



PINNACLE WEST

PWMT Contract No. 62528

CONFIDENTIAL

Michelle Gettinger
 Pinnacle West Marketing & Trading
 P. O. Box 53999, M/S 9842
 Phoenix, Arizona 85072-3999
 Telephone: (602) 250-2701
 Facsimile: (602) 250-3719

May 3, 2001

CONFIDENTIAL

To: California Department of Water Resources

The following terms and conditions shall govern the verbal agreement of May 1, 2001, between Dick Ferreira, on behalf of California Department of Water Resources ("CDWR"), and Michelle Gettinger, on behalf of Pinnacle West Capital Corporation ("PWMT"), whereby CDWR agreed to purchase and receive and PWMT agreed to sell and deliver energy as follows:

Seller: Pinnacle West Capital Corporation 400 N. 5 th Street, M/S 9842 Phoenix, Arizona 85004 Confirm Administrator: Lisa Williams (602) 250-3532 (phone) (602) 371-5256 (fax)	Buyer: California Dept of Water Resources 1416 9th Street Sacramento, CA 95814 Confirm Administrator: Pete Garris (916) 574-2694 (phone) (916) 574-2782 (fax)
Preschedule: (602) 250-4511 Real Time: (602) 250-3585	Preschedule: (916) 574-2768 Real Time: (916) 574-2716
Quantity (MW/hr.): 100 Megawatts Price (\$/MWh): 05/03/01 - 05/31/01 \$ 115.00/MWh 06/01/01 - 06/30/01 \$ 145.00/MWh 07/01/01 - 09/30/01 \$ 185.00/MWh	Quantity (MWh): 120,800 MWh Type of energy: Firm (w/ Liquidated Damages)
Start date: May 3, 2001 Day(s) of week: Monday through Saturday, including Sundays and NERC holidays.	End date: September 30, 2001 Hours: H. E. 2300-0600 Pacific Prevailing Time ("PPT").
Delivery Point: SP15 or other mutually agreed upon delivery point(s).	
Transmission Contingencies: None Generation Contingencies: None	
Enabling Agreement: CDWR and PWMT enter into this transaction pursuant to and in accordance with the WSPP Agreement and Service Schedule C (SSC) of the WSPP Agreement, to which CDWR and PWMT are parties. Terms used but not defined herein shall have the meanings ascribed to them in the WSPP Agreement.	
Additional Terms: Per attached.	

1. **Scheduling:** Preschedules shall be exchanged for all deliveries of energy, including identifications of receiving and generating control areas under this Confirmation Agreement by 11:00 a.m. Pacific Prevailing Time on the last work day observed by both Parties prior to the scheduled date of delivery. Interchange scheduling shall be conducted in accordance with Western Systems Power Pool (WSPP) Operating Procedure No. 1.

2. **Special Provisions:**

2.1 PWMT shall supply firm energy in accordance with WSPP Service Schedule C utilizing available generation or purchased power resources at the point of delivery. If, in order to maintain firm energy deliveries, PWMT is required to obtain additional generation or transmission resources, PWMT shall absorb all additional costs incurred, including any charges for generation, transmission or ancillary services.

2.2 Payments. Sections 9 of the WSPP Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

9.1 The accounting and billing period for transactions under Service Schedules to the Agreement shall be seven (7) calendar days, unless otherwise specified and mutually agreed to through a Confirmation Agreement. Bills sent to any Party shall be sent to the appropriate billing address as set forth in Section 3 of this Confirmation Agreement.

9.2 Payments for amounts billed under Service Schedules hereto shall be paid so that such payments are received, by wire transfer, in immediately available funds, by the Party to be paid on the second (2) calendar day after receipt of the bill. Payment shall be made at the location designated in Section 3 of this Confirmation Agreement. Payment shall be considered received when payment is received by the Party to which payment is due at the location designated by that Party.

9.3 If on any day both Parties are required to pay an amount on the payment due date in the same month for transactions under the WSPP Agreement or a Confirmation Agreement, then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of the WSPP Agreement. All outstanding payments between the Parties which are to be netted for transactions under the WSPP Agreement shall be offset against each other or set off or recouped therefrom.

9.4 Interest rate to be charged on amounts past due shall be the rate per annum published from time to time in the Wall Street Journal under "Money Rates" as the "Prime Rate" (or if such rate is no longer published by such entity, a successor or comparable rate agreed to by the parties) plus two percent (2%) per annum. Interest at this rate shall accrue and compound daily based on a 360-day year. Interest shall accrue from and including the due date of the payment until, but excluding, the date payment is made.

9.5 In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, may have been overpaid shall be returned by the owing Party within two (2) calendar days upon determination of the correct amount, with interest accrued, or the maximum interest rate permitted by law, if any, whichever is less, prorated by days from the date of overpayment to the date of refund. The Parties shall have no rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered for a specific transaction.

9.6 If a Party's records reveal that a bill was not delivered for a specific transaction, then the Party may deliver to the appropriate Party a bill within two (2) years from the date on which the bill would have been delivered under Section 9.1 of this Agreement.

9.7 Each Party, or any third party representative of a Party, shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or statements of charges submitted hereunder for a period of two (2) years from the date the first bill was delivered for a specific transaction completed under this Agreement. Within a two (2) year period from the date the first bill was delivered under this Agreement, any Party to that transaction may request in writing copies of the records of the other Party for that transaction to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

2.3 Uncontrollable Forces. Section 10 of the WSPP Agreement is hereby modified to include the following:

If the Claiming Party is a Governmental Entity or Public Power System, Uncontrollable Forces does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

2.4 Creditworthiness. Section 27 of the WSPP Agreement shall not be applicable to either Party for this Confirmation Agreement.

2.5 Termination Without Recourse. In addition to any other termination rights provided in the WSPP Agreement, PWMT shall have the right, but not the obligation, to terminate this transaction without recourse against CDWR for any Termination Payment or other costs and without any further obligation or liability of either PWMT or CDWR, upon the occurrence of either of the following:

(a) CDWR fails, on or before July 1, 2001, (i) to issue the Bonds, or (ii) to obtain an underlying rating on the Bonds (without regard to credit enhancements) of Baa3 or better by Moody's or BBB- or better by S&P; or

(b) CDWR fails to maintain at least one of said ratings at any time thereafter and such failure continues for 30 or more consecutive days. If CDWR determines for any reason not to rely on the Bonds, including, but not limited to, any determination not to issue the Bonds, and CDWR gives PWMT written notice of such determination on or before July 1, 2001, the foregoing sentence shall not apply and instead, in addition to any other termination rights herein, PWMT shall have the right, but not the obligation, to terminate this transaction without recourse against CDWR for any Termination Payment or other costs and without any further obligation or liability of either PWMT or CDWR, upon the occurrence of either of the following: (a) CDWR's failure, on or before July 1, 2001, to obtain a rating based on the ability of the Department of Water Resources Electric Power Fund (the "Fund") to pay its obligations under the Agreement of Baa3 or better by Moody's, or BBB- or better by S&P, or (b) CDWR's failure to maintain at least one of said ratings thereafter and such failure continues for 30 or more consecutive days.

2.6 Suspension of Performance. Notwithstanding any other provision of the WSPP Agreement, if (a) an Event of Default or (b) a potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single transaction unless an early termination date shall have been declared and notice thereof given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

2.7 Dispute Resolution. Section 34 of the WSPP Agreement shall be deleted in its entirety and the following inserted in lieu thereof:

34.1 Alternative Dispute Resolution. All disputes arising under the WSPP Agreement are subject to the provisions of this Article 34.

34.2 Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under claim, counterclaim, demand, cause of action, dispute, and/or controversy relating to the terms of this Confirmation Agreement, or the breach thereof (collectively "Claims"), shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the rules of arbitration of the Federal Arbitration Act and, to the extent an issue is not addressed by the federal law on arbitration, by the then-prevailing Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The validity, construction, and interpretation of this agreement to arbitrate and all related procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. Submission shall be made upon the request of either Party. There shall be three (3) arbitrators. Both the claimant and the respondent shall appoint one (1) arbitrator within twenty (20) days of receipt by the respondent of service of the notice of arbitration. The two (2) arbitrators so appointed shall select the third arbitrator, the chairperson, of the tribunal within twenty (20) days thereafter. The third arbitrator shall be a person who has over eight (8) years of experience in energy-related transactions and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration. The chairperson shall be bound to schedule and hear the dispute within six (6) months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitrators shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. The arbitration shall take place at a neutral venue to be determined by the arbitrators. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

34.3 Confidentiality. The arbitration proceedings conducted pursuant to this Confirmation Agreement shall be confidential. Neither Party shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by the other Party in the arbitration proceedings or about the existence, contents or results of the arbitration award without the prior written consent of such other Party except as required in the course of a judicial, regulatory or arbitration proceeding, as may be requested or required by a governmental authority or as required for the enforcement of an arbitration award. Before making any disclosure permitted by the preceding sentence, the Party intending to make such disclosure shall give the other Party reasonable written notice of the intended disclosure and afford the other Party a reasonable opportunity to protect its interests.

2.8 Additional Representations and Warranties. Section 37 of the WSPP Agreement is hereby modified to include the following paragraphs:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Confirmation Agreement as follows: (i) all acts necessary to the valid execution, delivery and performance of this Confirmation Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Confirmation Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Confirmation Agreement does not extend beyond any

applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under this transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Confirmation Agreement by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Confirmation Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Confirmation Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the other Party, regarding the validity, binding effect and enforceability of this Confirmation Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

Governmental Entity or Public Power System Security. With respect to each this transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Confirmation Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any delivery period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Confirmation Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Confirmation Agreement is in effect and, notwithstanding anything to the contrary, an early termination date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire delivery period.

3. **Billing and Payment:** Monthly billings and payment shall be in accordance with Section 9 of the WSPF Agreement. Billings and payment shall be sent to:

Pinnacle West Capital Corporation
Attention: Cash Management, Station 9996
P. O. Box 53920
Phoenix, AZ 85072-3920

California Dept of Water Resources
Attention: Peter Garris
1416 9th Street
Sacramento, CA 95814

Wire information:



PWMT Contract No.62528 shall be included on all correspondence or Invoices in reference to this Confirmation Agreement.

If the above accurately reflects the terms and conditions of the agreement between CDWR and PWMT on May 1, 2001, please sign a copy of this Confirmation Agreement and return it via fax to the PWMT Confirm Administrator listed above.

Pinnacle West Capital Corporation

Signature: _____

David A. Hansen

Print Name: David A. Hansen

Title: Director, Pinnacle West Marketing & Trading

Date: _____

California Department of Water Resources

Signature: _____

Peter S. Garris

Print Name: Peter S. GARRIS

Title: CHIEF CERS OPERATIONS

Date: 5/15/01

Bulk Power
Contracts
Department

By _____

[Signature]



PINNACLE WEST

CAPITAL CORPORATION

Michelle Gettinger
Pinnacle West Marketing & Trading
P. O. Box 53999, M/S 9842
Phoenix, Arizona 85072-3999
Telephone: (602) 250-2701
Facsimile: (602) 250-3719

May 3, 2001

CONFIDENTIAL

To: California Department of Water Resources

The following terms and conditions shall govern the verbal agreement of May 2, 2001, between Dick Ferreira, on behalf of California Department of Water Resources ("CDWR"), and Michelle Gettinger, on behalf of Pinnacle West Capital Corporation ("PWMT"), whereby CDWR agreed to purchase and receive and PWMT agreed to sell and deliver energy as follows:

Seller: Pinnacle West Capital Corporation 400 N. 5 th Street, M/S 9842 Phoenix, Arizona 85004	Buyer: California Dept of Water Resources 1416 9th Street Sacramento, CA 95814
Confirm Administrator: Lisa Williams (602) 250-3532 (phone) (602) 371-5256 (fax)	Confirm Administrator: Pete Garris (916) 574-2694 (phone) (916) 574-2782 (fax)
Preschedule: (602) 250-4511 Real Time: (602) 250-3585	Preschedule: (916) 574-2768 Real Time: (916) 574-2716
Quantity (MW/hr.): Maximum of 125 MW	Quantity (MWh): 137,740 MWh
06/01/01 - 06/16/01	H.E. 0700 - 2200 125 MW
06/18/01 - 06/30/01	H.E. 0700 - 1300 125 MW H.E. 1400 - 1400 75 MW H.E. 1500 - 1800 50 MW H.E. 1900 - 1900 75 MW H.E. 2000 - 2200 125 MW
07/02/01 - 09/14/01	H.E. 0700 - 1300 90 MW H.E. 1400 - 1900 40 MW H.E. 2000 - 2200 90 MW
09/15/01 - 09/29/01	H.E. 0700 - 2200 90 MW
Price (\$/MWh): \$ 156.75/MWh	Type of energy: Firm (w/ Liquidated Damages)
CDWR shall pay PWMT the following monthly capacity payments. Payments are due three (3) Business Days prior to the first of each month identified below:	
June 2001 \$ 3,125,000	August 2001 \$ 3,150,000
July 2001 \$ 3,150,000	September 2001 \$ 3,150,000
Start date: June 1, 2001	End date: September 30, 2001
Day(s) of week: Monday through Saturday, excluding Sundays and NERC holidays.	Hours: H. E. (see above) is in Pacific Prevailing Time ("PPT").
Delivery Point: SP15 or other mutually agreed upon delivery point(s).	Transmission Contingencies: None
Enabling Agreement: CDWR and PWMT enter into this transaction pursuant to and in accordance with the WSPPP Agreement and Service Schedule C (SSC) of the WSPPP Agreement, to which CDWR and PWMT are parties. Terms used but not defined herein shall have the meanings ascribed to them in the WSPPP Agreement.	Generation Contingencies: None
Additional Terms: Per attached.	

Additional Terms

1. **Scheduling:** Preschedules shall be exchanged for all deliveries of energy, including identifications of receiving and generating control areas under this Confirmation Agreement by 11:00 a.m. Pacific Prevailing Time on the last work day observed by both Parties prior to the scheduled date of delivery. Interchange scheduling shall be conducted in accordance with Western Systems Power Pool (WSPP) Operating Procedure No. 1.

2. **Special Provisions:**

2.1 PWMT shall supply firm energy in accordance with WSPP Service Schedule C utilizing available generation or purchased power resources at the point of delivery. If, in order to maintain firm energy deliveries, PWMT is required to obtain additional generation or transmission resources, PWMT shall absorb all additional costs incurred, including any charges for generation, transmission or ancillary services.

2.2 Payments. Sections 9 of the WSPP Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

9.1 The accounting and billing period for transactions under Service Schedules to the Agreement shall be seven (7) calendar days, unless otherwise specified and mutually agreed to through a Confirmation Agreement. Bills sent to any Party shall be sent to the appropriate billing address as set forth in Section 3 of this Confirmation Agreement.

9.2 Payments for amounts billed under Service Schedules hereto shall be paid so that such payments are received, by wire transfer, in immediately available funds, by the Party to be paid on the second (2) calendar day after receipt of the bill. Payment shall be made at the location designated in Section 3 of this Confirmation Agreement. Payment shall be considered received when payment is received by the Party to which Payment is due at the location designated by that Party.

9.3 If on any day both Parties are required to pay an amount on the payment due date in the same month for transactions under the WSPP Agreement or a Confirmation Agreement, then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of the WSPP Agreement. All outstanding payments between the Parties which are to be netted for transactions under the WSPP Agreement shall be offset against each other or set off or recouped therefrom.

9.4 Interest rate to be charged on amounts past due shall be the rate per annum published from time to time in the Wall Street Journal under "Money Rates" as the "Prime Rate" (or if such rate is no longer published by such entity, a successor or comparable rate agreed to by the parties) plus two percent (2%) per annum. Interest at this rate shall accrue and compound daily based on a 360-day year. Interest shall accrue from and including the due date of the payment until, but excluding, the date payment is made.

9.5 In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount of bills which, through inadvertent errors or as a result of a dispute, may have been overpaid shall be returned by the owing Party within two (2) calendar days upon determination of the correct amount, with interest accrued, or the maximum interest rate permitted by law, if any, whichever is less, prorated by days from the date of overpayment to the date of refund. The Parties shall have no rights to dispute the accuracy of any bill or payment after a period of two (2) years from the date on which the first bill was delivered for a specific transaction.

9.6 If a Party's records reveal that a bill was not delivered for a specific transaction, then the Party may deliver to the appropriate Party a bill within two (2) years from the date on which the bill would have been delivered under Section 9.1 of this Agreement.

8.7 Each Party, or any third party representative of a Party, shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or statements of charges submitted hereunder for a period of two (2) years from the date the first bill was delivered for a specific transaction completed under this Agreement. Within a two (2) year period from the date the first bill was delivered under this Agreement, any Party to that transaction may request in writing copies of the records of the other Party for that transaction to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

2.3 Uncontrollable Forces. Section 10 of the WSPF Agreement is hereby modified to include the following:

If the Claiming Party is a Governmental Entity or Public Power System, Uncontrollable Forces does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

2.4 Creditworthiness. Section 27 of the WSPF Agreement shall not be applicable to either Party for this Confirmation Agreement.

2.5 Termination Without Recourse. In addition to any other termination rights provided in the WSPF Agreement, PWMT shall have the right, but not the obligation, to terminate this transaction without recourse against CDWR for any Termination Payment or other costs and without any further obligation or liability of either PWMT or CDWR, upon the occurrence of either of the following:

(a) CDWR fails, ~~or~~ before July 1, 2001, (i) to issue the Bonds, or (ii) to obtain an underlying rating on the Bonds (without regard to credit enhancements) of Baa3 or better by Moody's or BBB- or better by S&P; or

(b) CDWR fails to maintain at least one of said ratings at any time thereafter and such failure continues for 30 or more consecutive days. If CDWR determines for any reason not to rely on the Bonds, including, but not limited to, any determination not to issue the Bonds, and CDWR gives PWMT written notice of such determination on or before July 1, 2001, the foregoing sentence shall not apply and instead, in addition to any other termination rights herein, PWMT shall have the right, but not the obligation, to terminate this transaction without recourse against CDWR for any Termination Payment or other costs and without any further obligation or liability of either PWMT or CDWR, upon the occurrence of either of the following: (a) CDWR's failure, on or before July 1, 2001, to obtain a rating based on the ability of the Department of Water Resources Electric Power Fund (the "Fund") to pay its obligations under the Agreement of Baa3 or better by Moody's, or BBB- or better by S&P, or (b) CDWR's failure to maintain at least one of said ratings thereafter and such failure continues for 30 or more consecutive days.

2.6 Suspension of Performance. Notwithstanding any other provision of the WSPF Agreement, if (a) an Event of Default or (b) a potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single transaction unless an early termination date shall have been declared and notice thereof given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

2.7 Dispute Resolution. Section 34 of the WSPF Agreement shall be deleted in its entirety and the following is inserted in lieu thereof:

34.1 Alternative Dispute Resolution. All disputes arising under the WSPF Agreement are subject to the provisions of this Article 34:

34.2 Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under claim, counterclaim, demand, cause of action, dispute, and/or controversy relating to the terms of this Confirmation Agreement, or the

breach thereof (collectively "Claims"), shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the rules of arbitration of the Federal Arbitration Act and, to the extent an issue is not addressed by the federal law on arbitration, by the then-prevailing Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The validity, construction, and interpretation of this agreement to arbitrate and all related procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. Submission shall be made upon the request of either Party. There shall be three (3) arbitrators. Both the claimant and the respondent shall appoint one (1) arbitrator within twenty (20) days of receipt by the respondent of service of the notice of arbitration. The two (2) arbitrators so appointed shall select the third arbitrator, the chairperson, of the tribunal within twenty (20) days thereafter. The third arbitrator shall be a person who has over eight (8) years of experience in energy-related transactions and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration. The chairperson shall be bound to schedule and hear the dispute within six (6) months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitrators shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. The arbitration shall take place at a neutral venue to be determined by the arbitrators. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

34.3 Confidentiality. The arbitration proceedings conducted pursuant to this Confirmation Agreement shall be confidential. Neither Party shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by the other Party in the arbitration proceedings or about the existence, contents or results of the arbitration award without the prior written consent of such other Party except as required in the course of a judicial, regulatory or arbitration proceeding, as may be requested or required by a governmental authority or as required for the enforcement of an arbitration award. Before making any disclosure permitted by the preceding sentence, the Party intending to make such disclosure shall give the other Party reasonable written notice of the intended disclosure and afford the other Party a reasonable opportunity to protect its interests.

2.8 Additional Representations and Warranties. Section 37 of the WSPF Agreement is hereby modified to include the following paragraphs:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Confirmation Agreement as follows: (i) all acts necessary to the valid execution, delivery and performance of this Confirmation Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Confirmation Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Confirmation Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of

payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System obligations hereunder and under this transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Confirmation Agreement by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Confirmation Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Confirmation Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the other Party, regarding the validity, binding effect and enforceability of this Confirmation Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

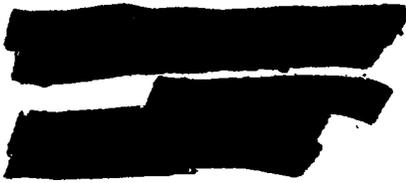
Governmental Entity or Public Power System Security. With respect to each this transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Confirmation Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any delivery period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Confirmation Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Confirmation Agreement is in effect and, notwithstanding anything to the contrary, an early termination date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire delivery period.

3. **Billing and Payment:** Monthly billings and payment shall be in accordance with Section 9 of the WSPP Agreement. Billings and payment shall be sent to:

Pinnacle West Capital Corporation
Attention: Cash Management, Station 9996
P. O. Box 53920
Phoenix, AZ 85072-3920

California Dept of Water Resources
Attention: Peter Garris
1416 9th Street
Sacramento, CA 95814

Wire Information:



PWMT Contract No.62529 shall be included on all correspondence or invoices in reference to this Confirmation Agreement.

If the above accurately reflects the terms and conditions of the agreement between CDWR and PWMT on May 2, 2001, please sign a copy of this Confirmation Agreement and return it via fax to the PWMT Confirm Administrator listed above.

Pinnacle West Capital Corporation

Signature:

David A. Hansen

Print Name: David A. Hansen

Title: Director, Pinnacle West Marketing & Trading

Date: _____

California Department of Water Resources

Signature:

Peter S. Garris

Print Name: Peter S. GARRIS

Title: CHIEF CERS OPERATIONS

Date: 5/16/01

Bulk Power
Contracts
Department

By *CG*