, as the case may be, the sales price of such capacity and/or energy to another Project Participant or NCPA member shall be equal to the cost of purchasing the capacity and/or energy from such other source.

(d) If the alternative cost of purchasing capacity and/or energy for other Project Participants or members of NCPA is more than the Project Participant's cost of surplus capacity and/or energy from the Project, then the sales price shall be the Project Participant's cost plus one-half the difference between the Project Participant's cost and the cost of capacity and/or energy from an alternative source.

11. Insurance and Indemnification. NCPA shall obtain or cause to be obtained insurance for the Project covering such risks, in such amounts and with such deductibles as shall be determined by NCPA. NCPA shall indemnify and hold harmless each Project Participant from any liability for bodily injury or property damage resulting from any accident or occurrence arising out of or in any way related to the construction or operation of the Project.

12. Member Direction and Review. NCPA shall comply with all lawful directions of the Project Participants with respect to this Agreement, while not stayed or nullified, to the fullest extent authorized by law. Actions of Project Participants, including giving above directions to NCPA, will be taken only at meetings of authorized representatives of Project Participants duly called and held pursuant to the Ralph M. Brown Act.

(a) A quorum of the NCPA Commission for purposes of acting upon matters related to the Project shall consist of those Commissioners, or their designated alternates, representing a numerical majority of the Project Participants, or, in the absence of such, those Commissioners representing Project Participants having a combined Project Entitlement Percentage of at least 50%.

(b) Special meetings of the Commission to act only on matters relating to the Project may be called by a majority of the Commissioners of Project Participants upon notice as required by the Ralph M. Brown Act.

(c) At regular or special meetings of the Commission, voting on matters relating to the Project shall be by Project Entitlement Percentage, and a 50% or greater affirmative vote shall be required to take action, unless the Project Participants agree at such meetings that voting will be on a one member one vote basis, with a majority vote of those present required for action.

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(d) Upon demand of any Commissioners (including alternates) of Project Participants, at any meeting of the Commission other than a special meeting referred to in subsection (b) of this Section 12, the vote on any issue relating to the Project shall be by Project Entitlement Percentage and 65% or greater affirmative vote shall be required to take action.

(e) Any Project Participant may veto a discretionary action of the Project Participants relating to the Project that was not taken by a 65% or greater Project Entitlement Percentage vote within 10 days following mailing of notice of such Commissioners' action, by giving written notice of veto to NCPA, unless at a meeting of Commissioners or alternates of Project Participants called for the purpose of considering the veto and held within 30 days after such veto notice, the holders of 65% or greater of the Project Entitlement Percentage shall vote to override the veto.

(f) The sixty-five percent of the Project Entitlement Percentage specified in this Section 12 shall be reduced by the amount that the Project Entitlement Percentage of any Project Participant shall exceed 35%, but such 65% shall not be reduced below 50%.

13. Term. This Agreement shall not take effect until it and/or any supplement to it provided for in Section 2(c) of the Second Phase Agreement has been duly executed and delivered to NCPA by Project Participants the Project Entitlement Percentages of which, in the aggregate, equal 100%, all in accordance with Section 2(c) of the Second Phase Agreement and accompanied by an opinion for each Project Participant of an attorney or firm of attorneys in substantially the form attached hereto as Appendix B, and by evidence satisfactory to NCPA (a) of authority to enter into this Agreement, in compliance with Section 5C of "Amended and Restated Member Agreement for Construction, Operation and Financing of NCPA Geothermal Generating Unit #2 Project," made as of January 1, 1980 by NCPA and Purchasing Participating Members or (b) that such authority is not necessary.

Notwithstanding the delay in effective date of this Agreement until the Project Entitlement Percentages in the aggregate equal 100%, it is agreed by all signatories hereto that in consideration for NCPA's signature hereto, and for its commitment to use its best efforts to obtain the 100% commitment within 90 days following August 1, 1982, each Project Participant upon its execution and delivery of each agreement to NCPA along with required opinion and any required evidence of authority as called for shall be immediately bound not to withdraw its respective offer herein made to enter into this Agreement as executed and/or supplemented or to decrease its respective participation percentage during the 90 day period commencing August 1, 1982. The term of this Agreement shall continue until the later of (i) all Bonds issued have been retired, or full

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provisions made for their retirement, including interest until their retirement date or (ii) expiration or termination of the Power Purchase Contract. This Agreement shall expire and terminate if the first series of Bonds shall not be issued on or before September 30, 1983 or one year from the date the FERC license relating to the Project is final and not subject to appeal, whichever is the later.

14. Termination and Amendments. This Agreement shall not be subject to termination by any party under any circumstances, whether based upon the default of any other party under this Agreement, or any other instrument, or otherwise, except as specifically provided herein.

Except as otherwise provided in this Agreement, so long as any Bonds are outstanding and unpaid and funds are not set aside for the payment or retirement thereof in accordance with the applicable Bond Resolution, this Agreement shall not be amended, modified or otherwise changed or rescinded by agreement of the parties without the consent of each Trustee for NCPA Bonds or CCWD Bonds whose consent is required under the applicable Bond Resolution.

15. Member Service Agreement. This Agreement is a service schedule and a Third Phase agreement attached to and incorporated into the Member Service Agreement. This Agreement shall be construed as the more specific terms governing the general relationship between the parties set out in the Member Service Agreement in connection with the Project.

16. Second Phase Agreement. The Second Phase Agreement is superseded by this Agreement, except that section 4 thereof shall remain in effect as provided by section 5 of the Second Phase Agreement unless changed by formal action of all of the Project Participants. Said section 4 is as follows:

"Section 4. Conditional Repayment to Members. All payments and advances made pursuant to Section 1 excluding interest paid on delinquent payments shall be repaid to each of the entities making such payments and advances pursuant to this Agreement out of the proceeds of the first issuance of the Project bonds or as and when there are sufficient funds available from the partial sale of bonds. Such reimbursements shall be made within 60 days following the sale of any Project bonds and shall include interest computed monthly at a rate equivalent to the end of the month prime rate of the Bank of America NT&SA. Any interest due under the third paragraph of section 1 of this Agreement and unpaid shall be deducted from the repayments. If Calaveras is not successful in obtaining a Project license from FERC, there shall be no reimbursement except out of unused Project funds including those then in Calaveras Working Capital and Contingency Fund account and

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all money Calaveras is obligated to pay or return to NCPA in connection with the Memorandum along with all other receipts to which NCPA is entitled in connection with the Project."

IN WITNESS WHEREOF each Project Participant has executed this Agreement with the approval of its governing body, and caused its official seal to be affixed and NCPA has executed this Agreement in accordance with the authorization of its Commission.

NORTHERN CALIFORNIA POWER AGENCY

By _____
And _____

CITY OF ALAMEDA

By _____
And _____

CITY OF BIGGS

By _____
And _____

CITY OF GRIDLEY

By _____
And _____

CITY OF HEALDSBURG

By _____
And _____

CITY OF LODI

By _____
And _____

CITY OF LOMPOC

By _____
and _____

CITY OF PALO ALTO

By _____
and _____

CITY OF REDDING

By _____
and _____

CITY OF ROSEVILLE

By _____
and _____

CITY OF SANTA CLARA

By _____
and _____

CITY OF UKIAH

By _____
and _____

PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE

By _____
and _____



SCHEDULE OF PROJECT PARTICIPANTS
AND PROJECT ENTITLEMENT PERCENTAGES

<u>Project Participant</u>	<u>Project Entitlement Percentage</u>
City of Alameda	3
City of Biggs	
City of Gridley	
City of Healdsburg	
City of Lodi	
City of Lompoc	
City of Palo Alto	
City of Redding	
City of Roseville	
City of Santa Clara	
City of Ukiah	
Plumas-Sierra Rural Electric Cooperative	
Total	100.000%

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FORM OF OPINION OF COUNSEL

Northern California Power Agency
8421 Auburn Boulevard
Suite 160
Citrus Heights, California 95610

Dear Sirs:

I am acting as counsel to the _____ (the "Project Participant") under the Agreement for Construction, Operation and Financing of the North Fork Stanislaus River Hydroelectric Development Project dated as of _____, 1982 (the "Agreement") among the Project Participant, the Northern California Power Agency (the "Agency") and certain other entities, and I have acted as counsel to the Project Participant in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of the Project Participant, (ii) all necessary documentation of the Project Participant relating to the authorization, execution and delivery of the Agreement and (iii) an executed counterpart of the Agreement.

Based upon the foregoing and an examination of such other information, papers and documents as I deem necessary or advisable to enable me to render this opinion, including the Constitution and laws of the State of California together with the charter, other governing instruments, ordinances and public proceedings of the Project Participant, I am of the opinion that:

1. The Project Participant is [state form of organization] _____, duly created, organized and existing under the laws of the State of California and duly qualified to furnish electric service within said State.

2. The Project Participant has full legal right, power and authority to enter into the Agreement and to carry out and consummate all transactions contemplated thereby, and the Project Participant has complied with the provisions of applicable law in all matters relating to such transactions.

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3. The Agreement has been duly authorized, executed and delivered by the Project Participant, is in full force and effect and, assuming that the Agency has all the requisite power and authority, and has taken all necessary action, to execute and deliver such Agreement, constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms, except that the rights and remedies set forth therein may be limited by or resulting from bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

4. Payments by the Project Participant under the Agreement will constitute an operating expense of the Project Participant and are to be made solely from, and are secured by a valid pledge of, the Revenues of its Electric System as provided in Section 5, (b) of the Agreement. However, as long as no Bonds other than Temporary Bonds are outstanding, to the extent stated in the Bond Resolution authorizing Temporary Bonds then outstanding, payments by the Project Participant under the Agreement shall be made from Revenues of its Electric System but only after the payment of operating expenses thereof. "Bond", "Temporary Bonds" and "Bond Resolution" herein have the respective meanings given thereto in the Agreement.

5. No approval, consent or authorization of any governmental or public agency, authority or person is required for the execution and delivery by the Project Participant of the Agreement, or the performance by the Project Participant of its obligations thereunder.

6. The authorization, execution and delivery of the Agreement and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence or operation of the Project Participant, any commitment, agreement or other instrument to which the Project Participant is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order or decree to which the Project Participant (or any of its officers in their respective capacities as such) is subject or any provision of the laws of the State of California relating to the Project Participant and its affairs.

7. There is no action, suit, proceeding, inquiry or investigation at law or in equity, or before any court, public board or body, pending or, to my knowledge, threatened against or affecting the Project Participant or any entity affiliated with the Project Participant or any

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of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the powers of the Project Participant referred to in paragraph 2 above or the validity of the proceedings taken by the Project Participant in connection with the authorization, execution or delivery of the Agreement, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Agreement, or which, in any way, would adversely affect the validity or enforceability of the Agreement.

[Note: Where it shall be necessary for the Project Participant to obtain the authorization or approval of a Federal, state or local regulatory authority relating to such Project Participant's performance under the Agreement, the form of opinions set forth in paragraphs 2, 3 and 5 hereof may be appropriately adjusted to reflect the necessity for such authorization or approval and paragraph 4 hereof shall be adjusted to include therein an exception thereto specifically describing the requisite authorization or approval and stating that it has been duly given or obtained and is in full force and effect.]

Very truly yours,

McDONOUGH, HOLLAND & ALLEN
A PROFESSIONAL CORPORATION
ATTORNEYS

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IN REPLY REFER TO:

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JOHN E. DI GIUSTO
JOHN L. CARRIER
CRAN R. POWELL
MARK J. MUEBCH
SHARON B. ROSENE
JOHN J. FLYNN III

October 6, 1982

TO: NCPA LEGAL COMMITTEE

Gentlemen:

SUBJECT: Approvals of Calaveras Project

We have such a complicated legal structure on the Calaveras Third Phase Agreement that I want to be sure it works as expected.

I would appreciate it if each of you would fill out, or have someone else fill out, and return to me the enclosed questionnaire, for which a self-addressed stamped envelope is enclosed. I will give Gail copies; she is on a partial vacation right now. I will send each of you a summary of all.

Thank you.

Sincerely yours,


Martin McDonough
Attorney

MMcD:pa
enc.
cc: Robert E. Grimshaw

OCT 07 1982

PARTICIPATION IN CALAVERAS PROJECT BY

CITY OF LODI.

The ordinance approving execution by this City of
the Third Phase Agreement for the Calaveras Project, entitled:

"An Ordinance of the City Council of the
City of Lodi, approving the
terms and conditons of a member agreement
between Northern California Power Agency
and Certain Participating Members, and
authorizing the execution of and delivery
of said agreement by officers of the City
of Lodi"

received final passage by the City Council* on 9/15/82,
1982, and is numbered 1269.

The percentage specified in section 1 of the resolu-
tion is 10.37 %.

The percentage specified in section 2 of the
resolution is 10.37 %.

(signed) _____
Fred M. Reid
Mayor

(signed) _____
Alice M. Reimche
City Clerk

*Board of Commissioners, in the case of Alameda.