

## **Regulatory Commitments – User Contributions Statement of Principles**

*Changes in available CALFED funding and the need to enable water supply, water quality, ecosystem, and levee projects to progress within a stable regulatory framework require a new structure that provides regulatory and funding assurances for the key actions described herein.*

*This Statement of Principles is the foundation for an agreement among the California Department of Water Resources, California Department of Fish and Game, U.S. Fish and Wildlife Service, NOAA's National Marine Fisheries Service, the U.S. Bureau of Reclamation, and others. This agreement proposes to cause (1) the development of one or more Habitat Conservation Plan/Natural Communities Conservation Plan(s) [HCP/NCCP(s)] for the Delta and its upstream basins and (2) the implementation of key, near-term water supply, water quality, ecosystem, and levee actions, subject to compliance with any applicable environmental review under CEQA and NEPA.*

*The negotiators intend these HCP/NCCP(s) to:*

- Ensure implementation of actions that will adequately conserve and assist in the recovery of fish and wildlife affected by covered activities as a major part of the overall CALFED Multi-Species Conservation Strategy's effort to recover fish and wildlife, and*
- Provide long-term assurances related to implementation of and operation of designated water and power related projects and associated activities.*

*Development and/or implementation of the water-related projects and protection of and recovery efforts for fish and wildlife resources are critical to the people and economy of California.*

*A key principle of the CALFED Bay-Delta Program is that the elements of the program (ecosystem, water quality, water supply, and levees) should be implemented in a balanced fashion with appropriate linkages among the elements, costs and benefits. This document acknowledges that a long-term water supply, water quality, ecosystem restoration and levee funding framework and a funding program for these actions needs to be developed in a timely manner including a long-term science program.*

*A process has begun regarding the development of a 100 year vision for the future of the Delta, consistent with AB 1200. This process could provide input and guidance for the HCP/NCCP(s).*

*DWR and DFG will continue to work cooperatively with the State Water Contractors and other interested parties in developing a separate NCCP to cover existing operations of the State Water Project and the operable gates.*

## I. Goal

- A. The negotiators pledge their good faith efforts to obtain ratification of this presently non-binding Statement of Principles by each of their appropriate authorized persons and/or governing bodies on or before January 31, 2006.
- B. Upon ratification, the undersigned negotiators pledge their good faith efforts to work diligently toward a Memorandum of Understanding (MOU) and final written Planning Agreement (the Agreement) that is consistent with the Principles set forth herein.
- C. The negotiators anticipate that these Principles will be incorporated into a binding MOU by April 1, 2006.

## II. The MOU and Agreement

- A. The MOU shall establish the process for developing an Agreement for integrated or coordinated Habitat Conservation Plans (“HCP”) and Natural Community Conservation Plans (“NCCP”) covering the areas set forth in Section II.D.
- B. The HCP/NCCP(s) are a mechanism voluntarily entered into, meeting the requirements of the Federal Endangered Species Act (FESA), the California Endangered Species Act (CESA) and the California Natural Community Conservation Planning Act (NCCPA). The Parties and Participants shall seek to structure the Agreement and the HCP/NCCP(s) in a manner that meets FESA, CESA, and the NCCPA and also enables the United States Bureau of Reclamation to be a Party. The Agreement shall address the relationship of the HCP/NCCP(s) to other regulatory actions such as Section 401 and 404 of the CWA, FERC relicensing, or other actions as appropriate. Actions proposed under the Agreement may be subject to compliance with any applicable environmental review under CEQA and NEPA.
- C. Conservation strategies will be developed to contribute to regulatory compliance strategies, *inter-alia*, under Section 7 of the FESA and the HCP/NCCP(s).
- D. Scope

The Agreement and the HCP/NCCP(s) shall identify covered activities and covered species which utilize the Delta, the Sacramento River Basin

and the San Joaquin River Basin. The initial list of species to be covered by the HCP/NCCP(s) shall be set forth in an attachment or appendix to the Agreement. It is the intent of the negotiators to limit the Agreement to those fish and wildlife species, particularly state and federally listed delta pelagic and anadromous species that are impacted by covered activities. Covered activities shall include water and power facilities and operations. Other activities may be added subsequently.

The negotiators anticipate the following geographic areas:

1. The statutory Delta as defined in the California Water Code plus the Suisun Marsh and Suisun Bay.
2. All or parts of the Sacramento River and its tributaries.
3. All or parts of the San Joaquin River and its tributaries.
4. All or parts of the three eastside streams, the Mokelumne, Cosumnes, and Calaveras Rivers.

This Statement of Principles creates the broadest possible geographic scope and it is possible that it will be restricted in the future, depending on the Parties and Participants of the HCP/NCCP(s).

#### E. Parties and Participants

1. The United States Fish and Wildlife Service (FWS), NOAA's National Marine Fisheries Service (NOAA Fisheries), and the California Department of Fish and Game (DFG) shall be Parties to the MOU, Agreement and to the HCP/NCCP(s).
2. Persons or entities whose otherwise lawful activities could cause incidental take of threatened or endangered species may comply with FESA and/or CESA by voluntarily electing to become Parties to the MOU, Agreement and the HCP/NCCP(s) prepared under the Agreement. DWR, USBR, and all or some of their water supply contractors may become Parties to the MOU and the Agreement.
3. The MOU, Agreement and the HCP/NCCP(s) shall include provisions for Participants (e.g., an entity that is not a party but involved in an adaptive management committee) including but not limited to environmental organizations, water user groups, and other interested entities.

#### F. Science and Adaptive Management

1. The MOU and the Agreement shall recognize and provide that the HCP/NCCP(s) be based on the best available science. The development and implementation of the HCP/NCCP(s) shall include a science process that focuses on providing the best available answers to management questions, including measurable objectives that are needed to develop and implement a comprehensive and balanced HCP/NCCP(s), including a monitoring program. All Parties and Participants shall be involved in this science process.
2. The negotiators understand that provisions for adaptive management, oversight and coordination, and independent scientific input will be developed and implemented as part of the HCP/NCCP(s) process and may result in the need to terminate the HCP/NCCP(s) to provide adequate protection of covered species and proceed under regulatory provisions.
3. The Agreement will establish a broad-based adaptive management team comprised of policy and technical representatives who will provide input to the process of developing and implementing any necessary changes resulting from additional information for the HCP/NCCP(s).

G. Interim Projects:

The Agencies (DWR, DFG, FWS, NOAA Fisheries, and USBR), subject to completion of any required environmental review document and permitting, support implementation of the Projects described in Attachments B (water supply projects), C (water quality projects), D (ecosystem projects), and E (levees and other work in the waterways), during development of the Agreement and the HCP/NCCP(s).<sup>1</sup> The agencies are committed to following legal process and to consider all points of view, including those of conservation groups or other water agencies that have expressed concerns with the implementation of these projects. The development of the Agreement and the HCP/NCCP(s) shall not delay the implementation of those interim projects.

1. In the event for reasons beyond the control of the Agencies any interim project is delayed beyond completion of the HCP/NCCP(s), it is anticipated that the HCP/NCCP(s) will advance progress of the interim projects. Execution of the MOU or the Agreement shall not constitute a waiver by any Party or Participant of any right or remedy they may have nor does it constitute agency pre-approval of any project or preferred project

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<sup>1</sup> Some parties may not be supportive of the implementation of these Projects at this point.

alternative or waive or otherwise abridge agency Responsible or Trustee duties required, or discretion authorized, under state and federal law.

2. Inclusion of interim projects on Attachments B, C, D or E does not commit state or federal funding beyond that already approved or budgeted for those projects, nor does it constitute agency pre-approval of any project or preferred project alternative or waive or otherwise abridge agency Responsible or Trustee duties required, or discretion authorized, under state and federal law.
3. The MOU and the Agreement will provide a means to augment the project lists set forth in Attachments B, C, D, and E to add additional covered activities if such projects meet agreed upon criteria, including:
  - i. They will not result in stranded investments;
  - ii. They will not impede development and implementation of the HCP/NCCP(s) (generally consistent with the HCP/NCCP(s) goals);
  - iii. Their implementation and operation shall be based on best available science; and
  - iv. They are consistent with HCP/NCCP(s) objectives as they are developed.

#### H. Process for Amendments and Withdrawal

1. The MOU, Agreement and the HCP/NCCP(s) will include a process for amendments, e.g. to include additional covered activities and associated Parties and Participants. The amendment process will be designed to balance the need to be inclusive, the need to be decisive, and the need to complete the HCP/NCCP(s) on time.
  2. The MOU, Agreement and the HCP/NCCP(s) will define the criteria and process for early withdrawal.
  3. The MOU, Agreement and HCP/NCCP(s) should provide a definition of the criteria for early withdrawal or termination should for any reason the Parties' objectives, including species recovery, not be achieved.
- I. If the state imposes fees or an involuntary financial obligation on any water agency or utility signatory to this Statement of Principles for implementation of any CALFED Programs, including the Ecosystem Restoration Program, the Environmental Water Account, or other

activities funded under the Statement of Principles or the MOU, the terms of this Statement of Principles and MOU shall terminate. The negotiators recognize that the State is exploring the adoption of a water resources investment fund through an amendment of the California Constitution, and they commit to work cooperatively to develop a water resources investment fund, the implementation of which their principals/boards of directors would support and which would not affect any rights or obligations under the MOU or Agreement.<sup>2</sup>

- J. Negotiators agree to work together to establish a structure that will facilitate the design of a functional planning and implementation process, including, if appropriate, an executive director.

### III. Near Term Funding

This Statement of Principles proposes to provide, over the next two years, \$60 million in contributions for the HCP/NCCP(s), Species Recovery Capital Fund, Ecosystem Restoration Project, POD Studies, and the 100-Year Vision for the Future of the Delta. This \$60 million does not include the value of the commitments made pursuant to Section III.E for the Environmental Water Account.

In order to provide sufficient supplemental funds, which when combined with state, federal and other funding that will enable implementation of priority ecosystem restoration projects for Delta pelagic and anadromous fish through the end of Stage 1 (December 31, 2007), the following near-term funding is proposed:

#### A. HCP/NCCP(s)

1. For calendar years 2006 and 2007, the Central Valley Project and State Water Project (hereinafter referred to as The Projects) shall contribute an aggregate of \$3 million annually for the collective use of DFG, USFWS, and NOAA Fisheries for staff and administrative costs related to the development of the HCP/NCCP(s) and regional conservation strategies. The negotiators anticipate that a more informed budget will be developed prior to the execution of the MOU, and the annual contribution may be adjusted with the mutual consent of DFG, USFWS, NOAA Fisheries, the Projects and their water supply contractors signatory to this Statement of Principles.

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<sup>2</sup> The non-state and non-federal negotiators are in agreement that any mandatory fee, regardless of its use, imposed by the state should be subject to an open public hearing process in which all interested parties have had the opportunity to present testimony on appropriate payments, whether as a beneficiary or as a responsible party. Such conditions should not be construed in any way as support for any mandatory fee.

2. The Projects and other Applicants who have activities that will be covered by the HCP/NCCP(s) will develop a cost-share agreement as part of the application process for the HCP/NCCP(s), which may provide for reimbursement of the Applicants if new applicants are able to utilize work for which the Applicants paid.
3. DFG, USFWS, and NOAA Fisheries will expend contributions made under this section consistent with a work plan developed in cooperation with contributing Applicants.
4. DFG, USFWS, and NOAA Fisheries shall seek additional contributions for agency costs from other HCP/NCCP participants.
5. DFG, USFWS, and NOAA Fisheries will apply for additional funding through a FESA Section 6 application.
6. If new bond funds become available and are appropriated for this purpose, the contributions by the Projects for agency staff and administrative costs shall be reduced accordingly.

#### B. Species Recovery Capital Fund

1. The SWP shall contribute a total of \$12 million to a Species Recovery Capital Fund through the end of Stage 1 (December 31, 2007) for restoration projects.
2. Money in this fund contributed by the SWP shall only be used to fill funding gaps for identified restoration projects and only if all bond money available for and appropriated for these purposes has been committed.
3. Contributing Parties will be actively engaged in the selection and management of restoration projects funded by the Species Recovery Capital Fund.
4. The \$12 million in SWP contributions shall be credited towards future Delta pelagic and anadromous fish restoration obligations identified under HCP/NCCP(s).
5. If the HCP/NCCP(s) are not developed the SWP contributions shall be credited towards environmental obligations of the SWP.

#### C. Ecosystem Restoration Program

1. The State and Federal agencies agree to continue annual contributions of \$15 million from the CVPIA restoration fund and Four Pumps Fish Mitigation Agreement towards the Ecosystem Restoration Program.
2. The Parties anticipate that current contributions under the CVPIA, combined with the Four Pumps, Species Recovery Capital Fund and available bond funds will meet the

requirements of the Conservation Agreement for financing the Ecosystem Restoration Program through the end of Stage 1.

D. POD studies

1. For the calendar years 2006 and 2007, the Projects shall continue to contribute up to an aggregate of \$4 million annually or additional amounts as necessary upon mutual agreement, to research into the causes of the Delta Pelagic Organism Decline.
2. These contributions do no offset other obligations of the SWP or the CVP.

E. Environmental Water Account

1. DWR and DFG agree to pursue full public funding from the Legislature as provided in the CALFED ROD and the 2004 MOU that extended Environmental Water Account (EWA) through 2007.
2. Until full public funding is made available for the 2005-2006 state fiscal year, and after exhausting all other Tier II assets and in an attempt to avoid the use of Tier III assets, the SWP will loan EWA up to 80 TAF of water to make up for the current funding shortfall. This loan will be repaid with variable EWA assets or financial assets.
3. Sufficient public resources are identified in the 10-Year Action Plan and, if appropriated, will fully fund the EWA through the 2006-2007 state fiscal year.
4. If public funds are not made available to meet the terms of the 2004 MOU and DFG or DWR require the SWP to provide a non-reimbursable fiscal or water contribution to provide adequate resources for the EWA until December 31, 2007, then the SWP may terminate this Statement of Principles in its entirety.
5. The EWA Agencies agree to conduct a comprehensive review of the EWA by July 1, 2007 to determine if the program should be continued and, if continued, how it will be sized, managed, and funded for the 2007-2008 state fiscal year and beyond.

F. 100 Year Vision for the Future of the Delta

1. The Projects and other water and hydropower project operators will contribute 50% of the cost of the process to develop a long-term vision for the future of the Delta up to a maximum of \$2 million annually not to exceed \$4 million in total.
2. DWR and DFG will obtain at least an equivalent amount of funding from other private or public sources.

3. If bond funding is available for this purpose, the obligations of The Projects and other water and hydropower project operators under Section III.F.1 and the public under Section III.F.2 will be reduced proportionally.

#### IV. Interim and Long-term Funding

Interim funding before the HCP/NCCP(s) are complete will be developed through the Agreement that will be signed and take effect prior to January 1, 2008. Negotiators will work diligently and cooperatively so as to expedite developing the framework for the planning stage of the HCP/NCCP(s).

Long-term funding in support of the HCP/NCCP(s) will be developed during the planning stage and will contain a financing plan for the term of the HCP/NCCP(s) that provides for contributions from those that choose to participate.

#### V. Concurrent Linked Actions

This section describes the need to develop plans for long-term programs for the protection and funding of Delta levees and funding and an improved implementing structure for a Long-term Water Quality Program. If these packages are not developed in a timely manner or as outlined below, the agencies agree to inform the Secretary of the Interior and the Governor and to consider this as a substantial factor in annual review of progress and balance under state and federal law. If imbalance is found then the agencies will take the steps required by law, including those measures prescribed by Section 105 (b)2 of the CALFED Bay-Delta Authorization Act, P.L. 108-361.

##### A. Delta Levees

The negotiators recognize the need to develop a funding plan for a long-term program for the protection and funding of Delta levees. In addition, as the HCP/NCCP(s) is/are prepared, Parties involved in the levee program that need to comply with CESA and FESA can consider whether they would like to have their activities in the program included as covered activities in the HCP/NCCP(s).

##### B. Long-Term Water Quality

The negotiators recognize a need to establish funding and an improved implementing structure for a Long-term Water Quality Program by April 2007.

## **Attachment A - Parties**

The negotiators for the Parties below have initialed this document as a means of pledging good faith efforts to obtain ratification of the Statement of Principles by each of their appropriate authorized persons and/or governing bodies on or before January 31, 2006.

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## **Attachment A (1) - Participants**

The negotiators for the Participants below appreciate participation in this process and pledge to bring this document to their boards or governing bodies for review and further discussion.

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## **Attachment B - Water Supply Projects<sup>3</sup>**

- SDIP with Integrated Operations, Banks 8500 cfs, Dredging
- CVP-SWP Intertie
- San Luis Low Point Improvement Project

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<sup>3</sup> "Core" Delta Projects previously identified by principals

## Attachment C - Water Quality Projects<sup>4</sup>

- CCWD Alternative Intake Project
- Contra Costa Canal Encasement Project
- Franks Tract Pilot Project
- San Joaquin River Salinity Management<sup>5</sup>
- Old River and Rock Slough Water Quality Improvement Projects (completed 11/05)
- Operable Gates<sup>6</sup>

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<sup>4</sup> "Core" Delta Projects previously identified by principals

<sup>5</sup> Includes salinity reduction in Westside/Grasslands area, recirculation, water purchases, and real time management. Developing and implementing a plan to meet existing Vernalis water quality standards and objectives is a separate action under the Program plan.

<sup>6</sup> This project is intended to protect water quality for South Delta irrigators and migratory salmon, but could adversely affect water quality for other water users

## **Attachment D – Ecosystem Projects**

- ERP MYPP list as negotiated
- Environmental Water Account

## Attachment E - Levee Projects<sup>7</sup>

- Levee Subventions
- Special Projects
- Delta Risk Management Strategy
- Levee Subsidence Control
- Emergency Management and Response Plan

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<sup>7</sup> These are the elements in the current Program Plan for the Levee Program