



SOUTH FEATHER WATER & POWER AGENCY

TO: Board of Directors

FROM: Kathy Zancanella, Power Division Manager

DATE: December 15, 2009

RE: Soper Company Agreement – Sly Creek Dam Crest Modification
Agenda Item for 12/22/09 Board of Directors Meeting

As was discussed last month, negotiations have been ongoing for an agreement with Soper Company for material for the Sly Creek Dam Crest Modification project. The agreement that has now been reached will provide 20,000 cubic yards of material from the borrow site at a price of \$10 per cubic yard. The agreement also specifies requirements to reshape the site and install measures to minimize future erosion from runoff. Five years of site monitoring will ensure that the installed measures work.

The draft agreement proposed by Soper Company is attached for your review. Jeff Meith has also reviewed this agreement and any changes he requests will be incorporated into the final version.

The recommended form of action is:

“I move approval of, and authorization for the General Manager to execute the ‘Agreement to Supply Fill Material in Place’ with Soper Company for material for the Sly Creek Dam crest modification project, subject to final review and approval by legal counsel.”

AGREEMENT TO SUPPLY FILL MATERIAL IN PLACE

Agreement entered into as of the 1st day of January, 2010, between SOPER COMPANY, a Delaware corporation, having its principal place of business at 19855 Barton Hill Road, Strawberry Valley, California 95981 (hereinafter referred to as "Seller"), and SOUTH FEATHER WATER AND POWER AGENCY, a public agency having its principal place of business at 2310 Oro-Quincy Highway, Oroville, California 95966 (hereinafter referred to as "Buyer").

WHEREAS, Buyer desires to obtain 20,000 cubic yards of fill material consisting of mostly decomposed granite for use at its Sly Creek Dam near Strawberry Valley, California, in order to raise the height of the dam crest by 10 feet using a mechanically-stabilized earth (MSE) wall; and

WHEREAS, Seller owns property nearby the proposed project, near Strawberry Valley, California, from which Buyer has heretofore obtained fill material needed for the original dam construction; and

WHEREAS, Buyer and Seller desire to enter into an agreement under which Seller will supply Buyer with fill material in place from Seller's land near Strawberry Valley, California,

NOW THEREFORE, for and in consideration of the mutual promises and benefits herein contained, Buyer and Seller agree to the purchase and sale of fill material in accordance with the terms and subject to the conditions set forth herein.

1. MATERIALS SOLD

Seller agrees to sell fill material in place and to supply raw materials to Buyer, on the terms and conditions set forth in this agreement, in, on, and under the following described land near the unincorporated community of Strawberry Valley, California, identified by the Butte County Assessor as parcel number 073-060-002, described more fully in Exhibit A hereto (the "Subject Property").

2. BUYER'S EXCLUSIVE RIGHTS: SELLER'S RESERVED RIGHTS

Buyer shall have the exclusive right to enter on the Subject Property at any and all times during the term of this agreement in order to remove fill material for Buyer's use and not for resale, in accordance herewith. Seller reserves to itself the right to enter upon and use the Subject Property, for any purpose, without unreasonable interference to the fill material extraction operations of Buyer. However, Seller shall not remove fill material from the Subject Property except for use in operating and managing timberlands owned by Seller in the area. During the term of this agreement, Seller shall not sell, or grant, lease, or license any rights to remove, fill material from the Subject Property to any person other than Buyer.

3. TERM AND TERMINATION

(a) Initial Term: Operations. During the Initial Term, the Buyer, at Buyer's sole cost and expense, will remove material for use in the Buyer's Sly Creek Dam Crest Modification Project (the "Project"), and install erosion, water, and off-highway vehicle control mitigations from whence the material was removed and along roadways used for the purposes of this agreement as mutually agreed to by both parties. In the event that any federal, state or county regulatory agency requires different mitigations as a result of issuing a permit for the Project, both parties will subsequently meet and agree to a mutually acceptable alternative mitigation plan in compliance with regulatory agency requirements. The Initial Term of this Agreement shall be deemed to have commenced as of the effective date of this Agreement as set forth in the first paragraph on the first page of this Agreement (the "Effective Date") and shall continue for a period of two (2) years from the Effective Date of this Agreement or to the end of the Project, whichever occurs first.

(b) Secondary Term: Monitoring. The secondary term of this Agreement shall be deemed to have commenced as of the ending date of the Initial Term and shall continue for a minimum period of five (5) years afterwards as described below. During this period, all erosion, water, and off-highway vehicle control mitigations installed by the Buyer will be monitored by both the Buyer and Seller. If any of the said mitigations fail or require repair prior to failure within the Secondary Term, Buyer, at Buyer's sole cost and expense, will repair or replace mitigations to the extent necessary to meet the objectives of the original design, and the Secondary Term will be extended five (5) years commencing on the completion date of any repair or replacement, to include monitoring of all Project mitigations on the Subject Property. The Secondary Term of this Agreement shall end when no Project mitigations have failed on the Subject Property within the past five (5) years. Seller may offer to do repair work at cost billed to Buyer if Seller can accomplish the repair without undue hardship, and repair work is within the scope of Seller's operations.

(c) Termination by Buyer. Buyer may terminate this Agreement prior to commencing road-building, earth-moving, or vegetation-removal operations during the Initial Term upon written notice to Seller. In the case that the Buyer wishes to terminate this Agreement during the Initial Term after said operations have begun and prior to the complete extraction of the agreed-upon amount of fill material, the parties will re-negotiate a price and adopt regulatory approved mitigations subject to the Secondary Term given in 3(b) to meet the objectives of the original mitigations.

(d) Termination by Either Party. The Initial Term of this Agreement may be terminated by either party upon or after the occurrence of any of the following events;

(i) the failure by the other party to make any payment due hereunder within ten (10) days after receipt of written demand therefor;

(ii) a breach by the other party of any of the material terms or conditions of this Agreement which is not cured within ninety (90) days after receipt of written notification thereof, provided,

however, that the ninety-day cure period shall be extended to account for any period during which cure is made impossible or impractical by seasonal or weather conditions;

(iii) the depletion of fill material reserves on the Subject Property;

(iv) any requirement of a federal, state or county regulatory agency which substantially alters the scope or feasibility of the Project;

(v) the making by the other party of an assignment for the benefit of creditors, or the admission by such party in writing of its inability to pay its debts generally as they become due, or the filing by such party of a petition for bankruptcy protection, or the taking of action by such party in furtherance of any such action.

4. PRICING; PAYMENT; QUANTITIES.

(a). Buyer agrees to pay \$200,000 for approximately 20,000 cubic yards of fill material removed from the Subject Property, due and payable in full upon commencement of operations. The cubic yard quantity is estimated based upon the design specifications of the Project. Recognizing the complications and added costs of measuring actual amounts of material used, Buyer and Seller agree to a final good-faith estimate to determine the total amount of fill material removed from the Subject Property. In the event that the Project uses substantially more or less than 20,000 cubic yards, the parties agree to meet and negotiate an adjustment in price.

(b) Seller agrees to allow Buyer to remove and purchase, at a price equivalent to that set forth in Paragraph 4(a), above, an indeterminate quantity of fill material from the Subject Property for Project use, with no annual or cumulative maximum quantities, limited only by the depletion of fill material reserves on the Subject Property, mitigation agreements, or regulatory agencies.

(c) Seller agrees to provide Buyer with felled whole trees from approximately ½ acre of the Subject Property to be chipped and used for on-site mitigations. Seller will obtain required permits for tree removal provided the permit does not require a California Timber Harvest Plan.

5. OPERATIONS; ROADS; MACHINERY AND EQUIPMENT.

(a) Buyer agrees to supply, at Buyer's sole cost and expense, all contractors, agents, employees, and equipment necessary for the exploration, extraction, processing, loading, and hauling of the fill material, all equipment necessary for chipping and chip distribution of felled whole trees, and to provide material and installation for all mitigations.

(b) Seller agrees to supply, at Seller's sole cost and expense, all contractors, agents, employees, and equipment necessary for the felling, transport, and piling of whole trees on-site.

(c) Buyer and Seller will consult, confer, and cooperate in exploring for, planning and locating fill material pits, expanding pits, establishing stockpile or processing areas, and clearing brush and timber as needed for such purposes. Before trees are to be cut and removed for the above

purposes, Buyer and Seller will, in good faith and with commercial reasonableness, consult and agree upon the quantities of such timber cut and removed.

(c) In order to obtain access to the Subject Property, and to carry on its operations, Buyer shall have the right to make use of and, if Buyer so desires, improve, at Buyer's sole cost and expense, all roadways now existing on the Subject Property, and shall have the right to build, at Buyer's sole cost and expense, such additional roads as may be reasonably necessary for the excavation, processing, stockpiling and removal of fill material. In maintaining, improving, or building such roads, Buyer may use sand, gravel, and fill from the Subject Property. Buyer shall not be required to pay for such materials so used. Any road not in use by Buyer shall be left in a condition at least as good as existed before use by Buyer under this agreement. Buyer shall consult and confer with Seller as to the location, layout, and standards of new roads that may be reasonably required, but Seller shall not unreasonably withhold approval of any such new road.

(d) Buyer shall have the right to place on the Subject Property, at Buyer's sole cost and expense, machinery, equipment, fill material processing plants, tool sheds, and other structures required by it in connection with its operations, with the full right to remove all the machinery, equipment and structure within one hundred eighty (180) days after the ending date of the Initial Term of this agreement.

(e) No petroleum products, toxic substances, or hazardous materials or waste may be stored upon the Subject Property, excepting the amount of fuel and oil needed for one day of operations. In the case of a spill or discharge of petroleum, toxic substances, or hazardous materials or waste, Buyer assumes all responsibility and cost for fines, clean-up, monitoring, and mitigations.

6. PERMITS; TAXES

(a) Buyer shall be responsible, at Buyer's sole cost and expense, for obtaining and/or maintaining all permits and licenses required by law for fill material extraction operations on the Subject Property, and Buyer shall pay all costs associated with such permitting and licensing, including, but not limited to, engineering studies, application fees, monitoring tests, and environmental studies. Seller and Buyer shall cooperate, consult and confer to plan fill material operations in accordance with existing permits and licenses and to obtain new permits and licenses as needed, and Seller, as property owner, shall provide any and all approvals and signatures that are necessary to maintain and/or obtain such permits and licenses.

(b) Seller shall be solely responsible for payment of and filing all reports and returns for Property Taxes, Excavation Taxes, and Excavation Activity Taxes relating to the Subject Property.

(c) Buyer shall be solely responsible for any taxes on any machinery, equipment, or structures that it owns.

7. COMPLIANCE WITH LAW

Each party agrees to comply with all applicable laws, statutes, ordinances, and governmental rules and regulations applicable to the Project and subject matter of this Agreement.

8. INDEMNITY

(a) Buyer will hold Seller harmless from all claims that may arise out of its occupation of the Subject Property and operations conducted thereon by it, its employees, agents, or contractors and shall indemnify and defend Seller against any suit, claim, judgment or demand whatsoever arising out of the breach of this agreement by Buyer or the negligence or willful misconduct of Buyer in the exercise of any of its rights pursuant to this agreement, provided that Seller is not a contributing cause to the events giving rise to such suit, claim, demand or judgment. Buyer shall obtain and maintain general comprehensive liability insurance, including property damage and loss from fire and insuring Buyer's liability from all activities which may result from actions to accomplish the requirements of this agreement, also naming Seller as additionally insured, carrying principal liability amounts of not less than One Million Dollars (\$1,000,000.00) for injury to person and property. Said policy shall include provisions to cover any and all claims which might result from these operations, including, but not limited to, environmental and hazardous materials/waste claims, whenever those claims may be made, in perpetuity. Buyer shall furnish to Seller certificates evidencing such insurance coverage, and shall provide that the coverage thereunder shall be terminated only after ten days written notice delivered to Seller.

(b) Seller will hold Buyer harmless from all claims that arise solely out of its ownership of the Subject Property and shall indemnify and defend Buyer against any suit, claim, judgment or demand whatsoever arising out of the breach of this agreement by Seller or the negligence or willful misconduct of Seller, provided that Buyer is not a contributing cause to the events giving rise to such suit, claim, demand or judgment.

(c) The obligations of the parties under this section shall survive the expiration or termination of this agreement.

(d) In the event a dispute arises between the parties to this agreement regarding enforcement of the terms of this agreement, the obligations of the parties, or activities pursuant to this agreement, the prevailing party shall be entitled to payment of their reasonable attorney's fees in addition to any other relief granted.

10. FORCE MAJEURE

Neither Buyer nor Seller shall be liable for failure to perform any of its obligations under this Agreement during any period in which performance is prevented by any cause beyond such party's control, which causes are called "force majeure" below. For purposes of this Agreement, "force majeure" includes, but is not limited to, acts of God, fire, flood, undue shortage of energy or power, strikes, insurrection or mob violence, requirements or regulations of government with which a party cannot reasonably comply, and other causes of a similar nature that are beyond the control of a party. The party whose performance is prevented will notify the other party of the date of commencement and cause of each period of force majeure and the time of removal of such cause.

11. INDEPENDENT CONTRACTORS

This Agreement shall not constitute or give rise to a partnership or joint venture between the parties. All activities by either party under the terms of this Agreement shall be carried on as independent contracting parties and not as an agent for or employee of the other party, and each party shall be solely responsible for the acts of its agents and employees. Neither party shall have any right, power, or authority to create any obligation, express or implied, on behalf of the other party.

12. NOTICES

All notices, reports, and consents required or permitted to be given under this Agreement shall be in writing and deemed given when hand delivered or by documented overnight delivery service, or sent by email, facsimile, or other electronic transmission service, provided a confirmation copy is also sent no later than the next business day by first class mail, to the party to whom the same is directed at its address as set forth below or to such other address as such party shall designate by notice under this Section:

If to Buyer: South Feather Water and Power Agency 2310 Oro-Quincy Highway Oroville,
California 95966 Attn: Kathy Zancanella
Fax: (530) 675-0361 email: kzancanella@southfeather.com

If to Seller: Soper Company 19855 Barton Hill Road Strawberry Valley, California 95981 Attn:
Dan Kruger
Fax: (530) 675-0843 email: dkruger@soperwheeler.com

(d) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. The determination by any court of competent jurisdiction that one or more of the sections or provisions of this Agreement are unenforceable shall not invalidate this Agreement, and the decision of such court shall be given effect so as to limit to the extent possible the sections or provisions of this Agreement which are deemed unenforceable. To the extent such determination has a material impact upon the economic expectations of the parties hereto, the parties agree to make appropriate modifications to this Agreement to take such impact into account.

(e) Headings; Construction. Section headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement. The language used in this Agreement will be deemed the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction will be applied against any person.

THIS AGREEMENT has been executed by the duly authorized representative of the parties as of the date first hereinabove set forth.

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IN WITNESS WHEREOF, this Agreement has been executed by respective duly authorized agents of SOUTH FEATHER WATER AND POWER AGENCY and SOPER COMPANY as of the date first above written.

SOPER COMPANY

SOUTH FEATHER WATER AND POWER AGENCY

By _____

By _____

Name: _____

Name: _____

Title: _____

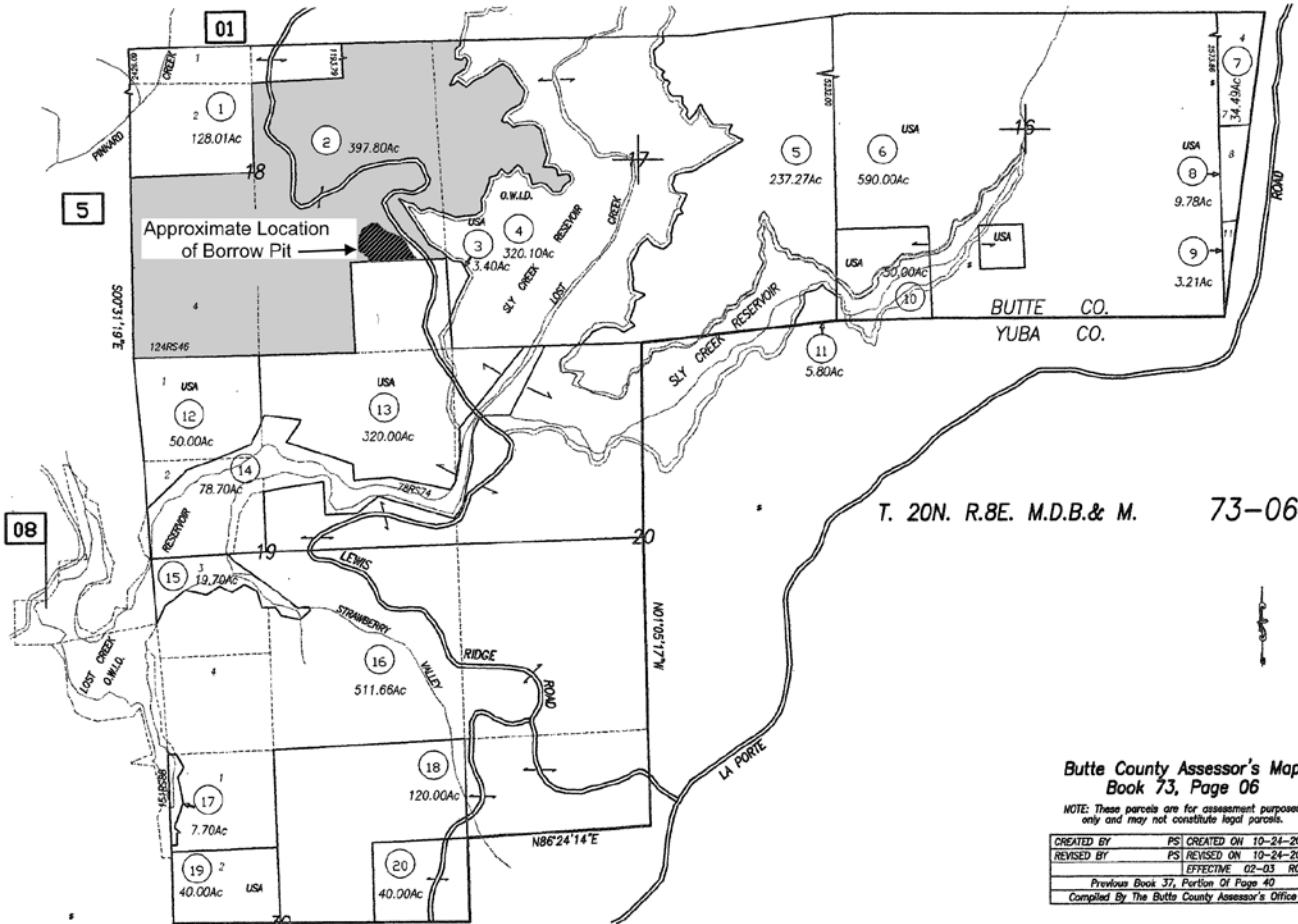
Title: _____

Date: _____

Date: _____

Exhibit A

Butte County Assessor's Map detailing approximate location of borrow site on Subject Property



**Butte County Assessor's Map
Book 73, Page 06**

NOTE: These parcels are for assessment purposes only and may not constitute legal parcels.

CREATED BY	PSI	CREATED ON	10-24-2001
REVISED BY	PSI	REVISED ON	10-24-2001
		EFFECTIVE	02-03 ROLL
Previous Book 37, Portion Of Page 40			
Compiled By The Butte County Assessor's Office			