

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION AND THE UNITED
STATES FISH AND WILDLIFE SERVICE, THE DEPARTMENT OF COMMERCE,
NATIONAL MARINE FISHERIES SERVICE
AND
CONTRA COSTA COUNTY
FOR
COOPERATIVE DEVELOPMENT OF THE BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT
(BDCP EIR/EIS)

This Memorandum of Understanding (MOU) is entered into jointly by the following parties: the Bureau of Reclamation (Reclamation), the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), and Contra Costa County.

I. Purpose

The purpose of this MOU is to formalize the commitment among the parties to work collaboratively in preparation of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) in compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) for the Bay Delta Conservation Plan (BDCP). This MOU is intended to clarify and define the roles and responsibilities of Reclamation, USFWS, and NMFS (NEPA Lead Agencies) and Contra Costa County as a Cooperating Agency in preparation of the BDCP EIR/EIS.

II. Introduction

Reclamation, USFWS, and NMFS, and the California Department of Water Resources (DWR) are lead agencies in preparation of the BDCP EIR/EIS in compliance with NEPA and CEQA. The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers and the State and Federal Contractors Water Authority are Cooperating Agencies under NEPA, and the California Department of Fish and Game and the State Water Resources Control Board are Responsible Agencies under CEQA.

The BDCP is a conservation plan being prepared to meet the requirements of the Federal and California Endangered Species Acts (FESA and CESA) and the State of California's Natural Community Conservation Planning Act (NCCPA). The effort to develop the BDCP is led by the California Resources Agency working in partnership with Federal agencies. It is intended that adoption of and implementation of the BDCP will be consistent with FESA, NEPA, CESA and the NCCPA and will support issuance of FESA and CESA incidental take permits for habitat conservation actions, conveyance actions, and water operations and management activities including those associated with water operations of the California State Water Project (SWP), as operated by DWR, as well as operations of certain Mirant Delta LLC (Mirant Delta) power plants. It is anticipated that the BDCP will be used as a component of relevant consultations under Section 7 with USFWS and NMFS for operations of the Federal Central Valley Project

(CVP), as operated by Reclamation, and for Federal permitting and authorizations necessary to adopt and implement the BDCP. As stated by the NEPA Lead Agencies in the Notice of Intent published on February 13, 2009, the BDCP is intended to secure authorizations that would allow actions to restore and protect water supply reliability, water quality, and ecosystem health to proceed within a stable regulatory framework.

On January 24, 2008, USFWS and NMFS issued a Notice of Intent (NOI) to conduct public scoping and prepare an EIR/EIS regarding the BDCP. A subsequent NOI for preparation of the BDCP EIR/EIS was issued on April 15, 2008, which included Reclamation as a co-lead agency, updated the status of the BDCP planning process, corrected an error in the January 24, 2008, NOI, and provided notice of scoping meetings. An additional NOI for preparation of the BDCP EIR/EIS was issued on February 13, 2009. The lead agencies have held a total of 22 scoping meetings throughout the State of California in 2008 and 2009. The lead agencies have received scoping comments and are moving forward with the process of developing the environmental analysis and other components to be included in the EIR/EIS.

III. Statutory and Regulatory Authority

This MOU is being entered into pursuant to NEPA, 42 U.S.C. Section 4331, *et seq.*, the Council on Environmental Quality's NEPA regulation regarding Cooperating Agencies, 40 C.F.R § 1508.5, the U.S. Department of the Interior's NEPA regulations, 43 C.F.R §46 *et seq.*, and its regulation regarding Cooperating Agencies, 43 CFR §26.225(d). The purpose of this MOU is to document the roles, responsibilities and commitments of the Lead agencies and Cooperating Agencies pursuant to NEPA and implementing regulations.

IV. Responsibilities

The parties to this MOU herein commit as follows:

a. NEPA Lead Agencies

The NEPA Lead Agencies are responsible for the preparation, quality, and content of the Draft and Final BDCP EIR/EIS. Other responsibilities of the NEPA Lead Agencies include:

1. Providing invitations and adequate notice for monthly BDCP Environmental Coordination Team (BECT) meetings;
2. Providing direction to and reviewing the work products of the EIS consultants;
3. Clearly identifying and acknowledging the roles and responsibilities of all NEPA Cooperating Agencies in the BDCP EIR/EIS;
4. Informing the public and decision-makers of the potential direct, indirect, and cumulative impacts of the alternatives that are reviewed during the EIR/EIS process, as well as about potential means to mitigate those impacts;
5. Identifying opportunities to avoid, minimize, or compensate for significant adverse effects due to Federal actions;
6. Providing preliminary EIR/EIS deliverables, as appropriate, to the Cooperating Agency for review and comment;

7. Providing technical analyses and information to the Cooperating Agency and soliciting its review and comment, particularly with respect to key subject areas pertaining to issues within its jurisdiction by law or special expertise as appropriate;
8. Taking those actions necessary to permit the Cooperating Agency to accomplish its responsibilities, including the provision of those documents to be reviewed by Cooperating Agency, as determined to be appropriate by the NEPA Lead Agencies.
9. Assuring compliance with all applicable laws and regulations pertaining to preparation of the BDCP EIR/EIS;
10. Making all decisions on the content of public documents;
11. Informing the Cooperating Agency of schedule changes that could affect its input to the BDCP EIR/EIS or ability to provide timely review of the document; and
12. Making all decisions contained in the Record of Decision (ROD).

b. Cooperating Agency

As a Cooperating Agency pursuant to NEPA for the BDCP EIS/EIR, to the extent that its limited fiscal, staff and other resources permit, the responsibilities of Contra Costa County include taking the following actions in a timely manner consistent with the schedule for developing and completing the EIR/EIS and with direction provided by the NEPA Lead Agencies:

1. Devoting staff resources sufficient to provide technical assistance to fulfill its role as a Cooperating Agency;
2. Attending BECT meetings;
3. Providing review and comment on preliminary EIR/EIS deliverables;
4. Providing responses to data requests pertaining to issues within its jurisdiction by law or special expertise;
5. Providing technical information and expertise directly associated with its statutory responsibilities or related experience, including review of technical analyses of key subject areas, as requested by the NEPA Lead Agencies;
6. Raising issues as early in the process as reasonably feasible to avoid delay and inefficiency;
7. Identifying data and analysis in the EIR/EIS that may be needed to fulfill its role as potential responsible agencies under CEQA and any other requirements regarding jurisdictional permits and/or other approvals required for implementation of the project;
8. Following consolidation of review comments by the NEPA Lead Agencies, providing review of individual chapters of the Administrative Draft EIR/EIS prior to public review of the Draft EIR/EIS, as requested by the NEPA Lead Agencies;
9. Reviewing comments on the Draft EIR/EIS and assisting with responses to comments as requested by the NEPA Lead Agencies;
10. Following consolidation of review comments by the NEPA Lead Agencies, providing review of portions of the Administrative Final EIR/EIS that deal with subjects within the scope of Contra Costa County's jurisdiction or expertise, as requested by the NEPA Lead Agencies, prior to public release of the Final EIR/EIS;
11. Complying with the confidentiality requirements and procedures specified below for all documents received as a part of this MOU, and
12. Except as funds may be made available pursuant to 40 C.F.R. §1501.6(b)(5), funding its own expenses associated with its participation in the NEPA process, including development of information, reviewing, and providing comments on the EIR/EIS

pertaining to the Cooperating Agency's jurisdiction and special expertise as outlined above.

V. Representation

Each of the NEPA Lead Agencies and Contra Costa County shall designate its representative for purposes of this MOU. The representatives shall be responsible for ensuring that the information sharing, collaboration, and document review procedures established by this MOU are implemented: (1) by the employees and consultants of the NEPA Lead Agencies directly responsible for the technical analyses and preparation of the environmental documents, and (2) by the employees and consultants of the Cooperating Agency.

Contra Costa County shall designate one representative and one alternate responsible for regular attendance at all BECT meetings. Changes to the identified representative and/or alternate shall be provided in writing and subject to approval by the NEPA Lead Agencies.

VI. Confidentiality

Contra Costa County agrees to keep all documents, including drafts, provided by the NEPA Lead Agencies in accordance with its Cooperating Agency status and pursuant to this MOU confidential to the extent allowable by law. Contra Costa County will provide notice to each of the NEPA Lead Agencies before disclosing any document required by law to be disclosed to outside parties that has been shared with Contra Costa County in accordance with its Cooperating Agency status and pursuant to this MOU.

Contra Costa County agrees to keep all deliberations with the NEPA Lead Agencies prior to the release of a public draft EIS/EIR confidential to the extent allowable by law.

VII. Additional Provisions

- 1. Effect of MOU.** This MOU shall take effect as to Contra Costa County when signed by Contra Costa County and the NEPA Lead Agencies.
- 2. Termination of the MOU.** This MOU shall terminate upon issuance of the ROD by the NEPA Lead Agencies, or upon written agreement of the parties.
- 3. Withdrawal from the MOU.** Any party may withdraw from the MOU with 30 days written notice to the NEPA Lead Agencies. If Contra Costa County withdraws from this MOU it will no longer be considered a Cooperating Agency for the purposes of the BDCP EIS/EIR.
- 4. Modification of the MOU.** This MOU may be modified by written agreement of the parties.
- 5. Contingent on Apportionment or Allotment of Funds.** The expenditure or advance of any money or the performance of any obligation of the United States under this MOU 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 MOU in the event that funds are not appropriated or allotted.

- 6. Liability of Contra Costa County.** Contra Costa County has limited fiscal, staff, and other resources to devote to the performance of its obligations hereunder. Consequently, Contra Costa County may not be able to fully or timely perform its obligations hereunder. By executing this MOU, Contra Costa County commits only to participate as a cooperating agency to the extent that it reasonably determines to be feasible. No liability shall accrue to Contra Costa County for failure to perform any obligation under this MOU.
- 7. Reservation of Rights.** Contra Costa County waives no rights under NEPA, CEQA or other law to comment upon, dispute or otherwise challenge the EIR/EIS or BDCP.
- 8. Conflicts of Interest.** Nothing in this document, nor any of the activities undertaken by Contra Costa County under this document shall constitute, be asserted as, or construed as, a conflict of interest or representation by any office holder, employee, or agent of Contra Costa County under Federal or California law.
- 9. Counterparts.** This MOU may be signed in counterparts.

2. Conclusion

In signing this MOU, the undersigned recognize and accept the roles and responsibilities assigned to each party. Each of the parties agrees to pursue maximum cooperation and communication to ensure that the EIR/EIS fully comply with all applicable Federal requirements and minimizes duplication of effort and project delays.

BUREAU OF RECLAMATION

By: _____ Date: _____

U.S. FISH AND WILDLIFE SERVICE

By: _____ Date: _____

NATIONAL MARINE FISHERIES SERVICE

By: _____ Date: _____

CONTRA COSTA COUNTY

By: _____ Date: _____