

DECEMBER 15, 2011

**FIRST AMENDMENT  
TO THE  
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 First Amendment to the Memorandum of Agreement (“MOA”) 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 (“First Amended MOA”) is entered into as of the last date of execution of the signatories hereto. This First Amended MOA replaces in its entirety the MOA executed by the Parties in March 2009.

The MOA, as amended, establishes a joint process among the California Department of Water Resources (“DWR”); the U.S. Department of the Interior’s Bureau of Reclamation (“Reclamation”); the State and Federal Contractors Water Agency (“SFCWA”), Metropolitan Water District of Southern California, Kern County Water Agency, State Water Project Contractors Authority, San Luis & Delta-Mendota Water Authority, Westlands Water District, and Santa Clara Valley Water District (“Public Water Agencies”).

The primary purpose of this First Amended MOA is to further efforts to develop a Bay Delta Conservation Plan that meets all applicable standards of state and federal law, and is consistent with the co-equal goals of “providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.” This First Amended MOA will enable timely analysis of conservation measures and water supply measures, including Delta conveyance options that are developed in the Bay Delta Conservation Planning process. This First Amended 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 First Amended MOA.

**RECITALS**

- A. The Parties initiated the Bay Delta Conservation Plan (“BDCP”) process in 2005-2006, and the Delta Habitat Conservation and Conveyance Program (“DHCCP”) in 2008.
- B. The BDCP is a voluntary effort to obtain long-term, incidental take permits for: 1) the operations of the State Water Project (“SWP”) through development of a comprehensive Habitat Conservation Plan (“HCP”) under the federal Endangered Species Act (“ESA”), and a Natural Community Conservation Plan (“NCCP”) under the California Natural Community Conservation Planning Act (“NCCPA”) and; 2) support for incidental take authorization for the operations of the Central Valley Project (“CVP”) under section 7 of the ESA. The BDCP is being developed in an open and inclusive process.

- C. One or more of the CVP water contractors may also seek long term incidental take permits for certain actions undertaken by them based on the BDCP under ESA section 10 and the NCCPA, including implementation of conservation measures and conveyance of water through new or improved facilities.
- D. The DHCCP is the program that is providing funding for the necessary engineering and investigation programs and preparation of the BDCP Environmental Impact Statement and Environmental Impact Report ("EIS/EIR") pursuant to the federal National Environmental Policy Act ("NEPA") and the California Environmental Quality Act ("CEQA").
- E. On June 1, 2010, DWR, Reclamation, U.S. Fish and Wildlife Service ("USFWS"), National Marine Fisheries Service ("NMFS"), and consultant HDR, Inc., executed the "Agreement Regarding Preparation of a Joint Environmental Impact Report/Environmental Impact Statement for the Bay Delta Conservation Plan" ("Lead Agency Agreement") to define the roles and responsibilities of the agencies with respect to preparing the EIR and EIS for the BDCP. DWR is the lead agency under CEQA and is responsible for producing an EIR that satisfies CEQA requirements, including certifying that the EIR satisfies CEQA, publishing a draft EIR for public comment, and filing a Notice of Determination ("NOD") when the project is approved. Reclamation, USFWS, and NMFS are co-lead agencies under NEPA ("NEPA Co-lead Agencies") and are responsible for producing an EIS that satisfies NEPA's requirements and carrying out the procedural steps leading to the issuance of a Record of Decision ("ROD"). The Public Water Agencies are responsible agencies that will rely on the EIS/EIR to implement certain actions of the BDCP-DHCCP. The Lead Agency Agreement remains in effect and is not modified by this First Amended MOA. Reclamation's role as set out in this agreement specifically, including Section II.E, is intended to be consistent with and to clarify implementation of the Lead Agency Agreement.
- F. In May 2010, the NEPA Co-lead Agencies and the state and federal water contractors, through SFCWA, executed an MOU that defines the roles of the Public Water Agencies and NEPA Co-lead Agencies in the preparation of the EIS that complies with NEPA.
- G. The Parties have executed several agreements memorializing their ongoing commitment to the BDCP and DHCCP including: Memorandum of Agreement for Supplemental Funding for Certain Ecosystem Actions and Support for Implementation of Near-Term Water Supply, Water Quality, Ecosystem, and Levee Actions (July 2006); Statement of Principles (Dec. 2005); Planning Agreement Regarding the Bay Delta Conservation Plan (October 2006, amended January 2010); Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay Delta Conservation Plan (November 2006, as amended November 2009); 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 (March 2009); the Agreement for Funding Between the Department of Water Resources and the San Luis & Delta-Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation

Measures, Including Delta Conveyance Options (March 2009, amended June 2010); and the Agreement for Funding Between the Department of Water Resources and [member of the State Water Project Contractors Authority] for Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures Including Delta Conveyance Options (March 2009).

- H. The Planning Agreement Regarding the Bay Delta Conservation Plan was adopted in October 2006 and remains in effect and will continue to guide this planning process in furtherance of the BDCP planning goals, as follows:
- Provide for the conservation and management of BDCP Covered Species within the Planning Area;
  - Preserve, restore, and enhance aquatic, riparian and associated terrestrial natural communities and ecosystems that support BDCP Covered Species within the Planning Area through conservation partnerships;
  - Allow for projects to proceed that restore and protect water supply, water quality, and ecosystem health within a stable regulatory framework;
  - Provide a means to implement BDCP Covered Activities in a manner that complies with applicable State and federal fish and wildlife protection laws, including the California Endangered Species Act and federal ESA, and other environmental laws, including CEQA;
  - Provide a basis for permits necessary to lawfully take BDCP Covered Species;
  - Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements for BDCP Covered Activities within the Planning Area;
  - Provide a less costly, more efficient project review process which results in greater conservation values than project-by-project, species-by-species review; and
  - Provide clear expectations and regulatory assurances regarding BDCP Covered Activities occurring within the Planning Area.
- I. The Memorandum of Agreement for Supplemental Funding for Certain Ecosystem Actions and Support for Implementation of Near-Term Water Supply, Water Quality, Ecosystem and Levee Actions expired in 2007, and the Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay Delta Conservation Plan expired in or about January 2011.
- J. In November 2007, the BDCP Steering Committee described in a memorandum entitled "Points of Agreement for Continuing into the Planning Process," that "...the most promising approach for achieving the BDCP conservation and water supply goals involves a conveyance system with new points of diversion," and therefore the BDCP Steering Committee agreed that the DHCCP 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.

- K. In a February 28, 2008, letter to State Senators Perata, Machado, and Steinberg, Governor Schwarzenegger stated his intention to direct DWR to proceed under CEQA to evaluate at least four alternative Delta conveyance strategies in coordination with the BDCP.
- L. The Sacramento-San Joaquin Delta Reform Act was passed by the California Legislature in 2009, and sets out, among other things, that DWR shall consult with the Delta Stewardship Council and the Delta Independent Science Board during the development of the BDCP, and that if the BDCP complies with specified requirements, the Council shall incorporate the BDCP into the Council's Delta Plan and the public benefits associated with the BDCP shall be eligible for state funding.
- M. In November 2010, the Natural Resources Agency made a working draft of the BDCP HCP/NCCP available to the public.
- N. In December 2010, the Natural Resources Agency released its "Highlights of the BDCP" as a summary of the BDCP HCP/NCCP.
- O. In December 2010, the federal government released its "Interim Federal Action Plan Status Update for the California Bay-Delta: 2011 and Beyond" ("Interim Action Plan Update"), thereby reaffirming its commitment to the BDCP. In the Interim Action Plan, the federal government noted that "the USFWS and NMFS, together, with Reclamation, are working to lay the technical, policy and regulatory foundation necessary to develop an integrated biological opinion that could be issued jointly by both the agencies for the BDCP and continued operation of the CVP." (Interim Action Plan Update, p. 19.)
- P. DWR issued a Notice of Preparation on February 13, 2009, under the CEQA, and the USFWS, NMFS, and Reclamation issued a Notice of Intent on February 13, 2009, under NEPA to commence an environmental review process for the BDCP, which will include measures that incorporate options for improving the Delta water conveyance system.
- Q. DWR is primarily responsible for the development of the BDCP developed under ESA section 10 and the NCCPA. The federal and state lead agencies are responsible for the development of the EIS/EIR necessary for analyzing the potential environmental effects of the BDCP and the incidental take permits pursuant to the BDCP. The Parties intend that the effects analysis for the BDCP and the EIS/EIR will be coordinated, and, so far as practicable, consistent.
- R. The BDCP is a habitat conservation plan that will be submitted to Federal (USFWS and NMFS) and State (California Department of Fish and Game (DFG)) agencies for approval under the ESA and California state law. Notwithstanding the coordination set forth in this First Amended MOA, preparation of the BDCP is a fundamentally different process from developing the EIS/EIR under NEPA and CEQA. In addition, the Federal and State permitting agencies (USFWS, NMFS, and DFG) are not parties to the First Amended MOA and retain all appropriate discretion in carrying out their responsibilities for reviewing, assessing, and acting on the proposed conservation plan pursuant to the ESA and California state law.

DECEMBER 15, 2011

Q.S. The BDCP and DHCCP planning processes have progressed to a point where the most efficient use of resources can be achieved by closely coordinating the development of elements of the BDCP and NEPA/CEQA processes, which will facilitate a more efficient and cost effective process that:

- (a) analyzes potential responses to multiple threats to the State's economic well being posed by the current conveyance system's vulnerability to seismic risk, climate change, and regulation;
- (b) analyzes the conservation measures intended to address threats to the Bay-Delta ecosystem and the species in the ecosystem;
- (c) facilitates the assessment, planning and environmental analysis of likely conservation measures or elements of the BDCP; ~~particularly the Delta water conveyance options;~~
- (d) provides for the coordination and exchange of information among the Parties as preparation of the BDCP and draft EIS/EIR continue;
- (e) supports a plan that can adapt to the evolving Delta environmental conditions;
- (f) considers prudent funding of species conservation and improved Delta water conveyance facilities in order to achieve improvements to water supply, water supply reliability, and ecosystem health and resiliency.

R.T. ~~The Parties will refer to this effort as the "BDCP-DHCCP Planning Phase" or "Program."~~ DWR, Reclamation, and one or more of the Public Water Agencies intend to enter into separate agreements related to funding work and/or providing mechanisms to transfer funds needed for the BDCP and-DHCCP Planning Phase.

S.U. To date, the Public Water Agencies and Reclamation have dedicated significant funding, equaling more than \$150 million, toward the BDCP and -DHCCP Planning Phase. This includes direct assistance and in-kind contributions from Reclamation. The Public Water Agencies anticipate dedicating significant additional funds to support its completion.

T.V. It is anticipated that the Public Water Agencies will fund and implement portions of the BDCP, which will require the Public Water Agencies to make certain decisions regarding funding of aspects of plan implementation.

## AGREEMENT

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

**I. Definitions**

A. ~~“BDCP-DHCCP Planning Phase” or “Program”~~ means the development and completion of the BDCP Habitat Conservation Plan and Natural Communities Conservation Plan (“HCP-NCCP”).

A.B. ~~“DHCCP Planning Phase” or “Program”~~ means the development and completion of the DHCCP environmental impact statement/ environmental impact report (“EIS/EIR”) and certain preliminary engineering.

B.C. ~~“BDCP and -DHCCP Planning Phase funding agreements”~~ means each Agreement for Funding Between the Department of Water Resources and [a member of the State Water Project Contractors Authority] for Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance Options; the Agreement for Funding Between the Department of Water Resources and the San Luis & Delta-Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of Delta Conservation Measures, Including Delta Conveyance Options, as amended; and future agreements between DWR and/or Reclamation and some or all of the Public Water Agencies that will allow for funding needed to complete the BDCP and -DHCCP Planning Phase.

C.D. ~~“Public Water Agency” or “Public Water Agencies”~~ means SFCWA; Metropolitan Water District of Southern California; Kern County Water Agency; State Water Project Contractors Authority, and its member agencies as identified in Exhibit 2; San Luis & Delta-Mendota Water Authority; Westlands Water District; and Santa Clara Valley Water District.

D.E. ~~“Party” or “Parties”~~ means DWR, Reclamation and the Public Water Agencies.

E.F. ~~“Water Supply Contracts”~~ means the long-term water supply contracts, as amended, between the Department of Water Resources and the water agencies that receive water from the State Water Project.

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

A. The Parties shall work jointly to meet the objectives of this First Amended MOA and the planning goals of the BDCP, as presented in the Planning Agreement Regarding the Bay Delta Conservation Plan.

B. DWR, in collaboration with the other Parties, has retained environmental consultants to complete the BDCP and -DHCCP Planning Phase, which includes environmental documents required under CEQA and NEPA (“EIR/EIS”). DWR is the lead agency under the CEQA, and Reclamation, the USFWS and the NMFS are co-lead agencies under NEPA. Reclamation shall represent the NEPA Co-lead Agencies in working

with DWR and in providing information regarding material to be included in the EIS/EIR for purposes of satisfying NEPA. The NEPA Co-lead Agencies have responsibilities for the content of all NEPA draft documents, including draft documents and shall make the final determination on publication of the draft EIS for satisfying NEPA requirements. -This MOA does not alter the laws or principles guiding Federal and State agencies in carrying out their responsibilities.

- C. Exhibits 1 and 1A to this First Amended MOA are two schedules, incorporated herein by this reference, which describe the tasks to be performed and a schedule for performance of the identified tasks to complete, respectively, the EIR/EIS for the BDCP and Chapter 5 (Effects Analysis) of the BDCP-DHCCP Planning Phase. The Parties recognize refinement of Exhibits 1 and 1A may be necessary to conform to developing information, permitting and other requirements. Therefore, Exhibits 1 and 1A may be revised from time to time, without constituting an amendment to this First Amended MOA, but only after the Director of DWR consults with and provides written notice to the Parties. (Hereinafter reference to “Exhibit 1 and 1A” includes any revisions as provided by this subsection.)
- D. The Parties are committed to completing tasks pursuant to the schedules described in Exhibit 1 and 1A, which will result in a ROD by February 15, 2013. Furthermore, the Parties shall work cooperatively and use best efforts to release the public draft of the EIS/EIR in May 2012.
- E. DWR is taking the lead role in preparing and, after consultation with the Parties, shall direct the consultants regarding the content of the BDCP, including those elements of the BDCP intended to be incorporated in the EIS/EIR. DWR has also contracted with the consultants preparing the EIS/EIR and shall continue to administer the contract. DWR shall solicit, in a timely manner, from the Department of Fish and Game (“DFG”), the Public Water Agencies, and the NEPA Co-lead Agencies, comments on the draft work products in support of the completion of tasks, pursuant to as required by the schedules in Exhibit 1 and 1A. As set forth in Paragraph B above, Reclamation shall be responsible for coordinating with the NEPA Co-lead Agencies and coordinating with DWR on the NEPA Co-lead Agencies’ comments that DWR shall submit to the Consultants in accordance with the schedules in Exhibit 1 and 1A. In the event agency comments are not received consistent with the schedules in Exhibit 1 and 1A, DWR may proceed with preparation of the BDCP and DWR, and Reclamation may proceed with the preparation of the EIS/EIR. DWR shall direct the Program Manager on preparation of the BDCP and EIS/EIR as necessary to maintain the schedule or consider necessary revisions as described in subsection II.C. The DWR Director shall concurrently advise the Parties of the direction provided to the Program Manager. Nothing in this section or elsewhere in this First Amended MOA modifies the federal responsibilities for the content of the draft and final EIS and preparation of the ROD.
- F. DWR has retained a consultant with extensive project management experience to be the BDCP and -DHCCP Program Manager. The Program Manager shall report to and

be directed by the Director of DWR. The Director of DWR shall implement the responsibilities of DWR as set forth in Subsection II.E above. The Director of DWR may fulfill this responsibility through the Program Manager, who is delegated to carry out the day-to-day management activities of the BDCP and to closely coordinate with Reclamation regarding preparation of the EIS/EIR. Work performed by DWR consultants or staff shall not be charged to the BDCP Planning Phase unless approved by the Director of DWR, or his delegatee pursuant to DWR Delegation Orders, after discussion with the Program Manager.

- G. At its discretion and after coordination with Reclamation, DWR may designate SFCWA as a consultant contract administrator, with all or some of the consultants contracting directly with SFCWA to complete all or part of the BDCP. In the event DWR designates SFCWA as a consultant contract administrator, the Program Manager shall continue to report to the Director of DWR and carry out his responsibilities under Subsection II.F, including management of the consultants under contract with SFCWA, as described in Subsection II.F.
- H. The Parties shall support listing the Public Water Agencies, including but not limited to the member agencies identified in Exhibit 2, as “applicants” and “permittees” along with DWR pursuant to Section 10 of the federal ESA, and “plan participants” and “permittees” under the NCCPA, California Fish and Game Code, section 2800 *et. seq.* Support by the Parties does not grant the Public Water Agencies permittee status. Ultimate decision making authority, however, on the granting of any Section 10 permit application rests with the USFWS and NMFS, and on the granting of any permit under NCCPA rests with DFG, and the HCP and NCCPA permits and accompanying Implementing Agreement can provide the vehicle for defining the permittee relationship.- If permittee status is ultimately granted, The Parties acknowledge that the Public Water Agencies status as permittees would not provide them be granted any new authority over water project operational decisions or result in the delegation of authority from any state or federal agency.
- I. The Parties acknowledge that the Public Water Agencies are responsible agencies pursuant to CEQA.
- J. The Parties agree recognize that one of the BDCP Planning Goals was an essential element of a successful BDCP is to provide clear expectations and regulatory assurances regarding BDCP Covered Activities occurring within the Planning Area. Consistent with that provision, the Parties agree that one essential element of a successful BDCP is that the Public Water Agencies are provided the greatest measure of certainty, including assurances to for the CVP contractors that are equivalent to the assurances provided to DWR and the State Water Project Contractors, to the extent allowed by law, that is the equivalent of the assurances that are provided under ESA section 10. In recognition of the importance of this issue to CVP contractors, the Parties will give priority to identifying an expeditious process to address the issue. Therefore, the Parties will meet within 30 days of the effective date of this MOA to begin evaluating the availability of measures that could address the issue



DECEMBER 15, 2011

equivalent to section 10 assurances, with a goal of developing such measures to provide equal levels of certainty to DWR, CVP and SWP contractors -within the timeframes set forth in Exhibits 1 and 1A. The Parties acknowledge that regulatory assurances are not provided by this MOA and will be determined in association with permits that may be issued by the federal and state fishery agencies pursuant to federal and state law, the USFWS and NMFS pursuant to the Federal Endangered Species Act and DFG under the Natural Community Conservation Planning Act.

- K. The Public Water Agencies shall be provided all draft consultant work product in accordance with the agency review schedule in Exhibits 1 and 1A. This provision does not limit the ability of DWR or Reclamation from making draft consultant work product available to other cooperating agencies and members of the interested public. DWR, Reclamation, and the Public Water Agencies shall work cooperatively to address all comments received during the BDCP-DHCCP Planning Phase, including comments received during development of the BDCP and EIR/EIS.
- L. The Parties shall meet at least once monthly to discuss BDCP and -DHCCP Planning Phase management, including the status of the BDCP and EIS/EIR, consultant scope, direction and work product; sources of funds; commitments; obligations; encumbrances; expenditures; projected expenditures to completion; and a comparison of actual budgeted expenditures. If it appears to the Program Manager or any of the Parties that a task included in the schedule in Exhibits 1 and 1A will not be completed in a timely manner, the Director of DWR shall consult with Reclamation and the Public Water Agencies on actions necessary to maintain the schedule or potential revisions to the schedule. If an agreement cannot be reached, any Party may invoke the provisions of this First Amended MOA, Section IV, for withdrawal, substitution, or termination.
- M. In the event that DWR has not provided direction to the Program Manager and/or consultant when required to maintain the schedule presented in Exhibits 1 and 1A, the Director of DWR shall consult with Reclamation and the Public Water Agencies, which shall recommend to the Director the decision and/or direction needed to maintain or revise the schedule as described in subsection II.CBE.
- N. The Parties shall coordinate all activities related to fulfillment of the purpose of this First Amended MOA. The Parties shall cooperate with one another and work as efficiently, expeditiously, and effectively as possible in the pursuit of all activities and decisions described in this First Amended MOA and those that are not particularly described but which are related to or arise out of the activities that are described.
- O. As requested by the Director of DWR, each of the Parties shall provide expertise, guidance, and data on those matters for which it has specific expertise or authority, as needed to carry out the work and meet the purpose of this First Amended MOA and the then current Planning Agreement Regarding the Bay Delta Conservation Plan.

- P. Consistent with Subsection II. F, above, the Director of DWR shall ensure that appropriate staffing is available to complete the BDCP and -DHCCP Planning Phase, including the BDCP and EIS/EIR.
- Q. The Parties may retain consulting services as necessary to complete the BDCP and -DHCCP Planning Phase, including the BDCP and EIS/EIR. No consultants will be retained for BDCP work unless they are approved by DWR and by NEPA Co-lead Agencies for EIS/EIR work. Before retaining consultants for EIS/EIR work DWR shall, in accordance with NEPA, its implementing regulations and the Lead Agency Agreement, consult with the NEPA Co-Lead Agencies. Consistent with Section II. F, above, the Director of DWR shall manage the retained consultants to carry out the BDCP and EIS/EIR.
- R. Concurrent with the release of the public draft of the BDCP HCP-NCCP and EIS/EIR the Public Water Agencies ~~may~~shall release a financing plan, developed in coordination with DWR and Reclamation, for the design, construction, operation, and maintenance of any conveyance facilities that will be constructed as part of the BDCP.

### III. Program Funding

- A. Funding pursuant to this First Amended MOA addresses only the BDCP and -DHCCP Planning Phase. If the Parties determine to proceed with actions beyond the BDCP-DHCCP Planning Phase, the Parties may enter into amended or supplemental agreements.
- B. The Program Manager has developed a budget for the remainder of the BDCP-DHCCP Planning Phase, and shall work cooperatively with the Parties to develop revisions to the budget, if necessary. Supplemental or amended funding agreements are contemplated by one or more of the Public Water Agencies that shall commit additional funds to complete the BDCP and -DHCCP Planning Phase.
- C. DWR shall provide Reclamation and the Public Water Agencies with copies of all draft task work orders for any work performed during the BDCP and -DHCCP Planning Phase, including on the BDCP HCP-NCCP, EIS/EIR and preliminary engineering for review by the Public Water Agencies prior to approval by DWR. DWR shall also provide to the Public Water Agencies draft Notice-To-Proceed (“NTP”) agreements for review and comment for those task work orders that have been approved by DWR, but for which an NTP is required to authorize all or a portion of the work specified in the task order.

- D. Participating Public Water Agencies have agreed among themselves that the costs of the BDCP and -DHCCP Planning Phase should be shared equally: 50% by Public Water Agencies that receive water from the SWP and 50% by Public Water Agencies that receive water from the CVP. Additionally the Public Water Agencies have agreed that in-kind services or any funds provided to DWR via a financial assistance agreement with Reclamation shall also be credited towards the portion of the ~~BDCP~~-DHCCP Planning Phase costs assigned to Public Water Agencies that receive water from the CVP.
- E. DWR has signed a separate funding agreement with the San Luis & Delta-Mendota Water Authority, as amended June 2010, and anticipates signing an amendment thereto to conform that agreement to this First Amended MOA. DWR will also sign separate supplemental funding agreements with participating Public Water Agencies, including but not limited to those member agencies identified in Exhibit 2 that receive water from the SWP and are willing to advance funds for BDCP and -DHCCP Planning Phase costs through billing procedures based upon the Water Supply Contracts. The separate funding agreements for both the Public Water Agencies that receive water from the SWP and the Public Water Agencies that receive water from the CVP shall allow a Public Water Agency to withdraw from this First Amended MOA and the separate funding agreement under specified conditions, without impeding continuing participation of the remaining Public Water Agencies.
- F. Reclamation may sign a separate agreement(s) with certain Public Water Agencies that receive water from the CVP to facilitate Reclamation's funding of the ~~BDCP~~-DHCCP Planning Phase.
- G. The BDCP and -DHCCP Planning Phase shall be completed in three parts referred to as milestones. The planning milestones are the following:
1. Administrative review draft of the BDCP and EIS/EIR;
  2. Public review draft of the BDCP and EIS/EIR; and
  3. Final BDCP and EIS/EIR.

In addition, preliminary engineering may proceed as a concurrent activity during or subsequent activity to any part of the Planning Phase. Reclamation requires specific authorization before any Reclamation funds may be used for preliminary engineering tasks not required for the EIS/EIR.

- a. The Public Water Agencies agree to fund the first milestone identified above pursuant to their BDCP and -DHCCP Planning Phase funding agreements.

- b. The Public Water Agencies will consider funding the additional milestones, identified above as milestones 2 and 3, and preliminary engineering. DWR may not commence work on milestones identified above as 2 and 3 or on preliminary engineering using funds provided by the Public Water Agencies until the Public Water Agencies provide the Director of DWR with written authorization to proceed. In determining whether to proceed, the Public Water Agencies shall consider, but are not limited to, the following: (1) adherence to the schedule in Exhibit 1; (2) adherence to the agreed upon program budget, and; (3) adherence to the project management and planning principles set forth in the Planning Agreement Regarding the Bay-Delta Conservation Plan, this First Amended MOA, and BDCP and -DHCCP Planning Phase funding agreements with the Public Water Agencies.
- H. Upon completion of the Planning Phase, and if the BDCP proceeds to implementation, a mechanism shall be established between the Public Water Agencies, including but not limited to those member agencies identified in Exhibit 2, and DWR for reapportionment of BDCP and -DHCCP Planning Phase costs based on calculated benefits conferred from the implementation of the BDCP. Any funds or in-kind services provided by Reclamation during the ~~BDCP~~-DHCCP Planning Phase are considered sunk costs and are not available for reapportionment as described above, but shall continue to be credited toward the obligation of the Public Water Agencies that receive water from the CVP as described in Subsection III(D), above.
- I. In the event DWR designates SFCWA as a consultant contract administrator, DWR shall continue collecting funds from the Public Water Agencies, including but not limited to those member agencies identified in Exhibit 2, pursuant to the BDCP and -DHCCP Planning Phase funding agreements, and DWR shall distribute those funds to SFCWA to fund the consultants that are contracting directly with SFCWA for the completion of the BDCP and -DHCCP Planning Phase.
- J. In the event an individual Public Water Agency, including but not limited to those member agencies identified in Exhibit 2, withdraws from this First Amended MOA pursuant to Section IV, that Public Water Agency shall not be responsible for the cost of any BDCP and -DHCCP Planning Phase task orders, or portions of task order specified in an NTP, that were approved less than 60 days prior to the date the notice of withdrawal was transmitted to DWR pursuant to Section IV. The withdrawal of one or more Public Water Agencies, including but not limited to those member agencies identified in Exhibit 2, shall not impair the authority of the remaining Public Water Agencies to continue with the implementation of this MOA. However, the withdrawn Public Water Agency shall remain responsible for the costs of completing

any BDCP and -DHCCP Planning Phase task order, or portions of task orders specified in an NTP, approved prior to the dates set forth above. Any funding agreement entered into in conjunction with this MOA shall include such terms and conditions necessary to effectuate the intent of this provision.

- K. If additional funds from non-Parties become available and are appropriated for any action in furtherance of the BDCP and -DHCCP Planning Phase, the Parties shall determine how the additional money shall 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 BDCP and -DHCCP Planning Phase funding agreements, any Party may withdraw from this MOA upon 30 days written notice to the other Parties. If a Party intends to withdraw it shall, coincident with providing notice to the other Parties, provide a detailed written explanation to the other Parties explaining why the Party intends to withdraw. A party providing notice may rescind that notice or extend the date on which withdrawal is effective.
- B. If DWR and/or all of the Public Water Agencies withdraw from this First Amended MOA, it shall terminate. If Reclamation or any individual Public Water Agency withdraws from this First Amended 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 First Amended MOA. Failure to provide such notice shall be deemed an agreement to continue as a Party to this First Amended MOA. In the event of termination, the Parties' liability for reasonable termination costs shall be set forth in separate funding agreements.
- C. In the event of termination of this First Amended MOA prior to any of the following, certification of the EIS/EIR, issuance of a ROD for federal actions associated with the BDCP, or issuance of a NOD for the BDCP; (1) unless prohibited by law, DWR shall provide to the Public Water Agencies and Reclamation copies of the draft BDCP, draft EIS/EIR, and all documents that comprise the work product for the draft BDCP and for the draft EIS/EIR, including preliminary engineering, and (2) the Parties agree that the Public Water Agencies and Reclamation shall have the right to use the documents, in whole or in part, unless prohibited by law. For purposes of this subsection, copies of the "draft BDCP", "draft EIS/EIR and all documents that comprise the work product" includes, but is not limited to, technical tools, work products and data such as computer models and results of modeling, geotechnical and other survey data, and preliminary engineering plans. If the Parties determine there

are documents that may not be legally disclosed, DWR, Reclamation, and the Public Water Agencies shall meet to negotiate to develop an appropriate process to provide them such documents to the extent permitted by law. The intent of this provision is to enable the Public Water agencies to use documents as part of the BDCP-DHCCP, or for a projects or projects with similar purposes and planning goals.

- D. If the First Amended MOA terminates prior to completion of the BDCP and -DHCCP Planning Phase, and there are unspent funds that have been previously collected from the Public Water Agencies by DWR to fund the BDCP and -DHCCP Planning Phase, DWR shall return the unspent funds to the appropriate Public Water Agencies. If DWR is precluded by law from returning the unspent funds, DWR shall provide each appropriate Public Water Agency a credit that can be applied to any charges levied by DWR against the Public Water Agency. Reclamation's unspent funds should be handled in a manner consistent with the appropriate assistance agreement with DWR.

#### **V. Miscellaneous Provisions**

- A. Within 45 days of this First Amended MOA becoming effective, DWR shall review its existing contracts with the environmental consultant(s) retained to complete the BDCP and -DHCCP Planning Phase to determine if any terms of this First Amended MOA may be inconsistent with these contracts such that the parties shall consider amending these contracts. If any Party believes that these contracts may need amending, the Parties shall meet to discuss how best to proceed.
- B. Unless otherwise stated specifically, this First Amended MOA may only be modified by written agreement of all of the Parties.
- C. No Delegation of Authorities.
1. Nothing in this First Amended MOA constitutes a delegation by any Party of its existing authority to make any decision it is mandated by law to make.
  2. Nothing in the First Amended MOA shall amend, abridge, or modify any provisions of the Water Supply Contracts between DWR and any SWP contractor or the water supply or water service contracts between Reclamation and any CVP contractor.
  3. Nothing in the First Amended MOA shall limit DWR's, DFG's, Reclamation's, FWS' or NMFS' final decision-making authority at the time of

project approval or issuance of a ROD or NOD.

4. All provisions of this First Amended MOA are intended and shall be interpreted to be consistent with all applicable provisions of State and Federal law. The undersigned recognize that public agencies signatories to this First Amended MOA have specific statutory 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 First Amended MOA is intended to, nor shall have the effect of, constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this First Amended MOA constitutes an admission by any Party as to the proper interpretation of any provision of law, nor shall it have the effect of, waiving or limiting any public entity's rights and remedies under any applicable law.
  5. Execution of this First Amended 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.
- D. The expenditure of any money or the performance of any obligation of the United States under this First Amended 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 First Amended MOA in the event that funds are not appropriated or allotted.
- E. This First Amended MOA shall become effective upon the last date of signature of the Parties listed below.
- F. The Parties may execute this First Amended MOA in multiple originals each of which shall be deemed to be an original office copy, or counterpart.

This First Amended MOA is signed and dated:

DECEMBER 15, 2011

DWR:

Approved as to legal form  
and sufficiency

State of California  
Department of Water Resources

\_\_\_\_\_  
Chief Counsel

\_\_\_\_\_  
Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Reclamation:

Approved as to legal form  
and sufficiency

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

\_\_\_\_\_  
Counsel, U.S. Department of Interior  
Solicitor's Office

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SFCWA:

Approved as to legal form  
and sufficiency

State and Federal Contractors  
Water Agency

\_\_\_\_\_  
Counsel

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SWPCA:



Approved as to legal form  
and sufficiency

State Water Project Contractors  
Authority

\_\_\_\_\_  
Counsel

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

MWDSC:

Approved as to legal form  
and sufficiency

Metropolitan Water District of  
Southern California

\_\_\_\_\_  
General Counsel

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

KCWA:

Approved as to legal form  
and sufficiency

Kern County Water Agency

\_\_\_\_\_  
Counsel

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SLDMWA:

Approved as to legal form  
and sufficiency

San Luis & Delta-Mendota  
Water Authority

\_\_\_\_\_  
Counsel

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

WWD:

Approved as to legal form  
and sufficiency

Westlands Water District

\_\_\_\_\_  
Counsel

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SCVWD:

Approved as to legal form  
and sufficiency

Santa Clara Valley Water District

\_\_\_\_\_  
Counsel

\_\_\_\_\_  
Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attachments: Exhibit 1 - BDCP EIR/EIS, EA Schedule 8-9-11

Exhibit 2 – List of SWPCA Member Agencies

**EXHIBIT 1**

**BDCP EIR/EIS Schedule  
8/9/11**

Task	Date to Agencies	Review Complete
<b>BDCP: EIR/EIS Work Plan and Section Review</b>		
Prepare Work Plan and Schedule	12-Aug-11	26-Aug-11
<b>BDCP: Alternatives Descriptions</b>		
Prepare Alternatives Description	2-Sep-11	16-Sep-11
<b>BDCP: Admin Draft EIR/EIS</b>		
Prepare Batch A Chapters (e.g., Social Environment)	11-Nov-11	9-Dec-11
Prepare Batch B Chapters (e.g., Physical Environment)	7-Dec-11	4-Jan-12
Prepare Batch C Chapters (e.g., Aquatics, Terrestrial, Surface Water, Water Quality, and Supply)	27-Feb-12	27-Mar-12
1st Admin Draft and Review (Includes comments on batches A & B)	27-Feb-12	25-Apr-12
2nd Admin Draft and Review	9-May-12	4-Jun-12
Check Copy	11-Jun-12	17-Jun-12
File Public Draft EIR/EIS with EPA	22-Jun-12	28-Jun-12
EPA Publishes Draft EIS	29-Jun-12	
<b>BDCP: Draft Public Review Period</b>		
Public Review and Conduct Hearings (90 days)	29-Jun-12	26-Sep-12
<b>BDCP: Response to Comments on Draft EIR/EIS</b>		
Prepare Responses to Comments	12-Oct-12	26-Oct-12
Initiate Formal Consultation	2-Oct-12	
<b>BDCP: Prepare Final EIR/EIS</b>		
Prepare Admin Draft Final EIR/EIS	15-Nov-12	29-Nov-12
Prepare Final EIR/EIS	20-Dec-12	20-Dec-12
<b>BDCP: Final EIR/EIS Review</b>		
Public Review and Conduct Hearings (30 days)	20-Dec-12	18-Jan-13
Prepare Responses to Comments	4-Feb-13	15-Feb-13
Prepare ROD (Final EIR/EIS Complete)	15-Feb-13	

EXHIBIT 1A

BDCP Chapter 5 (Effects Analysis) Schedule  
8/9/11

Task	Date to Agencies	Review Complete
<b>BDCP: Chapter 5: Conceptual Foundation &amp; Analytical Framework</b>		
Technical Appendix (Conceptual Foundation)	8-Aug-11	24-Aug-11
Technical Appendix (Analytical Framework)	8-Aug-11	24-Aug-11
<b>BDCP: Chapter 5: Entrainment</b>		
Technical Appendix (Entrainment)	24-Aug-11	14-Sep-11
Delta Science Review (C. Foundation, A. Framework, Entrainment)	15-Sep-11	14-Oct-11
<b>BDCP: Chapter 5: Flow, Passage, &amp; Salinity</b>		
Technical Appendix (Flow, Passage & Salinity)	30-Sep-11	21-Oct-11
<b>BDCP: Chapter 5: Water Quality</b>		
Technical Appendix (Water Quality)	14-Oct-11	4-Nov-11
<b>BDCP: Chapter 5: Fish Population Analysis</b>		
Technical Appendix (Fish Population Analysis)	25-Nov-11	16-Dec-11
<b>BDCP: Chapter 5: Habitat Restoration</b>		
Technical Appendix (Habitat Restoration)	16-Dec-11	6-Jan-12
<b>BDCP: Chapter 5: Ecological Effects</b>		
Technical Appendix (Ecological Effects)	16-Dec-11	20-Jan-12
<b>BDCP: Chapter 5: Appendix - Analysis Not Used</b>		
Technical Appendix (Analysis Not Used)	16-Dec-11	6-Jan-12
<b>BDCP: Chapter 5: Terrestrial Species Analysis</b>		
Technical Appendix (Terrestrial Species Analysis)	16-Nov-11	16-Jan-12
<b>BDCP Chapter 5 (Roll-up)</b>		
Agency and Delta Science Review	27-Feb-12	27-Mar-12
<b>BDCP Chapter 5 (Effects Analysis)</b>		
Chapter 5 Complete	9-Apr-12	

**EXHIBIT 2**  
**STATE WATER PROJECT CONTRACTORS AUTHORITY (“SWPCA”) MEMBERS**

ALAMEDA CO FC&WCD - ZONE 7

ALAMEDA COUNTY WD

ANTELOPE VALLEY-EAST KERN WA

CASTAIC LAKE WA

COACHELLA VALLEY WD

COUNTY OF KINGS

CRESTLINE-LAKE ARROWHEAD WA

DESERT WATER AGENCY

DUDLEY RIDGE WD

KERN COUNTY WATER AGENCY

METROPOLITAN WD OF SC

MOJAVE WATER AGENCY

NAPA COUNTY FC&WCD

PALMDALE WD

PLUMAS COUNTY FC&WCD

SAN BERNARDINO VALLEY MWD

SAN GABRIEL VALLEY MWD

SAN GORGONIO PASS WA

CENTRAL COAST WATER AUTH.

SANTA CLARA VALLEY WD

SOLANO COUNTY WA

TULARE LAKE WSD

