

JOINT POWERS AGREEMENT
FORMING THE
STATE AND FEDERAL WATER
CONTRACTORS AGENCY

Effective August 19, 2009

Joint Powers Agreement – State and Federal Contractors Water Agency

This AGREEMENT is made and entered into by and among the Metropolitan Water District of Southern California, a public agency formed pursuant to the Metropolitan Water District Act, [Statutes 1969, ch. 209, as amended; West's California Water Code Appendix Chapter 109], the Kern County Water Agency, a public agency formed pursuant to the Kern County Water Agency Act [Statutes 1961, ch. 1003, as amended, West's Water Code Appendix, Chapter 99], the State Water Project Contractors Authority, a joint powers agency formed pursuant to Government Code section 6500 et seq., acting through its Delta Specific Project Committee, the San Luis & Delta-Mendota Water Authority, a joint powers agency formed pursuant to California Government Code section 6500 et seq., the Westlands Water District, a public agency of the State of California formed pursuant to California Water Code section 37823, and the Santa Clara Valley Water District, a public agency formed pursuant to Santa Clara Valley Water District Act [Statutes 1951, ch. 56, as amended; West California Water Code Appendix, Chapter 60], which are referred to herein individually as a "Party" and collectively as "Parties".

RECITALS

WHEREAS, each of the Parties is a public entity organized and operating under the laws of the State of California; and

WHEREAS, each of the Parties recognizes the close connection between the ecosystem health of the Sacramento-San Joaquin Delta ("Delta") and the ability to provide crucial water supplies from the Delta and its tributaries to water users throughout the State; and

WHEREAS, the Parties desire to protect both the Delta ecosystem and the more than 25 million people and 3,000,000 acres of highly productive farm land that currently depend upon water conveyed through the Delta; and

WHEREAS, the Parties desire to provide such protection directly through improvements in the manner water is put to beneficial use, including method of diversion, demand side management programs, and integrated regional water management; and

WHEREAS, the Parties desire to provide such protection directly through the implementation of additional measures that are intended to provide for the conservation of protected species dependent on the Delta; and

WHEREAS, the Parties desire to ensure that key habitat areas are identified, secured, and protected as essential elements of a comprehensive approach to Delta management; and

WHEREAS, the Parties have a common interest in improving Delta habitat in an expeditious manner; and

WHEREAS, the Parties have a common interest in timely completion and efficient implementation of the Bay Delta Conservation Plan ("BDCP"); and

WHEREAS, the Parties have common interests in jointly cooperating on research and studies concerning the State Water Project and the Central Valley Project, and

WHEREAS, the aforementioned activities may best be achieved through the cooperative action of the Parties operating through a joint powers authority; and

WHEREAS, each of the Parties is authorized to contract with each other for the joint exercise of common powers under Article 1, Chapter 5, Division 7, Title 1 of the Government Code (commencing with Section 6500); and

WHEREAS, the Parties desire to create a joint powers authority that is named **State and Federal Contractors Water Agency (“Agency”)**.

Now, therefore, it is agreed by and between the Parties hereto as follows.

ARTICLE I: DEFINITIONS

As used in this Agreement, unless the context requires otherwise, the meanings of the terms set forth below shall be as follows:

- 1.1 “Agreement” means this Joint Powers Agreement, which creates the Agency.
- 1.2 “Board” or “Board of Directors” means the governing body of the Agency as established by Article II (**Creation of the Agency**) of this Agreement.
- 1.3 “Central Valley Project” or “CVP” means the federal reclamation project operated by Reclamation pursuant to federal reclamation law (Act of June 17, 1902 (32 Stat. 388)) and acts amendatory or supplementary thereto.
- 1.4 “Conservation Measures” are actions to protect species dependent upon the Sacramento-San Joaquin River Delta and/or to protect water supplies for the more than 25 million people and 3,000,000 acres of highly productive farm land that currently depend upon water conveyed through the Delta. Conservation Measures may include, but are not limited to, actions that provide for the conservation of protected species, improve habitat (quality or quantity), improve the water supply and conveyance system, limit effects of toxics, limit effects of non-native species, and/or limit the adverse effects of water diversions.
- 1.5 “Member” means a public entity, including each of the Parties, that satisfies the requirements of Article V (Membership) of this Agreement.
- 1.6 “Reclamation” means the United States Bureau of Reclamation.
- 1.7 “San Luis & Delta-Mendota Water Authority” means the joint powers authority formed pursuant to California Government Code section 6500 *et seq.* that consists of member public agencies that contract with the United States Bureau of Reclamation for water supply from the Central Valley Project for distribution and use within areas of California.

- 1.8 “State” means the State of California.
- 1.9 “State Water Project Contractors Authority” or “SWPCA” means the joint powers authority formed pursuant to California Government Code section 6500 *et seq.* that consists of member public agencies that contract with the California Department of Water Resources for water supply from the State Water Project for distribution and use within areas of California.
- 1.10 “Delta Specific Project Committee” or “DSPC” means the committee of the SWPCA formed, among other functions, to act for SWPCA in entering into and carrying out the terms and conditions of this Agreement.
- 1.11 “State Water Project” or “SWP” means the State Water Facilities, as defined in California Water Code section 12934(d).

ARTICLE II: CREATION OF THE AGENCY

There is hereby created pursuant to the Joint Exercise of Powers Act, California Government Code section 6500 *et seq.*, a public entity to be known as the State and Federal Contractors Water Agency, which shall be an agency that is separate from the Members.

ARTICLE III: TERM

This Agreement shall become effective upon execution by each of the Parties and shall remain in effect until terminated pursuant to the provisions of Article XV (**Withdrawal of Members**) of this Agreement.

ARTICLE IV: PURPOSES AND POWERS

4.1 Purpose. The purpose of this Agreement is to establish a public entity separate from its Members to pursue Conservation Measures, to carry out research and studies concerning the State Water Project and the Central Valley Project, and to pursue any and all activities related or incidental thereto.

4.2 Powers. The Agency, and more specifically those Members that elect to participate in the particular Project pursuant to a Project Agreement in accordance with Article X (Specific Projects) of this Agreement, shall have the power in the name of the Agency to exercise common powers of its Members, including, but not limited to, the following:

4.2.1 To make and enter into contracts necessary for the full exercise of its powers;

4.2.2 To perform environmental review, engineering, and design for, and, if appropriate, to permit, construct or develop Conservation Measures or other facilities consistent with the purposes of the Agency;

4.2.3 To obtain and hold rights, permits and other authorizations for or pertaining to Conservation Measures or other facilities either by the Agency alone or in cooperation with the State, the United States, or other non-member entities;

4.2.4 To contract for the services of engineers, scientists, attorneys, planners, technical specialists, financial consultants, and separate and apart therefrom, to employ such persons as it deems necessary;

4.2.5 To enter into agreements with the United States of America, the State, or any other public or private entity, including for the provision of all or a portion of the local contribution which may be required for the promotion, planning, construction, ownership, financing, operation, maintenance, and, if necessary, repair of any Conservation Measures or other facilities;

4.2.6 To act as and for the “Water Agencies” in a manner consistent with the “Memorandum of Agreement Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation Program in Connection with the Development of the Bay Delta Conservation Plan,” a copy of which is attached hereto as Exhibit 1.

4.2.7 To incur debts, liabilities, or obligations subject to the limitation herein set forth;

4.2.8 To acquire, hold, and dispose of property necessary for the full exercise of its powers;

4.2.9 To issue bonds, notes, and other indebtedness, to enter into leases, installment sales, and installment purchase contracts;

4.2.10 To apply for, accept, and receive state, federal or local licenses, permits, grants, loans, or other aid from any agency of the United States, the State or other public or private entities necessary for the Agency’s full exercise of its powers;

4.2.11 To undertake any investigations, studies, and matters of general administration;

4.2.12 To develop, collect, provide, and disseminate to the Members and others information that furthers the purposes of the Agency;

4.2.13 To sue and be sued in its own name;

4.2.14 To perform all acts necessary or proper to carry out fully the purposes of this Agreement; and

4.2.15 To the extent not hereinafter specifically provided for, to exercise any powers in the manner and according to the methods provided under the laws applicable to the State Water Project Contractors Authority.

ARTICLE V: MEMBERSHIP

5.1 Members. Each Party which possesses the powers described in the recitals and in Article IV (**Purposes and Powers**) of this Agreement that executes this Agreement and any addenda, amendments or supplements thereto, and which has not, pursuant to the provisions hereof, withdrawn from this Agreement, shall be a Member.

5.2 New Members. Any public entity that is not a Member on the effective date of this Agreement shall be a Member upon (a) the approval of the Board of Directors, (b) payment of all previously incurred costs that the Board determines have resulted in benefit to the public entity, (c) payment of applicable fees and charges, and (c) written agreement to the terms and conditions of this Agreement.

ARTICLE VI: DIRECTORS AND OFFICERS

6.1 Formation of Board of Directors. The Agency shall be governed by a Board of Directors.

6.1.1 Westlands Water District, Metropolitan Water District of Southern California, Kern County Water Agency, and Santa Clara Valley Water District will each appoint one Director to the Board of Directors;

6.1.2 The San Luis & Delta-Mendota Water Authority will appoint three members to the Board of Directors; and

6.1.3 The DSPC will appoint two Directors to the Board of Directors.

6.1.4 Each Director shall be appointed prior to the initial meeting, as set forth in Article VII (**Director Meetings**) of this Agreement.

6.2 Requirements. The Directors shall be directors, officers, or employees of the Members. For Members that are joint powers agencies, the Directors appointed by those Members may be directors, officers or employees of the joint powers agency or of any public agency that is a member of the joint powers agency. Each Director shall certify to the Secretary in writing that he or she has been appointed to be a Director by the Member and that he or she meets the qualifications established by this section 6.2.

6.3 Alternate Directors. Each Member shall appoint one Alternate Director for each Director it appoints. Alternate Directors shall have no vote if the Director is present. If the Director is not present, the Alternate Director appointed by the Director to act in his/her place may cast a vote.

6.4 Removal of Directors. Directors and Alternate Directors serve at the pleasure of their respective Members and may be removed or replaced at any time. Upon removal of a Director, the Alternate Director shall serve as Director until a new Director is appointed by the Member. Members must submit any changes in Director or Alternate Director positions to the Secretary in writing and signed by the Member.

6.5 Officers. Officers of the Agency shall be a President, Vice President, Secretary, and Treasurer. Any number of offices may be held by the same person provided that the President shall not also serve as the Vice President, Secretary, or Treasurer. The Vice President, or in the Vice President's absence, the Secretary shall exercise all powers of the President in the President's absence or inability to act. The President, the Vice President, and the Secretary must be members of the Board of Directors. The Board, or its designated representative, shall contract either with an independent certified public accountant or the Treasurer or Chief Financial Officer of any Member, to serve as Treasurer of the Agency and to be the depository of and have custody of funds, subject to the requirements of Government Code sections 6505-6505.6. If the Treasurer for the Agency also serves as the Treasurer for one of the Members, the funds of the Agency shall be kept in accounts separate from those of the Member.

6.6 Appointment of Officers. Officers shall be chosen annually by, and serve at the pleasure of the Board. As provided for in Article VII (**Director Meetings**) of this Agreement, Officers shall be chosen at the first Board meeting following July 1st of each year. An Officer may serve for multiple consecutive terms. Any Officer may resign at any time upon written notice to the Board.

6.7 Legal Counsel. The Board may retain legal counsel, who shall report to the Board.

ARTICLE VII: DIRECTOR MEETINGS

7.1 Initial Meeting. The initial meeting of the Board of Directors shall be called by the State Water Project Contractors Authority, through the DSPC, and held in Sacramento, California within thirty (30) days of the effective date of this Agreement. The Directors shall, at their first meeting, elect all officers and select an Auditor. Unless changed by the Directors, Sacramento County shall be the domicile of the Agency.

7.2 Time and Place. The Directors shall meet at least twice per year at a time and place set by the Board, and at such other times as may be determined by the Board.

7.3 Special Meetings. Special meetings of the Directors may be called by the President or three (3) or more Directors and held at such times and places within California as may be ordered by the President or the Directors.

7.4 Conduct. All meetings of the Board, including special meetings, shall be noticed, held, and conducted in accordance with the Ralph M. Brown Act or the Bagley-Keene Open Meeting Act, to the extent applicable. The Board and Alternate Directors may use teleconferencing in connection with any meeting in conformance with and to the extent authorized by the applicable laws.

ARTICLE VIII: MEMBER VOTING

8.1 Quorum. A quorum of any meeting of the Board shall consist of a majority of the Directors. In the absence of a quorum, any meeting of the Directors may be adjourned from time to time by a vote of a majority present, but no other business may be transacted. For purposes of

this Article, a Director shall be deemed present if the Director appears at the meeting in person or telephonically.

8.2 Director Votes. Each Director shall have one (1) vote. Except as otherwise specified in this Agreement, all decisions shall be made by a majority vote of all the Directors.

8.3 Application to Specific Projects. The rights and obligations set forth in this Article shall apply to each Project, unless the Project Agreement states otherwise.

ARTICLE IX: EXECUTIVE DIRECTOR

9.1 Appointment. The Board shall hire an Executive Director who shall be compensated for his/her services, as determined by the Board.

9.2 Duties. The Executive Director shall be the chief administrative officer of the Agency, shall serve at the pleasure of the Board of Directors, and shall be responsible to the Board for the proper and efficient administration of the Agency. The Executive Director shall have the powers designated in the Bylaws.

9.3 Staff. The Executive Director shall employ such additional full-time and/or part-time employees, assistants and independent contractors that may be necessary from time to time to accomplish the purposes of the Agency, subject to the approval of the Board for any contract in excess of \$ 100,000.00.

9.4 Term and Termination. The Executive Director will serve until he/she resigns or the Board decides to terminate his/her employment.

ARTICLE X: SPECIFIC PROJECTS

10.1 Project(s). The Agency intends to carry out Conservation Measures and other activities in furtherance of the purposes of and consistent with the powers established by this Agreement. Each of the Conservation Measures or related activities is considered for purposes of this Agreement as a "Project." The Agency may undertake all or any portion of each such Project on its own or in conjunction and cooperation with the United States, the State, or any other public or private entity.

10.2 Member Participation. A Project may involve all or less than all the Members, and no Member shall be required to be involved in a Project, as a Member of the Agency, involving less than all of the Members.

10.3 Project Agreement. Prior to undertaking any Project, the Members electing to participate in the Project shall enter into a Project Agreement. Except as may be explicitly provided in this Agreement, each Project Agreement shall provide the terms and conditions by which the Members that enter into the Project Agreement will participate in the Project. All assets, rights, benefits and obligations attributable to the Project shall be assets, rights, benefits and obligations of those Members which have entered into the Project Agreement. Any debts, liabilities, obligations or indebtedness incurred by the Agency in regard to a particular Project shall be the debts, liabilities, obligations or indebtedness of the Members who have executed the

respective Project Agreement in accordance with the terms of such Project Agreement and shall not be the debts, liabilities, obligations and indebtedness of those Members who have not executed the Project Agreement. If a Project is to be undertaken by less than all of the Members of the Agency, the Members intending to participate in that Project shall each appoint a representative to a Project committee for that Project.

10.4 Board Approval. The Board of Directors shall have the authority to disapprove any Project Agreement upon a determination that the Project Agreement has specific, substantial adverse impacts upon Members that have not executed the Project Agreement.

ARTICLE XI: COMMITTEES

The Board may from time to time appoint one or more advisory committees or establish standing committees to assist in carrying out the objectives of the Agency. The Board shall determine the purpose and need for such committees and the necessary qualifications for individuals appointed to them. Each advisory or standing committee shall include at least one representative of a Member and a representative of a Member shall act as the chair thereof. However, no committee or participant on such committee shall have any authority to act on behalf of the Agency.

ARTICLE XII: ACCOUNTING PRACTICES

12.1 General. The Board shall establish and maintain such funds and accounts as may be required by generally accepted utility accounting practice.

12.2 Fiscal Year. Unless the Directors decide otherwise, the fiscal year for the Agency shall be March 1 through the last day of February of the following year.

12.3 Auditor.

12.3.1 An Auditor shall be chosen annually by, and serve at the pleasure of the Board. As provided for in Article VII (Director Meetings) of this Agreement, the Auditor shall be chosen at the first Board meeting. An Auditor may serve for multiple consecutive terms. The Auditor may resign at any time upon written notice to the Board.

12.3.2. The Auditor shall make an annual audit of the accounts and records of the Agency. A report shall be filed as a public record with the Auditor of the county where the Agency is domiciled consistent with Government Code section 6505, and with each agency that is a Member. Such report also shall be filed with the Secretary of State within twelve (12) months of the end of the fiscal year under examination.

12.4 Duties of the Treasurer. The Treasurer shall be the depository and have custody of all money of the Agency from whatever source and shall perform the duties specified in Government Code section 6505.5. The Treasurer shall be bound in accordance with Government Code section 6505.1 and shall pay demands against the Agency that have been approved by the Board. All funds of the Agency shall be strictly and separately accounted for, and regular reports shall be rendered to the Board of all receipts and disbursements at least quarterly during the

fiscal year. The books and records of the Agency shall be open to inspection by a Director at all reasonable times upon reasonable notice.

ARTICLE XIII: BUDGET AND EXPENSES

13.1 General Expense Accounts. For the purpose of funding general expenses for the ongoing operations of the Agency, there shall be established by the Board and approved in connection with the annual budget process a General Expense Account. Contributions to this General Expense Account shall be allocated fifty (50) percent to the State Water Project Contractors Authority and fifty (50) percent to the San Luis & Delta-Mendota Water Authority. The other Parties shall not be required to contribute to this General Expense Account, other than indirectly as a member of the State Water Project Contractors Authority and/or the San Luis & Delta-Mendota Water Authority.

13.2 Project Expense. Expenses associated with each Project shall be allocated among those Members participating in the Project. The method of allocation shall be established by the participating Members through the Project Agreement.

13.3 Return of Contributions. In accordance with Government Code section 6512.1, repayment or return to the Members of all or any part of any contributions made by Members and any revenues by the Agency may be directed by the Board at such time and upon such terms as the Board may decide. The Agency shall hold title to all funds and property acquired by the Agency during the term of this Agreement.

13.4 Issuance of Bonds. The issuance of bonds, notes or other forms of indebtedness, including entering into leases for real property or equipment, shall be approved at a meeting of the Directors by a supermajority of at least seventy (70) percent of all Directors. In the event of approval of indebtedness for a Project, bonds, notes, or other forms of indebtedness or leases of property for the Project must be approved by a supermajority of at least seventy (70) percent of the Directors who represent the Members that are parties to the Project Agreement for that Project.

ARTICLE XIV: LIABILITIES

14.1 No Member Liability. The debt, liabilities and obligations of the Agency shall be the debts, liabilities and obligations of the Agency alone, and not the Members.

14.2 Indemnity. Funds of the Agency may be used to defend, indemnify and hold harmless the Agency, each Member, each Director, and any officers, agents and employees of the Agency for their actions taken within the course and scope of their duties while acting on behalf of the Agency, including pursuant to a Project Agreement. Other than for gross negligence or intentional acts, the Agency shall indemnify and hold harmless each Member, its officers, agents and employees from and against all claims, demands, or liability, including legal costs, arising out of or are encountered in connection with this Agreement and the activities conducted hereunder and shall defend each of them against any claim, cause of action, liability, or damage resulting therefrom. Should funds of the Agency be used pursuant to this paragraph as a result of actions taken under a Project Agreement, the provisions of paragraph 10.3

regarding responsibility for costs and other obligations related to a Project Agreement shall apply.

ARTICLE XV: WITHDRAWAL OF MEMBERS

15.1 Termination of Membership. The Board of Directors may terminate the membership of any Member upon good cause and a two-thirds majority vote. Good cause includes, but is not limited to, Members not possessing powers common to the other Members.

15.2 Unilateral Withdrawal. A Member may unilaterally withdraw from this Agreement without causing or requiring termination of this Agreement, effective upon sixty (60) days' written notice to the Executive Director.

15.3 Effect of Withdrawal or Termination.

15.3.1 A Party whose membership has been terminated or who withdraws shall remain obligated to pay its share of all debts, liabilities and obligations of the Agency incurred or accrued prior to the effective date of such termination or withdrawal other than debts, liabilities and obligations incurred pursuant to any Project Agreement to which the withdrawing or terminating Member is not a participant.

15.3.2 In the event the Party whose membership has been terminated or who withdraws has any rights in any Conservation Measures or obligations to the Agency, the Party cannot sell, lease, or transfer such rights or be relieved of its obligations, except in accordance with a written agreement executed between it and the Agency.

15.3.3 No refund or repayment of the initial commitment of funds shall be made to a Party whose membership has been terminated or who withdraws whether pursuant to this Article or any other Article of this Agreement. The refund or repayment of any other contribution shall be made in accordance with the terms and conditions upon which the contribution was made, or other agreement of the Agency and withdrawing Member.

15.4 Rescission or Termination of Agency. This Agreement may be rescinded and the Agency terminated by unanimous written consent of all Members, except during the outstanding term of any Agency indebtedness. Nothing in this Agreement shall prevent the Members from entering into other joint exercise of power agreements.

15.5 Return of Contribution. Upon termination of this Agreement, any surplus money on-hand shall be returned to the Members in proportion to their contributions made. The Board of Directors shall first offer any property, works, rights and interests of the Agency for sale to the Members on terms and conditions determined by the Board. If no such sale to Members is consummated, the Board shall offer the property, works, rights, and interest of the Agency for sale to any governmental agency, private party or persons for good and adequate consideration. The net proceeds from any sale shall be distributed among the Members in proportion to their contributions made. If no such sale is consummated, then all property, works, rights, and interests of the Agency shall be given equally to all of the Members that financed the property, works, rights and interests.

ARTICLE XVI: BYLAWS

At, or as soon as practicable after, the first meeting of the Board of Directors, the Board shall draft and approve Bylaws of the Agency to govern the day-to-day operations of the Agency.

ARTICLE XVII: MISCELLANEOUS PROVISIONS

17.1 Non-Waiver of Sovereign Authority. Nothing herein shall constitute a waiver or relinquishment of sovereign authority of any Member with respect to any decision related hereto, including, but not limited to, the decision to participate in any action hereunder or to participate in an action separate and apart herefrom.

17.2 No Predetermination or Irretrievable Commitment of Resources. Nothing herein shall constitute a determination that any action, including Conservation Measures, shall be undertaken or that any irretrievable commitment of resources shall be made, until such time as the required compliance with the California Environmental Quality Act, National Environmental Policy Act, or permit requirements, as applicable, has been completed.

17.3 Notices. Notices to a Director or Member hereunder shall be sufficient if delivered to the principal office of the respective Director or Member and addressed to the Director or Member. Delivery may be accomplished by U.S. Postal Service, private mail service, or electronic mail.

17.4 Amendments To Agreement. This Agreement may be amended or modified at any time only by subsequent written agreement approved and executed by each of the Members.

17.5 Agreement Complete. The foregoing constitutes the full and complete Agreement of the Members. There are no oral understandings or agreements not set forth in writing herein.

17.6 Severability. Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any applicable Federal law or any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions hereof shall not be affected thereby, provided however, that if the remaining parts, terms, or provisions do not comply with Government Code sections 6500 *et seq.*, this Agreement shall terminate.

17.7 Withdrawal by Operation of Law. Should the participation of any Member to this Agreement be decided by the courts to be illegal or in excess of that Member's authority or in conflict with any law, the validity of the Agreement as to the remaining Members shall not be affected thereby.

17.8 Assignment. Except as otherwise provided in this Agreement, the rights and duties of the Members may not be assigned or delegated without the written consent of all other Members. Any attempt to assign or delegate such rights or duties in contravention of this Agreement shall be null and void.

17.9 Binding on Successors. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Members hereto. No creditor, assignee, or third-party beneficiary of any Member shall have any right, claim or title to any part, share interest, fund, or asset of the Agency.

17.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

17.11 Singular Includes Plural. Whenever used in this Agreement, the singular form of any term includes the plural form and the plural form includes the singular form.

17.12 Limitations on Liability. Section 14.2 of this Agreement defines the scope of the Agency's duty to defend, indemnify and hold harmless any Director, officer, agent or employee. The Agency may purchase such insurance as the Board may deem appropriate for this purpose. Notwithstanding Government Code section 6507, if, despite the separate nature of the Agency from its Members, and if the Members elect to be responsible for the liabilities imposed on the Agency, then, in contemplation of section 895.2 of the Government Code, and pursuant to the authority contained in sections 895.4 and 895.6 of that Code, each of the Members assumes that portion of the liability imposed upon the Agency or any of its Members, officers, agents or employees by law for injury caused by any negligent or wrongful act or omission occurring during the performance of any Project Agreement entered into by that Member pursuant to Article X (**Special Projects**) of this Agreement that is not covered by insurance, in accordance with the provisions of the Project Agreement. As to any other injury caused by any negligent or wrongful act or omission occurring during the performance of this Agreement, the State Water Project Contractors Authority and the San Luis & Delta-Mendota Water Authority assume the liability imposed upon the Agency or any of its Members, officers, agents or employees by law that is not covered by insurance, in the same proportions as their respective contributions to the General Expense Account provided for under Article XIII (**Budget and Expenses**) of this Agreement. Each Member shall, to the extent provided herein, indemnify and hold harmless the other Members for any loss, costs or expenses that may be imposed on such other Members solely by virtue of Government Code section 895.2. The provisions of section 2778 of the Civil Code are made a part of this Agreement as though fully set forth in this Agreement.

17.13 Official Bonds. The Executive Director and the Auditor are designated as officers required having and filing official bonds pursuant to Government Code section 6505.1 in amounts to be fixed by the Board.

IN WITNESS WHEREOF, the Members hereto have executed this Agreement by authorized officials thereof on the dates indicated below, which Agreement may be executed in counterparts.

Dated: _____

The Metropolitan Water District of Southern
California

By: _____
Jeffery Kightlinger, General Manager

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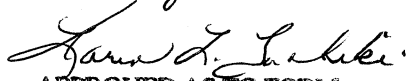
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IN WITNESS WHEREOF, the Members hereto have executed this Agreement by authorized officials thereof on the dates indicated below, which Agreement may be executed in counterparts.

Dated: August 11, 2009

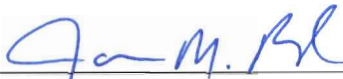

APPROVED AS TO FORM
Karen L. Tachiki
General Counsel

The Metropolitan Water District of Southern California

By: 
Jeffrey K. Klingler, General Manager

Dated: _____

Kern County Water Agency

By:  _____
James M. Beck, General Manager

Dated: _____

State Water Project Contractors Authority

By: _____
William J. Brennan, President

Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____
Daniel G. Nelson, Executive Director

Dated: _____

Westlands Water District

By: _____
Thomas W. Birmingham, General
Manager/General Counsel

Dated: _____

Santa Clara Valley Water District

By: _____
Beau Goldie, Chief Executive Officer

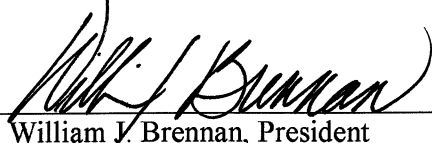
Dated: _____

Kern County Water Agency

By: _____
James M. Beck, General Manager

Dated: 8/13/09

State Water Project Contractors Authority

By: 
William J. Brennan, President

Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____
Daniel G. Nelson, Executive Director

Dated: _____

Westlands Water District

By: _____
Thomas W. Birmingham, General
Manager/General Counsel

Dated: _____

Santa Clara Valley Water District

By: _____
Beau Goldie, Chief Executive Officer

Dated: _____

Kern County Water Agency

By: _____
James M. Beck, General Manager

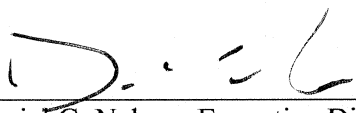
Dated: _____

State Water Project Contractors Authority

By: _____
William J. Brennan, President

Dated: August 14, 2009

San Luis & Delta-Mendota Water Authority

By:  _____
Daniel G. Nelson, Executive Director

Dated: _____

Westlands Water District

By: _____
Thomas W. Birmingham, General
Manager/General Counsel

Dated: _____

Santa Clara Valley Water District

By: _____
Beau Goldie, Chief Executive Officer

Dated: _____

Kern County Water Agency

By: _____
James M. Beck, General Manager

Dated: _____

State Water Project Contractors Authority

By: _____
William J. Brennan, President

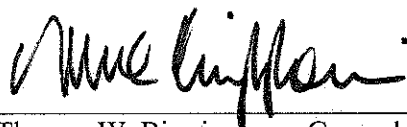
Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____
Daniel G. Nelson, Executive Director

Dated: 8.18.09

Westlands Water District

By:  _____
for Thomas W. Birmingham, General
Manager/General Counsel

Dated: _____

Santa Clara Valley Water District

By: _____
Beau Goldie, Chief Executive Officer

Dated: _____

Kern County Water Agency

By: _____
James M. Beck, General Manager

Dated: _____

State Water Project Contractors Authority

By: _____
William J. Brennan, President

Dated: _____

San Luis & Delta-Mendota Water Authority

By: _____
Daniel G. Nelson, Executive Director

Dated: _____

Westlands Water District

By: _____
Thomas W. Birmingham, General
Manager/General Counsel

Dated: 8-14-09

Santa Clara Valley Water District

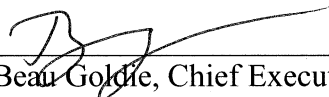
By:  _____
Beau Goldie, Chief Executive Officer

EXHIBIT 1
TO
JOINT POWERS AGREEMENT

**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) (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) (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:

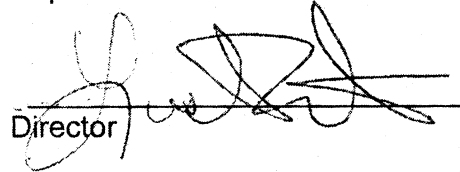
Approved as to legal form
and Sufficiency



Chief Counsel
Department of Water Resources

Date 3/12/09

State of California
Department of Water Resources

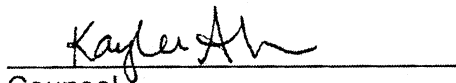


Director

Date 3/12/09

Reclamation:

Approved as to legal form [✓]
~~and Sufficiency~~



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

Date 3/12/09

U.S. Department of the Interior
Bureau of Reclamation



Regional Director

Date 3/12/09

SCVWD:

Approved as to legal form
and Sufficiency

Counsel
Santa Clara Valley Water District

Date _____

Santa Clara Valley Water District


Chief Executive Officer

Date _____

This MOA is signed and dated:

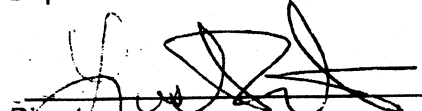
DWR:

Approved as to legal form
and Sufficiency


Chief Counsel
Department of Water Resources

Date 3/12/09

State of California
Department of Water Resources


Director

Date 3/12/09

Reclamation:

Approved as to legal form
and Sufficiency

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

Date _____


U.S. Department of the Interior
Bureau of Reclamation

Regional Director

Date _____

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Counsel
Santa Clara Valley Water District

Date 3/13/09

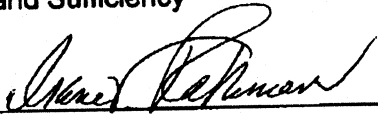
Santa Clara Valley Water District


Chief Executive Officer

Date 3/13/09

SLDMWA:

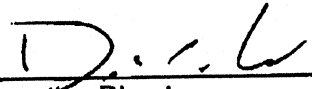
Approved as to legal form
and Sufficiency



Counsel
San Luis Delta Mendota
Water Authority

Date 3-12-09

San Luis Delta Mendota
Water Authority


Executive Director

Date 3/12/09

SWPCA:

Approved as to legal form
and Sufficiency

Counsel
State Water Project
Contractors Authority

Date _____

State Water Project Contractors
Authority

General Manager

Date _____

MWDSC:

Approved as to legal form
and Sufficiency

Counsel
Metropolitan Water District of
Southern California

Date _____

Metropolitan Water District of
Southern California

General Manager

Date _____

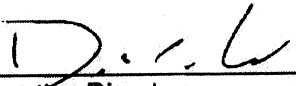
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Counsel
San Luis Delta Mendota
Water Authority

Date _____

San Luis Delta Mendota
Water Authority



Executive Director

Date 3/12/09

SWPCA:

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and Sufficiency

Counsel
State Water Project
Contractors Authority

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State Water Project Contractors
Authority



General Manager

Date 3/13/09

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Metropolitan Water District of
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General Manager

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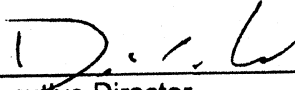
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Water Authority

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San Luis Delta Mendota
Water Authority

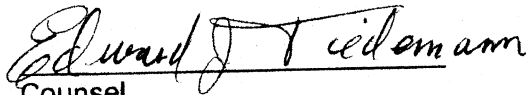


Executive Director

Date 3/12/09

SWPCA:

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and Sufficiency



Counsel
State Water Project
Contractors Authority

Date _____

State Water Project Contractors
Authority

General Manager

Date _____

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Metropolitan Water District of
Southern California

Date _____

Metropolitan Water District of
Southern California

General Manager

Date _____

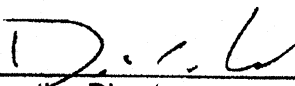
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Counsel
San Luis Delta Mendota
Water Authority

Date _____

San Luis Delta Mendota
Water Authority



Executive Director

Date 3/12/09

SWPCA:

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Counsel
State Water Project
Contractors Authority

Date _____

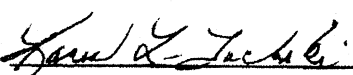
State Water Project Contractors
Authority

General Manager

Date _____

MWDSC:

Approved as to legal form
and Sufficiency



General Counsel
Metropolitan Water District of
Southern California

Date 3/12/09

Metropolitan Water District of
Southern California




General Manager

Date 3/12/09

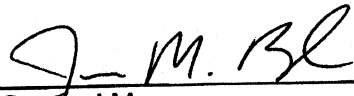
KCWA:

Approved as to legal form
and Sufficiency



Counsel
Kern County Water Agency
Date 3/12/2009

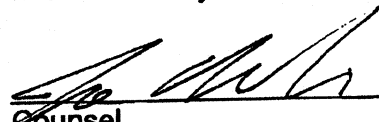
Kern County Water Agency



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

State/Federal Agencies	MEMBERS	ALTERNATES
Resources Agency	Karen Scarborough (CHAIR)	
CBDA	Joe Grindstaff	Keith Coolidge
State Water Resources Control Board	Tom Howard	
US Army Corps of Engineers	Paul Robershotte	
PRE's	MEMBERS	ALTERNATES
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
ENVIRONMENTAL	MEMBERS	ALTERNATES
American Rivers	Richard Roos-Collins	Steve Rothert
Defenders of Wildlife	Kim Delfino	
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	
OTHER	MEMBERS	ALTERNATES
CA Farm Bureau	Kenny Watkins	
Contra Costa Water District	Greg Gartrell	
Friant Water Authority	Ron Jacobsma	Steve Ottemoeller
North Delta Water Agency	Melinda Terry	
Participating Fish Agencies	MEMBERS	ALTERNATES
DFG	Don Koch	
FWS	Ren Lohoefer	John McCamman
NOAA	Russ Strach	John Engbring
	BDCP Management Team	Ted Meyers
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,¹ 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.

¹ 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.²
- **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.

²Habitat 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