

AGREEMENT REGARDING RESOLUTION OF PHASE 8 ISSUES,
DEVELOPMENT AND MANAGEMENT OF WATER SUPPLIES, AND A
BINDING COMMITMENT TO PROCEED PURSUANT TO SPECIFIED TERMS

This Agreement is in furtherance of a resolution of Phase 8 of the State Water Resources Control Board's (hereinafter "SWRCB") current Bay-Delta Water Rights Hearings. The Parties will work together to settle issues related to obligations or potential obligations to meet existing Bay-Delta water quality and flow objectives by developing a cooperative water management partnership among (a) those south of the Sacramento-San Joaquin Delta who possess water rights or are State Water Project ("SWP") or Central Valley Project ("CVP") water users; (b) the Contra Costa Water District and those who derive SWP water from the North Bay Aqueduct (hereinafter (a) and (b) for the purposes of this Agreement referred to collectively as "Export Water Users"); (c) those who possess water rights or are water users within the watershed of the Sacramento River and its tributaries (hereinafter "Upstream Water Users"); (d) the California Department of Water Resources (hereinafter "DWR"); and (e) the United States Bureau of Reclamation on behalf of the CVP (hereinafter "Reclamation"), all of which are hereafter referred to as the Parties.

Now therefore, it is mutually agreed as follows:

1. *Goals and Principles*

The Parties hereto agree to the following statement of goals and principles that shall guide the implementation of all aspects of this Agreement, including development of a cooperative water management partnership. This Agreement, during its term, is intended to:

- (a) Provide the mechanism for satisfying the flow-related objectives of the SWRCB's 1995 Bay-Delta Water Quality Control Plan (hereinafter the "1995 WQCP");

- (b) Be implemented in lieu of proceeding with Phase 8 of the SWRCB's Bay-Delta process;
- (c) Facilitate the development of integrated water management strategies that will enhance the Upstream and Export Water Users' abilities to optimize use of their existing supplies, enable them to develop additional supplies to meet their existing and future water needs, and enhance their water management flexibility;
- (d) Facilitate the development of protections to ensure that water stored and released by the SWP and the CVP is available for meeting downstream flow-related objectives and for SWP and CVP purposes, including exports from the Delta;
- (e) Be implemented in a manner compatible with CALFED's goals;
- (f) Facilitate the development of new near- and long-term water supplies through agreements among the Parties, and through the Governor's drought contingency plan, in ways that do not detract from the ability to meet the existing and future needs of Upstream Water Users;
- (g) Avoid unmitigated impacts to Delta water quality or the environment;
- (h) Provide net water quality benefits for Upstream Water Users, Export Water Users, and the Delta;
- (i) Be implemented in a manner that provides that the comprehensive program will, among other factors, be cost effective, financially feasible, and affordable; and
- (j) Result in state-wide water resource and environmental benefits and, therefore, receive funding from state and federal sources where appropriate.

2. *Initial Elements of the Cooperative Management Partnership.*

It is intended that the Goals and Principles adopted with this Agreement be implemented through the development of specific programs and projects. The development of these programs and projects will be an ongoing process and may, over time, involve numerous entities not signatories to this Agreement. These may include agencies of the state or federal government including, but not limited to, the United States Fish & Wildlife Service (“USFWS”), the National Marine Fisheries Service (“NMFS”), and the California Department of Fish and Game (“CDFG”), and may also include in-Delta water users. Moreover, over time, the Parties may decide to employ a facilitator or mediator to assist them in moving forward with project development and implementation. In this light, the following specific matters are intended only as the initial scope of work under this Agreement, with future work to be developed and implemented as appropriate. Future work plans, if appropriate, can become amendments to this Agreement or can be the subject of subsequent related agreements.

- (a) *Quantifying Water Demands and Supplies.* The Parties recognize a need to develop reliable estimates of the quantities of water that are currently being used, present unmet demands and projected future demands within the watershed of the Sacramento River and its tributaries. The Parties also need to develop estimates of the quantities of new water supplies that could be made available to Upstream areas, Export areas, and to meet the 1995 WQCP standards based on the measures included in the programs and projects described below. The Parties agree to establish a technical committee to begin immediately to develop, collect and analyze this information.

- (b) *Unmet and Future Demands in the Upstream Areas.* The Parties recognize that Upstream Water User demands may vary and that the following approximates the categories of upstream demands that will be provided for:

- (i) Urban needs and uses within the watershed of the Sacramento River and its tributaries.
 - (ii) Needs and uses within the Tehama-Colusa and Corning Canal service areas.
 - (iii) Needs and uses within the Sacramento River Water Rights Settlement Contractors' collective service area.
 - (iv) Needs and uses within areas that obtain supply from the drains and bypasses within the Sacramento Valley.
 - (v) Needs and uses within the areas tributary to the Sacramento, American, and Feather Rivers.
- (c) *Export Water Supplies.* The Parties recognize that Export Water Users have experienced water supply reductions as a result of regulatory and other actions. The programs and projects provided for in this Agreement will improve the water supplies on both a short- and long-term basis, and improve the water quality.
- (d) *Environmental Benefits.* The Parties recognize that programs and projects provided for in this Agreement will be developed and implemented not only to meet the needs of Upstream and Export Water Users and the flow-related objectives of the 1995 WQCP, but also to provide environmental benefits, including benefits to fish and wildlife, in the watershed of the Sacramento River.
- (e) *Role of Sites Reservoir.* The Parties recognize that new off-stream surface storage is an essential part of the long-term water management program, and agree that

Sites Reservoir is a potentially significant off-stream surface water storage project that could help meet the goals and objectives of this Agreement, including providing capacity to increase the reliability of water supplies for Upstream and Export Water Users, flexibility during critical fish migration periods on the Sacramento River, and storage benefits for other CALFED programs. Work being undertaken pursuant to CALFED's Sites MOU will be integrated into this Agreement and the Parties will work with CALFED to accelerate feasibility studies and completion of appropriate environmental and permitting processes for the reservoir.

- (f) *Enlarged Shasta.* The Parties agree that other significant surface water storage opportunities may exist, including the enlargement of Shasta Reservoir. The Parties shall take all appropriate efforts to advance these other opportunities and shall integrate the benefits associated with these projects into the programs provided for in this Agreement.

- (g) *Role of the Basin-Wide Management Plan.* Reclamation and certain Upstream Water Users are currently developing a Basin-Wide Management Plan for the purpose of improving water management within portions of the Sacramento Valley. The Basin -Wide Management Plan that Reclamation and certain Upstream Water Users are developing shall serve as a model for implementation of this Agreement and could be expanded to incorporate other areas of the watershed of the Sacramento River and its tributaries, as appropriate.

- (h) *Management Tools for this Agreement .* A key to accomplishing the goals of this Agreement will be the identification and implementation of a “palette” of voluntary water management measures (including cost and yield data) that could be implemented to develop increased water supply, reliability, and operational flexibility. Some of the measures that may be included in the palette are:

- (i) Basin-Wide Water Management Plan identified above;
- (ii) Conjunctive uses of surface water and groundwater;
- (iii) Coordinated use of storage facilities;
- (iv) Management and recovery of tailwater through major drains;
- (v) Transfers and exchanges among Upstream Water Users and with the CVP and SWP water contractors, either for water from specific reservoirs, or by substituting groundwater for surface water;
- (vi) Substitution of water from potential north of Delta reservoirs, such as Sites Reservoir, for groundwater, or river diversions, or maintaining water quality in the Delta; and
- (vii) Water conservation.

3. *Resolution of Phase 8 Issues*

- (a) The Parties agree that while this Agreement remains in effect, DWR and Reclamation shall assume responsibility for meeting the Sacramento River and its tributaries' portions of flow-related objectives established in the 1995 WQCP. Upstream Water Users shall have no obligation to release stored water, extract groundwater or forego diversions in order to help implement the flow-related objectives included in the 1995 WQCP.

- (b) In conjunction with the SWRCB, the Parties shall jointly develop a program to prevent unauthorized diversions, provided that the program is consistent with this Agreement.
- (c) The Export Water Users, DWR, and Reclamation agree that while this Agreement is in effect they shall take no action before the SWRCB or elsewhere, nor shall they support any such action to insert Term 91, or its regulatory equivalent, into existing water rights permits or licenses, or modify riparian or pre-1914 water rights through the application of the regulatory equivalent of Term 91. The Parties recognize that the SWRCB will continue to implement Term 91 according to its existing terms.
- (d) Notwithstanding the foregoing, nothing herein shall be interpreted as waiving the Parties' legal positions or rights in the event that the SWRCB proceeds with the Phase 8 hearings or otherwise attempts to determine the legal obligations of water users to meet adopted water quality or flow standards in the Bay-Delta or in streams tributary to the Bay-Delta. In addition, the Parties acknowledge and agree that nothing herein shall limit their ability to initiate a new or additional water right or water supply, transfer an existing water right, or change or modify an existing water right or a contract relating to a water supply; nor shall a Party be precluded from arguing that Term 91 should be applied or not applied by the SWRCB in any of these proceedings or that a new water right, transfer, or change or modification of an existing water right will or will not cause injury to a lawful water user.
- (e) This Agreement shall become effective on the day the SWRCB enters an order that:
 - (i) Provides for a Stay of Phase 8 of the current Bay-Delta water rights

proceeding pending development and approval of the Workplans described in Paragraphs 5(a) and 5(b) of this agreement;

- (ii) Provides that, should either of the Workplans not be completed or approved, and this Agreement is therefore terminated, the Parties shall immediately notify the SWRCB and the SWRCB will lift the stay and proceed with Phase 8;
- (iii) Under the circumstances provided for in sub-paragraph 3(e)(ii), extends the expiration of the SWP's and CVP's obligations under Conditions 1 and 2 of the Order in Revised Decision 1641 to the earlier of the completion of a resumed Phase 8 or one year from the date of a notice to the SWRCB of termination of this Agreement; and
- (iv) Provides that, should the Workplans described in Paragraphs 5(a) and (b) both be completed and approved, Notice of the approval provided to the SWRCB (a) automatically dismisses the Phase 8 proceedings and (b) further extends the expiration of the SWP's and CVP's obligations under Conditions 1 and 2 of the Order in Revised Decision 1641 to one year after the Notice of the termination of this Agreement to the SWRCB or such sooner time as a water rights proceeding allocating the responsibilities to meet Bay-Delta standards is completed; and
- (v) Provides that the dates set forth in sub-paragraphs 3(e)(iii) and (iv) above may be extended for up to one year if after notice and hearing the SWRCB determines that the additional time is necessary for it to fully consider and decide the matter.

4. *Resolution of Related Issues*

The Parties acknowledge that there are a number of administrative, regulatory, legislative and judicial actions currently ongoing or reasonably to be anticipated that could have major effects on the Parties' ability to implement the terms of this Agreement. In this regard, the Parties acknowledge and agree that developments in any of these or other matters may have a material effect on any Party's ability to implement this Agreement and meet the Milestones set forth in Paragraph 5 below. The Parties agree that they will work together to attempt to deal with the factual/legal situation that then exists in order to allow the Parties to proceed with the programs identified in this Agreement. Nonetheless, failure to meet Milestones, for whatever reason, shall remain a cause for the termination of this Agreement.

5. *Milestones*

- (a) *Short-Term Projects.* Within one hundred eighty days of the Effective Date of this Agreement, the Parties shall, working together, prepare a joint work plan listing short-term projects that can be used to implement this Agreement. Such projects are defined as those which can provide benefits for the 2002 and 2003 water years.

- (b) *Medium and Long-Term Projects.* Within one year of the Effective Date of this Agreement, the Parties shall, working together, prepare a joint work plan listing medium and long-term projects that can be used to implement this Agreement. Medium-term projects are defined as those which will be operational by December 31, 2005. Long-term projects are defined as those which are operational by December 31, 2010.

- (c) *Workplan Standards.* For each project identified in the respective Workplan, the appropriate Workplan shall: (i) briefly describe the project, including expected

net benefits and their proposed allocations; (ii) provide a preliminary estimate of the quantity of water or the nature of other water management benefits that can be realized by implementing the project; (iii) provide a preliminary estimate of the cost of the project; (iv) identify any major environmental issues associated with the project; and (v) describe how the project could best be implemented (including a plan for financing for the project). Each Workplan shall also provide a timetable for implementation of identified projects, which shall then constitute additional Milestones for this Agreement.

- (d) *Funding.* The Parties shall immediately jointly seek funding for the development of the two Workplans identified above from general state and/or federal sources. In addition, the Parties shall also seek funding, pursuant to Proposition 204 and other possible funding sources, to cover the cost of implementing programs identified within the respective Workplans. Milestones identified within this Agreement may need to be adjusted in order to provide ample time for the Parties to secure adequate state and federal funding to allow work to proceed. Such adjustments must be accomplished pursuant to mutual agreement of all Parties. The Parties shall not seek to acquire funds that are obligated to other programs within CALFED, and shall not seek funding that may otherwise conflict with funding commitments under the Central Valley Project Improvement Act Restoration Fund.
- (e) *Workplan Updates.* The Parties shall review and update the medium/long-term Workplan annually to incorporate information learned as a result of the cooperative process contemplated by this Agreement or as a result of other efforts. The Parties may also revise the list of projects contained in the medium/long-term Workplan, the estimates of the water supply or other benefits associated with such projects, the cost estimates for such projects, the environmental issues associated with such projects, and the implementation plan for each project. The Parties may

review and update the medium/long-term Workplan as necessary in the event that circumstances identified in Paragraph 4 above occur.

- (f) *Sites Reservoir Milestones.* Because of the potential significance of Sites Reservoir or other north of Delta offstream storage to achieving the goals of this Agreement, the following additional specific Milestones shall be adhered to:
- (i) finalize a Purpose and Needs Statement for the project satisfactory to the Parties no later than March 9, 2001;
 - (ii) initiate initial scoping sessions associated with appropriate environmental review by April 9, 2001;
 - (iii) initiate negotiations on all relevant Planning Agreements called for within the Sites MOU, including addressing issues dealt with in Paragraphs 7.4, 7.5 and 7.6 of the Sites MOU, by January 31, 2001;
 - (iv) complete all environmental and planning documentation for the project not later than August 2004;
 - (v) make a final decision with respect to the implementation and construction of the project, including obtaining all relevant permits/biological opinions, including compliance with Clean Water Act section 404(b)(1) or 404(r) by August 2005; and
 - (vi) assuming a decision to proceed, initiate project construction not later than August 2006.

6. *Term and Termination*

- (a) *Term.* Except as may be otherwise expressly provided, the term of this Agreement shall be until December 31, 2010.
- (b) *Annual Reviews.* The Parties shall agree upon the Workplan identified in Paragraph 5(a) of this Agreement within 60 days of its completion. A failure to do so shall cause the immediate termination of this Agreement. The Parties shall agree upon the Workplans identified in Paragraph 5(b) of this Agreement within 60 days of their completion. A failure to do so shall cause the immediate termination of this Agreement. Assuming approvals of the Workplans identified

in Paragraphs 5(a) and 5(b), the Parties shall thereafter, on an annual basis as scheduled by the Parties, jointly review the status of development and implementation of all Workplans, as well as the meeting of Milestones provided for herein and in the Workplans. Each annual review shall include a detailed examination of the status of Workplan and Milestone implementation including, without limitation, project feasibility and design, environmental review, permitting and funding. Except as provided for above, this Agreement may only be terminated following an annual review performed in accordance with this Paragraph 6.

- (c) *Termination for Failure to Meet Milestones.* Any Party may terminate this Agreement if, following an annual review and after the mediation provided for in Paragraph 7 of this Agreement, it determines:
 - (i) that either reasonable progress in achieving the Milestones established under this Agreement or in the Workplans cannot be made through the exercise of reasonable diligence by the Parties; or the Milestones established under this Agreement or in the Workplans have not been substantially achieved; and
 - (ii) that the Milestones established under this Agreement or in the Workplans cannot be revised to result in the reasonable achievement of the Milestones of this Agreement.
- (d) *Termination on Modification in 1995 WQCP.* In the event the flow-related objectives contained in the 1995 WQCP are increased or decreased, the Parties shall meet and, if necessary, employ the process outlined in Paragraph 7 of this Agreement, in an attempt to address the changed circumstances associated with

modified flow-related objectives. A failure to reach agreement shall cause the termination of this Agreement.

- (e) *Petition on Termination.* In the event the Workplans are not completed or approved or this Agreement is terminated, the Parties shall immediately petition the SWRCB to conduct a water rights hearing to consider the issues described in the SWRCB's Revised Notice of Phase 8 Hearing dated May 6, 1998.

7. *Resolution of Disputes*

Resolution of disputes, and issues which a Party believes may subject this Agreement to termination shall first be submitted to a mediator, mutually selected by the Parties, with experience in water-related disputes. The Parties will use their best efforts to resolve the issues within 30 days. The costs of any such mediation will be borne equally among the Parties.

8. *Effect of this Agreement on Other Matters*

Nothing in this Agreement, and nothing incorporated by reference into the terms of this Agreement, is intended or shall be construed as a precedent or other basis for any argument that the Parties to this Agreement have waived or compromised their rights which may be available under State or Federal law except as to the matters addressed in this Agreement, nor shall it be construed as an admission or determination of any Party's responsibility for meeting the requirements of the 1995 WQCP.

9. *Contingent Upon Appropriations*

The expenditure or advance of any money or the performance of any obligation of the United States under this Agreement shall be contingent upon appropriation or allotment of funds. -No liability shall accrue to the United States in case funds are not appropriated or allotted.

10. *Technical and Management Committees*

The Parties shall form two committees. The first shall be a technical committee which shall have the initial responsibility to develop the Workplans and related Milestones. The second shall be a management committee which shall provide policy direction to the technical committee and review and approve Workplans and Milestones. The committees shall together, in a manner that they determine, be responsible for the implementation of the Workplans. Each Party to this Agreement shall appoint one or more representatives to each of these committees.

11. *Public Participation*

The Parties shall hold periodic public meetings to provide an opportunity for non-participating individuals and entities to have input into the planning process.

12. *Other Agreements*

The Parties recognize that as program development progresses there will be a need to either amend this Agreement or to enter into additional agreements. In this regard, the Parties acknowledge that this Agreement will complement other relevant local partnerships and/or CALFED agreements and shall, as a consequence, be flexible enough to accommodate those other partnerships and agreements.

13. *Environmental Compliance*

In carrying out actions which may ultimately result from this Agreement, its amendments or subsequent agreements, the Parties hereto are committed to completing all required environmental review including all procedures and documents required by the National Environmental Policy Act and the California Environmental Quality Act, and to complying with

all applicable statutes, including the federal and state Endangered Species Act. The costs of funding this environmental work and compliance shall be among the funding issues dealt with herein. Nothing contained herein is intended to affect DWR's and USBR's compliance with regulatory constraints that are imposed under the Federal Endangered Species Act, the Central Valley Project Improvement Act, the Federal Clean Water Act, or any other applicable state or federal law or regulation, including those incorporated into Tier 1 in the CALFED Record of Decision dated August 28, 2000.

14. *Counterparts*

This Agreement may be executed simultaneously or in one or more counterparts, each of which shall be an original but all of which together shall constitute one and the same document.

15. *Notices*

All notices shall be sent to the following:

DWR: Thomas R. Hannigan
Director
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236-0001

Reclamation: Lester Snow
Regional Director
United States Department of the Interior
Bureau of Reclamation, MP-100
2800 Cottage Way
Sacramento, CA 95825

Export Water Users:

John Coburn
General Manager
State Water Contractors
455 Capitol Mall
Sacramento, CA 95814

Daniel Nelson
General Manager
San Luis & Delta-Mendota Water Authority
842 – 6th Street, Suite 7
P.O. Box 2135
Los Banos, CA 93635

Walter J. Bishop
General Manager
Contra Costa Water District
1331 Concord Avenue
P.O. Box H20
Concord, CA 94524

Upstream Water Users:

David J. Guy
Executive Director
Northern California Water Association
455 Capitol Mall, Suite 335
Sacramento, CA 95814

16. *Cooperation*

The Parties shall cooperate in carrying out the Mutual Goals and Principles contained herein and the provisions and intent of this Agreement.

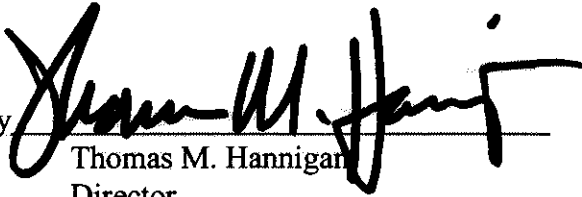
17. *Effective Date*

This Agreement shall become effective upon its full execution by all of the Parties hereto and the satisfaction of the conditions set forth in Paragraph 3(e) of this Agreement.

IN WITNESS HEREWITH, the Parties hereto have executed this Agreement.

• DEPARTMENT OF WATER RESOURCES

DATED: 3/23/01

By 
Thomas M. Hannigan
Director

Approved as to legal form
and sufficiency:



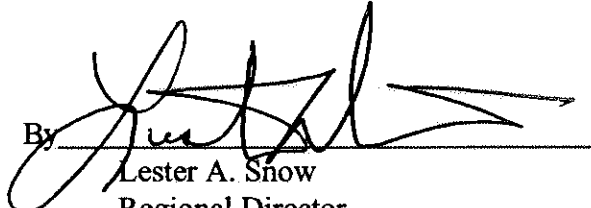
Asst. Chief Counsel, DWR
APPROVED AS TO LEGAL
FORM AND SUFFICIENCY



OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

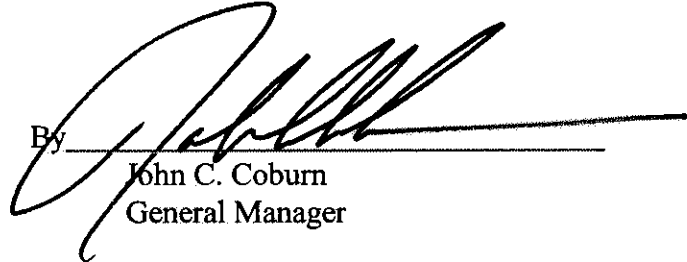
DATED: 3/16/01

• UNITED STATES BUREAU OF RECLAMATION
MID-PACIFIC REGION

By 
Lester A. Snow
Regional Director

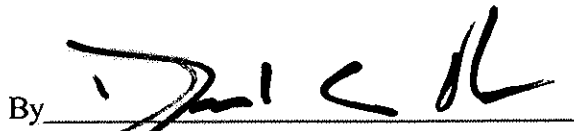
• STATE WATER CONTRACTORS

DATED: 4/3/01

By 
John C. Coburn
General Manager

• SAN LUIS & DELTA-MENDOTA
WATER AUTHORITY

DATED: 3/30/01

By 
Daniel G. Nelson
Executive Director

- CONTRA COSTA WATER DISTRICT

DATED: 4/3/01

By Walter J. Bishop
Walter J. Bishop
General Manager

- NORTHERN CALIFORNIA WATER ASSOCIATION

DATED: 4/2/01

By David J. Guy
David J. Guy
Executive Director