

**MEMORANDUM OF AGREEMENT REGARDING COLLABORATION ON THE  
PLANNING, PRELIMINARY DESIGN AND ENVIRONMENTAL COMPLIANCE  
FOR THE DELTA HABITAT CONSERVATION AND CONVEYANCE  
PROGRAM IN CONNECTION WITH THE DEVELOPMENT OF THE BAY  
DELTA CONSERVATION PLAN**

This Memorandum Of Agreement (MOA) establishes a joint process among the California Department of Water Resources (DWR), the U.S. Department of the Interior's Bureau of Reclamation (Reclamation), and certain contractors and representatives of contractors for water from the State Water Project (SWP contractors) and federal Central Valley Project (CVP contractors) listed on the signature page to this MOA (SWP and CVP contractors are sometimes referred to collectively as the Water Agencies). The purpose of this MOA is to enable timely analysis of appropriate habitat conservation and water supply measures, including Delta conveyance options that are developed in the Bay Delta Conservation Planning (BDCP) process. This MOA also addresses certain financial matters related to budgeting, cost sharing, funding sources, and the use of these funds to accomplish the purposes of this MOA. DWR, Reclamation, and the Water Agencies are sometimes referred to herein individually as a "Party" or collectively as "Parties".

**RECITALS**

- A. On February 28, 2008, Governor Schwarzenegger, in a letter to State Senators Perata, Machado, and Steinberg, stated his intention to direct DWR to proceed under the California Environmental Quality Act (CEQA) to evaluate at least four alternative Delta conveyance strategies in coordination with the BDCP.
- B. The BDCP is a voluntary effort by multiple State and federal resource agencies, water agencies, and other stakeholder groups (Attached as Exhibit 1) to develop a comprehensive Habitat Conservation Plan under the federal Endangered Species Act and Natural Community Conservation Plan under the State Natural Community Conservation Planning Act to better protect at-risk species in a manner that also recognizes the importance of water supply, seismic and flood durability, ecosystem health and resilience, water quality, schedule, and costs. The BDCP process is guided by principles set forth in the September 2006 Planning Agreement which establishes a Steering Committee, a group of Potentially Regulated Entities, and a decision-making process. DWR, Reclamation, and the Water Agencies are members of the BDCP Steering Committee and are participating in the process to develop the BDCP.
- C. In November 2007, the Steering Committee described in a memorandum entitled "Points of Agreement for Continuing into the Planning Process," (Attached as Exhibit 2) that it will evaluate a full range of potential facility design and operational parameters for Delta water conveyance options to achieve the BDCP conservation and planning objectives over the near and long term.
- D. In 2008, in close collaboration with the BDCP Steering Committee, DWR issued a Notice of Preparation under the CEQA and U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Reclamation issued a Notice of Intent under the National Environmental Policy Act (NEPA) to commence an environmental review process for the BDCP, which will include measures that incorporate options for improving the Delta water conveyance system.
- E. This MOA will support and complement the activities of the Steering Committee by establishing roles and responsibilities that will facilitate the funding and planning for the Delta water conveyance and habitat conservation studies. The Parties will refer to this effort as the "Planning Phase" of the "Delta Habitat Conservation and Conveyance Program" ("DHCCP" or "Program"). DWR, Reclamation, and the Water Agencies intend to enter into separate agreements related to funding the work necessary or providing mechanisms to transfer funds for the planning,

preliminary design, and environmental compliance documents required by CEQA and NEPA.

- F. Accordingly, to accomplish the stated purpose of the MOA, DWR, Reclamation, and the Water Agencies enter into this MOA to facilitate an efficient and cost effective process that will:
- (a) establish a DWR Program Manager and a Reclamation Program Manager for the DHCCP Planning Phase;
  - (b) analyze potential responses to the multiple threats to the State's economic well being posed by the current conveyance system's vulnerability to seismic risk and climate change;
  - (c) facilitate the assessment, planning and environmental analysis of likely conservation measures or elements of the BDCP, particularly the Delta water conveyance options;
  - (d) coordinate and exchange information among the Parties as the BDCP, CEQA and NEPA, and DHCCP Planning Phase moves forward;
  - (e) support a plan that can adapt to the evolving Delta environmental conditions;
  - (f) consider prudent funding of species conservation and improved Delta water conveyance facilities in order to achieve related benefits to water supply, water supply reliability, and ecosystem health and resiliency.

## **AGREEMENT**

NOW THEREFORE, it is mutually agreed by the Parties as follows:

### **I. Establishment of Delta Habitat Conservation and Conveyance Program Executive Committee, Core Team, and Related Processes.**

- A. Establishment of a DHCCP Executive Committee.
1. The Parties hereby establish the DHCCP Executive Committee (Executive Committee) comprised of the DWR Director, Reclamation Mid-Pacific Regional Director, Executive Director of the San Luis-Delta Mendota Water Authority, Chief Executive Officer of the Santa Clara Valley Water District, and the General Managers of the Westlands Water District, the Metropolitan Water District of Southern California, the Kern County Water Agency, two additional SWP contractor general managers selected through the State Water Project Contractors Authority (SWPCA), and two additional CVP contractor general managers selected through the San Luis-Delta Mendota Water Authority, at least one of which shall be a manager from a member agency of the SLDMWA.
  2. The Executive Committee will meet periodically as needed to carry out the activities described below, but at least quarterly. The Executive Committee will prepare and maintain minutes of its meetings.
  3. The Executive Committee will be provided a detailed update by Program Managers on the status of activities described in this MOA.
  4. The Executive Committee members will provide information and individual advice on the DHCCP Planning Phase, including:
    - a. progress on meeting DHCCP Planning Phase goals and objectives;
    - b. progress in implementing the actions undertaken pursuant to this MOA and resolving any issues related to these actions; and
    - c. measures that may be implemented in the event insufficient progress is being made in completing the DHCCP Planning Phase, or any element thereof.

5. The Executive Committee members will provide direction and oversight regarding activities that should be undertaken by their representatives on the DHCCP Core Team established below in Section I.B.
6. Any disputes over any of the activities discussed in this MOA shall be resolved by the DWR Director and Reclamation Regional Director as expeditiously as possible, after consultation with other members of the Executive Committee.
7. Each Party represented on the Executive Committee will act under its independent authority and any determinations or decisions made as a participant on the Executive Committee will be an independent determination or decision, including any determinations or decisions required by CEQA or NEPA. As limited by the foregoing, the Parties will not be obligated to accept or be bound by any determinations or decisions made by other Parties represented on the Executive Committee.

**B. Establishment of DHCCP Core Team.**

1. The Parties will establish a DHCCP Core Team (Team) that will provide individual advice regarding the direction and coordination of DHCCP activities, including the planning, financing, environmental review, permitting, and preliminary design of DHCCP Planning Phase options.
2. The Team will consist of one representative from each member of the Executive Committee. A member may change its designated representative by notifying all other members in writing.

**C. Team Meetings.**

1. The Team will establish a biweekly schedule for regular meetings to discuss development of activities, assignments, and ongoing work progress. Meetings may be scheduled more frequently at the discretion of the Team. The Team may establish and schedule meetings of subcommittees to coordinate implementation of this MOA and to specifically address technical, legal, and other matters as needed. Attendance at all meetings may be augmented to include staff or consultants to ensure that the appropriate expertise is available to address pertinent issues.

2. The Team will meet at least quarterly with the Executive Committee, and more frequently when needed, to provide status updates and discuss matters covered in this MOA.
3. Advance notice of Team meetings and agendas will be provided to the Team members and to the Executive Committee members. Notice will be by electronic mail unless notice by mail is requested.
4. The Team will attempt to provide meeting materials in advance of the scheduled meetings to provide Team members and the Executive Committee members with sufficient notice and information to facilitate meaningful participation.
5. Team shall establish a financial management and review coordinating committee that will meet monthly and report to the Team. The purpose of the Committee is to assist the Team in monitoring and managing invoicing, payments, cash flow, and other financial matters as directed by the Team, which are related to the DHCCP Planning Process.

**D. Team Activities.**

1. The Team members will provide individual advice on specific issues related to implementation of this MOA. The Team will work cooperatively and in an integrated manner with the Program Managers.
2. The Team will provide technical assistance and expertise on the DHCCP Planning Phase.
3. The Team will develop a process to facilitate communication, schedule meetings, distribute information, and other organizational requirements that will help to meet the objectives of this MOA.
  - a. The Parties will share all relevant DHCCP Planning Phase information with the Team in a timely manner.
  - b. The Team may meet with other interested stakeholders or groups, such as the BDCP PRE Committee, the SWC-CVP Water Contractor's Coordination Group, the BDCP Public

Outreach Planning and Scheduling Group, and the BDCP Working Groups, to:

- i. coordinate activities;
- ii. facilitate efficient and effective use of resources and staff; and
- iii. provide consistency with related efforts, such as the BDCP, Delta Vision, and Delta Risk Management Strategy.

## **II. Roles and Responsibilities of the Parties.**

- A. The Parties will work jointly to meet the objectives of this MOA.
- B. The Parties will coordinate all activities related to fulfillment of the objectives of this MOA. The Parties shall cooperate with one another and work as efficiently and effectively as possible in the pursuit of all activities and decisions described in this MOA and those that are not particularly described but which are related to or arise out of the activities that are described.
- C. As requested by the Program Managers, each of the Parties will provide expertise, guidance, and data on those matters for which it has specific expertise or authority, as needed to carry out the work of the Team and meet the objectives of this MOA. DWR and Reclamation will provide actual direction to the Program Managers and consultants, consistent with this MOA.
- D. After execution of this MOA, the Team shall create an Exhibit to this MOA that describes the anticipated tasks to be performed hereunder and a schedule for performance of said tasks. (Exhibit 3 is a placeholder for the Program Tasks and Schedule.) It is recognized that refinement of the tasks and the schedule will be necessary to conform to developing information, permitting and other requirements. Therefore, Exhibit 3 may be revised from time to time upon agreement of the Parties without constituting an amendment to this MOA.
- E. DWR has designated a Program Manager and its representative on the Team. Reclamation will designate a Program Manager and its representative on the Team. The Water Agencies' Executive Committee members will each designate a representative to serve on the Team. All Team members will work collaboratively to meet the purpose of this MOA.
- F. The Parties will ensure that staffing is available to carry out the Program and to assist the Program Managers.

- G. Through the State contracting process, DWR, in collaboration with the other Parties, has retained a consultant with program management experience to assist the Parties in meeting the objectives of the DHCCP Planning Phase and this MOA and in carrying out the activities determined through the BDCP and permitting processes. DWR, in collaboration with the other Parties, may retain other consulting services as necessary to ensure the timely completion of the tasks necessary in these efforts.
- H. DWR, in collaboration with the other Parties, has retained an environmental consultant to prepare necessary documents under CEQA and NEPA. DWR will act as lead agency under the CEQA and Reclamation will act as one of the lead agencies under NEPA. The Parties will coordinate during the preparation of the CEQA and NEPA documents. However, DWR and Reclamation will each remain responsible for making the final decisions regarding their respective environmental documents, as required by Public Resources Code Sections 21100 and 21108; California Code of Regulations, Title 14, Sections 15025, 15089, 15090; and the National Environmental Policy Act (NEPA), Title 42 of the United States Code, section 4321 et seq., and in accordance with Federal NEPA regulations (40 C.F.R. § Chapter V).
- I. The Parties will provide support and leadership to the Executive Committee and Team by contributing staff time, information, and facilities within available resources

### **III. Program Funding.**

- A. Funding pursuant to this MOA addresses only the planning, preliminary design, and environmental compliance actions that do not involve irrevocable commitments of funds for construction or other implementation of the Program. This set of actions is referred to as the "Planning Phase" of the DHCCP. If the Parties determine to proceed with actions beyond the Planning Phase, including the implementation and construction phases of the DHCCP, the Parties may enter into supplemental funding agreements.
- B. DWR has developed an estimated DHCCP Planning Phase Budget with specific DHCCP Planning Phase elements and will work collaboratively with all of the Parties to develop revisions to the budget. Additionally, Reclamation has developed an estimated budget for participating on the tasks of the DHCCP Planning Phase that are consistent with Reclamation's general planning authority. The total cost for the Planning Phase of the Program is currently estimated by DWR at \$140 million. A copy of the initial budget is attached hereto as Exhibit 4. No DHCCP Planning Phase task order shall exceed Ten Million Dollars.



- C. The Program Managers and the Executive Committee will discuss sources of funds, commitments, obligations, encumbrances, expenditures, projected expenditures to completion, and a comparison of actual to budgeted expenditures no less than once every quarter and whenever actual expenditures for any DHCCP Planning Phase element exceed 80 percent of the budgeted amount for that element.
- D. After the execution of this MOA, before any work is commenced on a DHCCP Planning Phase task order, DWR and Reclamation shall consult with the other members of the Executive Committee, and in the event any member of the Executive Committee objects to a DHCCP Planning Phase task order proceeding, the Executive Committee shall meet on the first date convenient to its members, but not later than 14 days after the expression of the objection, to attempt to resolve the objecting member's concerns. DHCCP Planning Phase budgets for successive fiscal years will be coordinated among the Parties as appropriate.
- E. Participating SWP contractors and CVP contractors have agreed among themselves that the costs of the DHCCP Planning Phase should be shared initially on an equal 50-50 basis. Additionally, participating SWP and CVP contractors have agreed that in-kind services provided by Reclamation will be credited toward the participating CVP contractors' 50 percent contribution. Any funds provided to DWR via a financial assistance agreement with Reclamation will also be credited towards the CVP contractors' portion of the DHCCP Planning Phase costs.
- Upon completion of the Planning Phase, and if the DHCCP proceeds to implementation, a mechanism shall be established between SWP and CVP contractors, or other appropriate entities, and DWR for reapportionment of DHCCP Planning Phase costs based on calculated benefits of the implemented and/or constructed DHCCP conservation measures to each Project. Any funds or in-kind services provided by Reclamation during the DHCCP planning phase are considered sunk costs and are not available for reapportionment as described above.
- F. DWR will sign separate funding agreements with the participating CVP contractors and a financial assistance agreement with Reclamation. DWR will also sign separate funding agreements with SWP contractors that are willing to advance funds for DHCCP Planning Phase costs through billing procedures based upon the Water Supply contracts. The separate funding agreements for both the SWP and CVP contractors will allow contractors to withdraw from this MOA and the separate funding agreement under specified conditions.

- G. Reclamation may sign separate agreement(s) with participating CVP contractors to contribute funds for the DHCCP Planning Phase.
- H. In the event a Water Agency withdraws from this MOA pursuant to Section IV, that Water Agency shall not be responsible for the cost of any DHCCP Planning Phase task orders that are subsequently approved by DWR or that were approved by DWR less than 60 days prior to the date the notice of withdrawal was transmitted to DWR pursuant to Section IV.A. The withdrawal of one or more Parties shall not impair the authority of the remaining Water Agencies to continue with the implementation of this MOA. However, the withdrawn Water Agencies shall remain responsible for the costs of completing any DHCCP Planning Phase task order approved prior to the dates set forth above. Any funding agreement entered into in conjunction with this MOA will include such terms and conditions necessary to effectuate the intent of this provision and the provisions of Section IV.B.
- H. If additional funds from non-parties become available and are appropriated for any action in furtherance of the BDCP, the Parties will determine how the additional money will affect the shared cost allocations and/or contributions by the Parties in the separate funding agreements.

#### **IV. Withdrawal, Substitution and Termination.**

- A. Subject to any restrictions established by any DHCCP Planning Phase funding agreement, any Party may withdraw from this MOU upon 30 days written notice to the other Parties. If a Party intends to withdraw it shall, coincident with the providing of notice to the other Parties, provide a detailed written explanation to the other Parties explaining why the Party intends to withdraw.
- B. If DWR withdraws from this MOA, it shall terminate. If Reclamation or any of the Water Agencies withdraw from the MOA, the remaining Parties shall notify DWR within seven days of the effective date of the withdrawal as to whether they intend to continue operating under this MOA. Failure to provide such notice shall be deemed an agreement to continue as a Party to this MOA. In the event of termination, the Parties' liability for reasonable termination costs shall be set forth in the separate funding agreements. In the event of withdrawal by one or more of the Water Agencies, liability for costs incurred in fulfillment of the DHCCP or the objectives of this MOA shall be set forth in the separate funding agreements, in accordance with Section III.H of this MOA. In the event of withdrawal by Reclamation, liability for costs incurred in fulfillment of the

DHCCP or the objectives of this MOA shall be set forth in the financial assistance agreement.

- C. If the Water Agencies become members of a Joint Powers Authority (JPA) which includes among its purposes collaboration on the analysis, development, and implementation of appropriate habitat conservation measures, including Delta Conveyance options, in coordination with the development of the BDCP, the JPA shall execute this MOA and thereafter become the "Water Agencies" for the purposes of this MOA. The JPA will thereafter be responsible for selecting the Water Agencies' representatives on the Executive Committee, the number of which shall remain unchanged. If the JPA assumes the role of the Water Agencies, withdrawal from this MOA by the Water Agencies shall only occur through notice from the JPA and such notice shall cause this MOA to terminate.

**V. Miscellaneous Provisions.**

- A. This MOA may be modified by written agreement of all of the Parties.
- B. No Delegation of Authorities.
1. The purpose of this MOA is to establish an agreed-upon cooperative process to provide planning, preliminary design and environmental compliance regarding conservation measures and Delta conveyance options in coordination with the BDCP process.
  2. Nothing in this MOU constitutes a delegation by any Party of its existing authority to make any decision it is mandated by law to make, including:
    - a. Making a final determination or commitment, that it is mandated to make independently by CEQA or NEPA,
    - b. Making any other final decision on a project,
    - c. Complying with a court order or regulatory order, or
    - d. Pursuing a project according to individual legal authority.
  3. Nothing in this MOA shall amend, abridge, or in any way alter the legal responsibilities or authorities of the Parties. Nothing in the MOA shall amend, abridge, or modify any provisions of the Water Supply Contracts between the DWR and any of its SWP contractors or the water supply contracts between Reclamation and any of its CVP contractors.

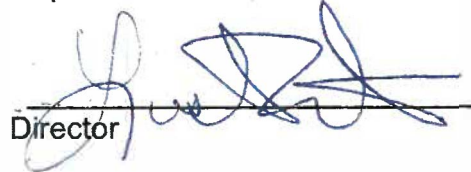
4. All provisions of this MOA are intended and will be interpreted to be consistent with all applicable provisions of State and federal law. The undersigned recognize that public agencies signatories to this MOA have specific statutory and regulatory authority and responsibilities, and that actions of these public agencies must be consistent with applicable procedural and substantive requirements of State and federal law. Nothing in this MOA is intended to, nor will have the effect of, constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this MOA constitutes an admission by any party as to the proper interpretation of any provision of law, nor is anything in the MOA intended to, nor will it have the effect of, waiving or limiting any public entity's rights and remedies under any applicable law.
  5. Execution of this MOA does not constitute a waiver by any signatory of any right or remedy it may have, nor does execution constitute pre-approval or any project or preferred project alternative, or waive or otherwise abridge responsible trustee duties required, or discretion authorized, under State and federal law.
- C. The expenditure of any money or the performance of any obligation of the United States under this MOA shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States for failure to perform any obligation under this MOA in the event that funds are not appropriated or allotted.
  - D. This MOA shall become effective upon signature and date of the Parties listed below and upon the execution of the funding agreements referenced in Section III above.
  - E. The Parties may execute this MOA in multiple originals each of which will be deemed to be an original official copy, or counterpart.

This MOA is signed and dated:

DWR:

Approved as to legal form  
and Sufficiency

State of California  
Department of Water Resources



Chief Counsel  
Department of Water Resources

Director

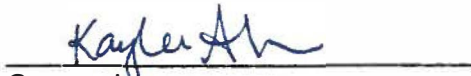
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Date 3/12/09

Reclamation:

Approved as to ~~legal form~~ <sup>LA</sup>  
~~and Sufficiency~~

U.S. Department of the Interior  
Bureau of Reclamation



Counsel  
U.S. Department of the Interior  
Bureau of Reclamation

Regional Director

Date 3/12/09

Date 3/12/09

SCVWD:

Approved as to legal form  
and Sufficiency

Santa Clara Valley Water District

Counsel  
Santa Clara Valley Water District

Chief Executive Officer

Date \_\_\_\_\_

Date \_\_\_\_\_

This MOA is signed and dated:

DWR:

Approved as to legal form  
and Sufficiency

State of California  
Department of Water Resources



Chief Counsel  
Department of Water Resources

Director

Date 3/12/09

Date 3/12/09

Reclamation:

Approved as to legal form  
and Sufficiency

U.S. Department of the Interior  
Bureau of Reclamation

\_\_\_\_\_  
Counsel  
U.S. Department of the Interior  
Bureau of Reclamation

\_\_\_\_\_  
Regional Director

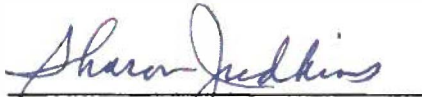
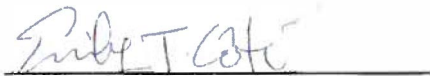
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Date \_\_\_\_\_

SCVWD:

Approved as to legal form  
and Sufficiency

Santa Clara Valley Water District



Counsel  
Santa Clara Valley Water District

Chief Executive Officer

Date 3/13/09

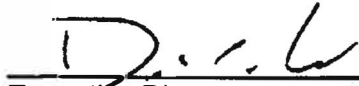
Date 3/13/09

**SLDMWA:**

**Approved as to legal form  
and Sufficiency**

**San Luis Delta Mendota  
Water Authority**

  
\_\_\_\_\_

  
\_\_\_\_\_

**Counsel  
San Luis Delta Mendota  
Water Authority**

**Executive Director**

Date 3-12-09

Date 3/12/09

**SWPCA:**

**Approved as to legal form  
and Sufficiency**

**State Water Project Contractors  
Authority**

\_\_\_\_\_  
**Counsel  
State Water Project  
Contractors Authority**

\_\_\_\_\_  
**General Manager**

Date \_\_\_\_\_

Date \_\_\_\_\_

**MWDSC:**

**Approved as to legal form  
and Sufficiency**

**Metropolitan Water District of  
Southern California**

\_\_\_\_\_  
**Counsel  
Metropolitan Water District of  
Southern California**

\_\_\_\_\_  
**General Manager**

Date \_\_\_\_\_

Date \_\_\_\_\_

**SLDMWA:**

Approved as to legal form  
and Sufficiency

San Luis Delta Mendota  
Water Authority

\_\_\_\_\_  
Counsel  
San Luis Delta Mendota  
Water Authority

  
\_\_\_\_\_  
Executive Director

Date \_\_\_\_\_

Date 3/12/09

**SWPCA:**

Approved as to legal form  
and Sufficiency

State Water Project Contractors  
Authority

\_\_\_\_\_  
Counsel  
State Water Project  
Contractors Authority

  
\_\_\_\_\_  
General Manager

Date \_\_\_\_\_

Date 3/13/09

**MWDSC:**

Approved as to legal form  
and Sufficiency

Metropolitan Water District of  
Southern California

\_\_\_\_\_  
Counsel  
Metropolitan Water District of  
Southern California

\_\_\_\_\_  
General Manager

Date \_\_\_\_\_

Date \_\_\_\_\_



SLDMWA:

Approved as to legal form  
and Sufficiency

San Luis Delta Mendota  
Water Authority

\_\_\_\_\_  
Counsel  
San Luis Delta Mendota  
Water Authority

  
\_\_\_\_\_  
Executive Director

Date \_\_\_\_\_

Date 3/12/09

SWPCA:

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and Sufficiency

State Water Project Contractors  
Authority

\_\_\_\_\_  
Counsel  
State Water Project  
Contractors Authority

\_\_\_\_\_  
General Manager


Date \_\_\_\_\_

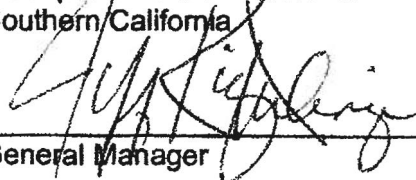
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MWDSC:

Approved as to legal form  
and Sufficiency

Metropolitan Water District of  
Southern California

  
\_\_\_\_\_  
General Counsel  
Metropolitan Water District of  
Southern California


  
\_\_\_\_\_  
General Manager

Date 3/12/09


Date 3/12/09

KCWA:

Approved as to legal form  
and Sufficiency


  
\_\_\_\_\_  
Counsel  
Kern County Water Agency  
Date 3/12/2009

Kern County Water Agency

  
\_\_\_\_\_  
General Manager  
Date 3/12/09

WWD:

Approved as to legal form  
and Sufficiency

  
\_\_\_\_\_  
Counsel  
Westlands Water District  
Date 3/12/2009

Westlands Water District

\_\_\_\_\_  
General Manager  
Date \_\_\_\_\_

KCWA:

Approved as to legal form  
and Sufficiency

Kern County Water Agency

\_\_\_\_\_  
Counsel  
Kern County Water Agency

\_\_\_\_\_  
General Manager

Date \_\_\_\_\_

Date \_\_\_\_\_

WWD:

Approved as to legal form  
and Sufficiency

Westlands Water District

\_\_\_\_\_  
Counsel  
Westlands Water District

  
\_\_\_\_\_  
General Manager

Date \_\_\_\_\_

Date 3/12/09

## Exhibit 1

## BDCP Steering Committee ~ Members and Alternates

<b>State/Federal Agencies</b>	<b>MEMBERS</b>	<b>ALTERNATES</b>
Resources Agency	Karen Scarborough (CHAIR)	
CBDA	Joe Grindstaff	Keith Coolidge
State Water Resources Control Board	Tom Howard	
US Army Corps of Engineers	Paul Robershotte	
<b>PRE's</b>	<b>MEMBERS</b>	<b>ALTERNATES</b>
DWR	Lester Snow	Jerry Johns
Bureau of Reclamation	Don Glaser	Federico Barajas
Kern	Brent Walthall	Tom Clark
Metropolitan Water District	Roger Patterson	Randall Neudeck
Mirant	John Chillemi	Ron Kino
San Luis Delta-Mendota	Dan Nelson	Ara Azhderian
Santa Clara Valley	Greg Zlotnick	Cindy Kao
Westlands	Tom Birmingham	Jason Peltier
Zone 7	Jill Duerig	Kurt Arends
<b>ENVIROMENTAL</b>	<b>MEMBERS</b>	<b>ALTERNATES</b>
American Rivers	Richard Roos-Collins	Steve Rothert
Defenders of Wildlife	Kim Deifino	
Environmental Defense Fund	Ann Hayden	Michael Bean
Natural Heritage Institute	Greg Thomas	John Cain
The Nature Conservancy	Anthony Saracino	Campbell Ingram
The Bay Institute	Gary Bobker	
<b>OTHER</b>	<b>MEMBERS</b>	<b>ALTERNATES</b>
CA Farm Bureau	Kenny Watkins	
Contra Costa Water District	Greg Gartrell	
Friant Water Authority	Ron Jacobsma	Steve Ottemoeller
North Delta Water Agency	Melinda Terry	
<b>Participating Fish Agencies</b>	<b>MEMBERS</b>	<b>ALTERNATES</b>
DFG	Don Koch	John McCamman
FWS	Ren Lohofener	John Engbring
NOAA	Russ Strach	Ted Meyers
<b>BDCP Management Team</b>		
Paul Cylinder	Marc Ebbin	Laura King Moon
Pete Rawlings	Will Stelle	Karla Nemeth

## Exhibit 2

**The Bay Delta Conservation Plan:  
Points of Agreement  
for  
Continuing into the Planning Process**

(November 16, 2007)

**1.0 Introduction**

Members of the Steering Committee for the Bay Delta Conservation Planning (BDCP) process are developing a conservation plan for the Bay Delta pursuant to the Endangered Species Act (ESA) and the Natural Community Conservation Planning Act (NCCPA).

Under a Planning Agreement dated October 6, 2006, the Steering Committee worked over the course of this year on developing an overall approach to the BDCP. We have chosen to concentrate initially on different approaches to conveyance and how they would likely contribute to achieving the planning goals and conservation objectives of the Planning Agreement and affect habitat restoration opportunities across the Delta.

This memorandum describes the agreements reached by the Steering Committee to date on the basic approaches to several important topics for the plan, including potential improvements to the water conveyance system, and strategies for in-Delta habitat restoration and enhancement. The Steering Committee has also agreed on the importance of addressing several other topics for purposes of proceeding into the planning process, including the development of adaptive management and monitoring programs, and a clear and reliable structure for plan implementation, including effective institutional arrangements for adaptive management. The Steering Committee will use these agreements as the starting points for developing the overall conservation plan for the Bay Delta.

For certain topics, such as improvements to the water conveyance system, this memorandum provides a preliminary level of detail, commensurate with the level of evaluation undertaken thus far by the Steering Committee and its technical team. Other elements are described more generally and will be further developed during the course of the planning process.

This memorandum is not intended to be a comprehensive and exhaustive enumeration of all of the elements of a scientifically-sound and legally-defensible conservation plan under the ESA or the NCCPA. The overall conservation plan will be developed during the planning process. An attachment to this memorandum outlines the range of topics which the Steering Committee will address in the BDCP.

The Steering Committee will develop the content of the BDCP during the remainder of 2007 and throughout 2008. The proposed plan will then be fully analyzed under relevant state and federal environmental laws, including the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), to ascertain if the proposed plan will achieve its conservation and water supply objectives and satisfy other applicable requirements. These analyses will include a reasonable range of alternatives and will be subject to thorough public

review and comment. Through these analyses and public review, the Steering Committee anticipates that additional ideas and approaches will emerge and be incorporated into the final BDCP. Therefore, all of the substantive decisions of the Steering Committee at this juncture about the basic approaches enumerated in this memorandum are open to change and adjustment as the planning process matures and as new information warrants.

The members of the Steering Committee intend to develop and evaluate the design, operational parameters and governance arrangements that may be necessary to achieve the plan's conservation and water supply objectives. The Steering Committee also intends to address issues of timing, implementation schedules and funding responsibilities for the different elements of the plan. The Steering Committee further expects that some of the actions described in the BDCP will be completed earlier than other actions. The Steering Committee will develop those details through the course of the planning process itself, and then analyze and refine them pursuant to the NEPA/CEQA process described above.

Members of the Steering Committee also understand that the BDCP will ultimately reflect a comprehensive set of agreements. As such, none of the members of the Steering Committee is bound to any single element of the plan until agreement has been reached on the final plan as a whole. Unless the Steering Committee agrees otherwise, this document is not intended to constitute an endorsement of any potential capital improvement projects prior to approval of the final plan. The agreements enumerated in this memorandum should therefore be understood in this broader context.

## **2.0 Description of Key Points of Agreement**

The Steering Committee agrees that it will develop a Bay Delta Conservation Plan that will include the following elements, which will be further developed, analyzed and improved upon as described in Section 1.0, *Introduction*.

### **2.1 Habitat Restoration and Enhancement**

The BDCP will contain a habitat restoration and enhancement program designed to increase the quality and quantity of habitat and otherwise help achieve the conservation objectives for covered species, enabled in part by improvements to conveyance over the near and long term. Initial habitat restoration and enhancement efforts will be directed toward areas that offer the greatest conservation opportunities, such as in Suisun Marsh and in the north and west Delta. Completion of a new Sacramento River intake and isolated conveyance facilities (described in Section 2.3 *Conveyance Facilities*) would change the hydrodynamic conditions in the Delta in a manner that would likely afford new opportunities for habitat restoration and enhancement in various other parts of the Delta.

The types of habitat restoration and enhancement actions which will be initially evaluated for inclusion in the conservation strategy include:

- Restoring intertidal habitat to establish vegetated marshes and associated sloughs to increase habitat diversity and complexity, food production and in-Delta productivity, and rearing habitat for covered species.

- Increasing hydraulic residence time and tidal exchange within the Delta sloughs and channels by changing circulation patterns to increase primary productivity and food web support and improve turbidity conditions for Delta smelt and longfin smelt.
- Increasing the amount of functional floodplain habitat to increase the quantity and quality of rearing habitat for salmonids and sturgeon and spawning habitat for Sacramento splittail, and generate food resources for pelagic species.
- Providing adequate water quality and quantity within the Delta at appropriate times to help conserve resident native fishes and improve rearing and migration habitats for salmon moving through the Delta.

As information is gathered through the planning process and as part of project implementation, the Steering Committee anticipates that additional restoration and enhancement opportunities may be identified, evaluated and implemented based upon their ability to achieve applicable conservation objectives.

### *2.2 Other Conservation Actions*

The Steering Committee agrees to evaluate and, as appropriate, include in the BDCP other conservation actions designed to help address a number of stressors on covered species other than water conveyance facilities and operations. These stressors include:

- Exposure to contaminants
- Non-native species competition and predation
- Entrainment at non-CVP/SWP intake facilities
- Harvest
- Reduced genetic diversity and integrity
- Effects of climate change

A list of conservation actions that may potentially address these and other stressors is included in the BDCP Conservation Strategy Options Evaluation (September 17, 2007) section 8.0 *Opportunities for Conservation Elements Available under all Options*.

### *2.3 Conveyance Facilities*

The Steering Committee agrees that the most promising approach for achieving the BDCP conservation and water supply goals involves a conveyance system with new points of diversion, the ultimate acceptability of which will turn on important design, operational and institutional arrangements that the Steering Committee will develop and evaluate through the planning process. The main new physical feature of this conveyance system includes the construction and operation of a new point (or points) of diversion in the north Delta on the Sacramento River and an isolated conveyance facility around the Delta. Modifications to existing south Delta facilities to reduce entrainment and otherwise improve the State Water Project's (SWP) and Central Valley Project's (CVP) ability to convey water through the Delta while contributing to near and long-term conservation and water supply goals will also be evaluated. This approach may provide enhanced operational flexibility and greater opportunities for habitat

improvements and fishery protection. During the BDCP process, the Steering Committee will evaluate the ability of a full range of design and operational scenarios to achieve BDCP conservation and planning objectives over the near and long term, from full reliance on the new facilities to use of the new facilities in conjunction with existing facilities.

#### *2.4 Water Operations and Management*

The Steering Committee will develop and evaluate operating criteria for water conveyance facilities to achieve applicable near and long-term conservation and water supply goals.

#### *2.5 Monitoring, Assessment and Adaptive Management*

The Steering Committee agrees that the BDCP will include comprehensive adaptive management and monitoring programs with measurable objectives to address uncertainties regarding the role and importance of various stressors and the capacity of the conservation strategy to achieve its conservation objectives. Monitoring will be used to evaluate the success of the BDCP in meeting these objectives, including the effectiveness of the conservation strategy to address the needs of the covered species. Specifically, the monitoring program will generate information: 1) to determine if the objectives are being met; 2) to assess the effectiveness of conservation actions; and 3) to provide feedback to guide adaptive management. As described in Section 2.8, the adaptive management program will include effective institutional arrangements to administer the conservation actions and other plan elements over the plan term.

#### *2.6 Scientific Input*

During the planning process and consistent with the NCCPA, the Steering Committee will continue to seek independent scientific input to further inform the development of the BDCP. The Steering Committee will use the Independent Science Advisors' November, 2007 Conservation Guidelines Report as an important source of information to guide the development, evaluation, and implementation of the BDCP.

#### *2.7 Cost and Funding*

The Steering Committee agrees that the BDCP will include an analysis of the costs associated with plan implementation, including one-time and on-going costs. This analysis will be used to determine the level of funding and other resources that will be required to implement the BDCP. The BDCP will identify potential sources of funds for implementation, reflecting the concept of proportionality identified in the Planning Agreement, and will include assurances that adequate funding will be provided to implement the plan over its term.

#### *2.8 Implementation Structure and Decision Making*

The BDCP will include a description of the steps and actions necessary to implement the plan, including an implementation approach and schedule for BDCP conservation actions. The plan will further detail a decision-making structure for the elements of the plan, that includes the establishment of an entity or entities to assume responsibility for plan implementation, and will assign specific functions and duties to such an entity or entities. The implementing entity or entities would likely be responsible for such matters as habitat restoration and enhancement and other conservation actions; the adaptive management and monitoring program; and plan funding, oversight, and reporting.



### ***3.0 Background Information***

Over the course of this past year, the Steering Committee has evaluated different conceptual approaches to the development of the BDCP. These analyses focused primarily on the different approaches to long-term water conveyance and on restoration and enhancement opportunities that would likely advance BDCP goals and objectives. The agreements reached on these and other topics are set out in this memorandum; this section summarizes the process used by the Steering Committee to arrive at these agreements.

To facilitate a focused discussion of these issues, the Steering Committee established a Conservation Strategy Workgroup in February, 2007, which met regularly through June. The Conservation Strategy Workgroup delineated the overall goals and objectives for the BDCP, identified a wide range of conservation strategy options, and synthesized the most promising elements of those options into more detailed options centered on potential changes to the existing water conveyance system in the Delta. The workgroup also considered the opportunities afforded by these options for physical habitat restoration and enhancement, and for other conservation actions that would advance the BDCP goals and objectives.

Initially, the Conservation Strategy Workgroup identified ten “conservation strategy alternatives” for further evaluation. To better assess these strategies, the workgroup organized elements of the strategies into what it termed “conservation element bundles” (bundles). The workgroup then developed, and the Steering Committee approved, seventeen criteria by which the workgroup would evaluate the relative capacity of each of the bundles to achieve BDCP goals and objectives. These seventeen criteria were aggregated into four categories:

- ⊙ biological criteria,
- ⊙ planning criteria,
- ⊙ flexibility/sustainability/durability criteria, and
- ⊙ other resources impacts criteria.

The BDCP consultant team conducted a qualitative evaluation of these conservation bundles, the results of which were presented in a May, 2007 report to the Steering Committee entitled “Draft Conservation Strategy Short-Listing Analysis Report.”

The Steering Committee then developed a short-list of four separate conservation strategy options, each of which were focused on two key components: water conveyance facilities and habitat restoration opportunities. These four options were subjected to a more in-depth analysis of their relative capacity to achieve the planning and conservation goals of the BDCP. The four options consisted of the following:

- ⊙ Option 1 provided for use of existing facilities and for habitat restoration to be focused in Suisun Marsh and the north and west Delta.
- ⊙ Option 2 provided for improved through-Delta conveyance and for habitat restoration to be focused in Suisun Marsh and the north, west, and south-central Delta.
- ⊙ Option 3 provided for dual-conveyance, which contemplated improved through-Delta conveyance and a new diversion located on the Sacramento River that would convey

water around the Delta to the south Delta CVP and SWP pumping facilities. Habitat restoration would be focused in Suisun Marsh and the north, west, and south-central Delta.

☉ Option 4 provided for a new diversion, located on the Sacramento River, which would convey water around the Delta to the south Delta CVP and SWP pumping facilities. Habitat restoration would be focused in Suisun Marsh and throughout the Delta.

In early September, 2007, the consultant team provided the Steering Committee a report entitled the “BDCP Conservation Strategy Options Evaluation” (Options Evaluation), which further analyzed the four options. This report set out a largely qualitative assessment of the opportunities and constraints of each option relative to achieving the planning goals and conservation objectives. The report evaluated each of the four options using the same seventeen criteria which it had earlier identified. The report analyzed the ability of each of the four options to affect each of the seventeen criteria in comparison to a base condition (which approximated current biological and hydrodynamic conditions) and in comparison to the other options.

The evaluation of the options was based primarily on the results of hydrodynamic modeling (CALSIMII and DSM2) and on the opportunities for habitat restoration afforded by each. To conduct the modeling, the Steering Committee directed its consultant team to identify a range of water operational values, represented by two scenarios, which were used as key model input parameters. Results for each of the scenarios provided the Steering Committee with information relating to the relative flexibility of each option to meet conservation and water supply objectives.

The purpose of the Options Evaluation was to assist the Steering Committee in better understanding of the implications – positive and negative – of each of the four options and their potential capacity to meet overall BDCP goals and objectives. On the basis of the Options Evaluation and on other relevant reports and information,<sup>1</sup> the Steering Committee arrived at agreement on these approaches.

#### ***4.0 Next Steps for the BDCP***

This section highlights the various topics that the Steering Committee will likely address in the upcoming months as it begins the planning process for the development of the BDCP. These “next steps” are not intended to reflect all the steps that will be involved in the planning process, but rather they identify the key areas of focus for the Steering Committee and the consultant team over the next several months. The attachment to this memorandum provides an example of a more complete enumeration of the many elements which may, ultimately, comprise the BDCP. Early focus on the topics identified below will allow for other plan elements to be developed in a timely and orderly manner.

- **Biological Goals and Objectives.** Define the preliminary biological goals and objectives to guide initial plan development, including preliminary goals for each covered species to meet the conservation and management goals in section 3 of the Planning Agreement.

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<sup>1</sup> These reports include the CALFED Bay-Delta Program, Diversion Effects on Fish: Issues and Impacts. June 25, 1998; the CALFED Bay-Delta Program, Diversion Effects on Fish: Evaluation of a Revised Through-Delta Scenario, September 28, 1998; the CALFED Bay-Delta Program: Final Programmatic EIR/EIS, 2000; and the California Resources Agency, Pelagic Fish Action Plan, March 2007.

- **Habitat Restoration and Enhancement Program.** Develop the major program elements of the in-Delta and Suisun Marsh habitat restoration program. Identify the location of habitat restoration opportunity areas and describe the potential conservation benefits to covered species at each location.<sup>2</sup>
- **Conservation Actions to Address Other Stressors.** Develop other conservation program elements (not included in the habitat restoration program) to address other stressors in the Delta (e.g., toxics, non-native introductions, harvest) and identify which specific biological goals and objectives for covered species these elements would address.
- **Water Conveyance Facilities.** Develop and analyze potential designs, and identify key operational parameters, for the long-term conveyance system, including a new diversion in the north Delta and the improvement to through-Delta conveyance. Further identify those improvements that could be implemented in the early stages of plan implementation.
- **Existing Ecological Conditions.** Continue to gather data and information relevant to the conservation planning process and complete a preliminary description of the existing ecological conditions in the Delta, including ecological profiles for each of the nine covered fish species.
- **Analytical Tools.** Identify the suite of analytical tools and models that will support thorough, scientifically defensible analyses of the potential benefits and impacts associated with conservation strategies developed for the BDCP. Such tools would be used to assess the ability of the plan to achieve its applicable conservation and water supply objectives.
- **In-Delta Water Quality.** Identify issues relating to the potential effect of the conveyance system on in-Delta water quality and of other potential actions that may help meet appropriate water quality objectives for the duration of the plan.

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<sup>2</sup>Habitat restoration within Suisun Marsh will be coordinated with the ongoing Suisun Marsh Restoration and Management planning processes.

## **Attachment A**

### **Working Draft BDCP HCP/NCCP Document Table of Contents**

**Note:** This working draft table of contents is intended to inform the Steering Committee of the likely contents and organization of the BDCP HCP/NCCP document (some sections are discretionary and some are required for compliance under ESA section 10 and NCCPA).

#### **Executive Summary**

#### **Chapter 1. Introduction**

- 1.1 Background**
- 1.2 BDCP Goals and Objectives**
- 1.3 Regulatory Context**
- 1.4 Scope of the BDCP**
- 1.5 Overview of the BDCP Development Process**

#### **Chapter 2. Existing Ecological Conditions**

- 2.1 Introduction**
- 2.2 Historical Conditions**
- 2.3 Current Ecological Conditions**
- 2.4 Biodiversity**

#### **Chapter 3. Conservation Strategy**

- 3.1 Introduction**
- 3.2 Biological Goals and Objectives**
- 3.3 Approach to Conservation**
- 3.4 Conservation Concepts**
- 3.5 Ecosystem Level Conservation Measures**
- 3.6 Natural Community Conservation Measures**
- 3.7 Species-Specific Conservation Measures**
- 3.8 Implementation Schedule**
- 3.9 Monitoring and Research**
- 3.10 Adaptive Management**

#### **Chapter 4. Description of Covered Activities**

- 4.1 Introduction**
- 4.2 Water Deliveries**
- 4.3 Existing Water Supply Facilities Operations and Maintenance**
- 4.4 New Water Supply Facilities and Operations and Maintenance**
- 4.5 Mirant Energy Water Use**

#### **Chapter 5. Assessment of Impacts and Level of Take**

- 5.1 Introduction and Approach**
- 5.2 Regulatory Context and Environmental Baseline**
- 5.3 Impact Assessment Methods**

- 5.4 Impacts on Covered Natural Communities**
- 5.5 Impacts on Covered Species**
- 5.6 Cumulative Effects**
- 5.7 Indirect Effects Outside of the Planning Area**

Chapter 6. Plan Implementation

- 6.1 Implementation Schedule**
- 6.2 Compliance Monitoring and Reporting**
- 6.3 Regulatory Assurances and Changed and Unforeseen Circumstances**
- 6.4 Permit Duration, Amendment, Renewal, and Enforcement**

Chapter 7. Implementation Structure

Chapter 8. Implementation Costs and Funding Sources

- 8.1 Cost to Implement the BDCP**
- 8.2 Funding Sources and Assurances**

Chapter 9. Alternatives to Take Considered

Chapter 10. Independent Science Advisory Process

Chapter 11. List of Preparers

Chapter 12. References

Appendices

The following are potential appendices to the BDCP HCP/NCCP document.

- Covered Species Accounts
- SWP and CVP Contracts Covered by the Plan
- Hydrologic/Hydrodynamic Analyses
- Acronyms and Abbreviations used in the BDCP HCP/NCCP
- Glossary of Terms used in the BDCP HCP/NCCP
- List of Species Mentioned in the BDCP HCP/NCCP
- Methods for Delineating Natural Communities and Constituent Habitat Types
- Covered Natural Communities x Species Matrix

**Exhibit 3**  
**Program Tasks and Schedule**  
**(To Be Developed by Core Team after Execution of MOA)**

**Exhibit 4**  
**Initial DHCCP Planning Phase Budget**  
(in \$1000)

Program Element	2008		2009		2010	
	Jan-Jun	Jul-Dec	Jan-Jun	Jul-Dec	Jan-Jun	Jul-Dec
Management, Planning, & Administration	\$ 0	\$ 3,134	\$ 2,885	\$ 2,915	\$ 2,995	\$ 2,995
Right of Way	\$ 611	\$ 3,155	\$ 2,818	\$ 3,568	\$ 3,817	\$ 3,817
Preliminary Engineering	\$ 476	\$ 7,840	\$11,115	\$11,523	\$15,903	\$15,903
Environmental Services	\$ 178	\$ 5,645	\$ 6,554	\$ 11,390	\$ 7,141	\$ 6,895
Legal Services	\$ 0	\$ 455	\$ 767	\$ 767	\$ 518	\$ 518
General Operating Expenses	\$ 5	\$ 1,540	\$ 438	\$ 502	\$ 389	\$ 477
Six Month Total	\$ 1,270	\$21,769	\$24,577	\$30,665	\$30,763	\$30,605
Calendar Year Total	\$ 23,039		\$ 55,242		\$ 61,368	