

MEMORANDUM OF UNDERSTANDING

CALFED LEVEE PROGRAM CO-MANAGEMENT PLAN

Among

**United States Army Corps of Engineers, and
California Department of Water Resources**

June 2001

The following attachments are made a part of this Agreement by reference:

- A. CALFED Bay-Delta Program, Programmatic Record of Decision dated August 28, 2000

- B. CALFED Levee System Integrity Program Plan dated July 2000

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The United States Army Corps of Engineers (USACE) and the California Department of Water Resources (DWR) hereinafter referred to collectively as the "Parties" enter into this Memorandum of Understanding (MOU) on the [] day of [] 2001.

The purpose of this MOU is to establish a framework for implementing the CALFED Levee Program as defined in the CALFED Bay-Delta Program, Programmatic Record of Decision.

WITNESSETH THAT:

WHEREAS, the CALFED Bay-Delta Program, Programmatic Record of Decision (ROD), Volume 1, Attachment 3, Implementation MOU, Attachment B, page 21 (dated August 28, 2000) stipulates:

- The CALFED Levee System Integrity Program (Levee Program) in large part adopts an existing program (Delta Subventions and Special Projects) currently managed by DWR with oversight by California Department of Fish and Game (DFG), Resources Agency, California Water Commission, and California Reclamation Board. Because of the expertise and existing program authority and structure in place, the CALFED Levee Program will be co-managed by the DWR and the USACE.
- DWR and the USACE will develop a recommendation to the Policy Group by February 1, 2001, in coordination with other interested agencies and stakeholders, that describes how the Levee Program will be co-managed and responsibilities distributed;

WHEREAS, the goal of the CALFED Levee System Integrity Program, as stated in the ROD, is to provide long-term protection for multiple Delta resources by maintaining and improving the integrity of the Delta levee system. In addition, the Levee Program aims to integrate ecosystem restoration and Delta conveyance actions with levee improvement activities. The Levee System Integrity Program Plan consists of the following elements:

- A. Base Level Protection. Provide funding to help local reclamation districts to reconstruct all levees to a base level of protection.
- B. Special Improvement Projects. Enhance stability of levees that have particular importance based on priorities to protect life and personal property, water quality, agricultural production and ecosystems.
- C. Levee Subsidence Control Plan. Develop “Best Management Practices” to control and reverse subsidence and work with local districts and landowners to implement cost-effective measures.
- D. Levee Emergency Response Plan. Enhance the ability of local, State, and federal agencies to rapidly respond to levee emergencies;

WHEREAS, the California Water Code promulgates authority to DWR to administer certain levee programs in the Sacramento-San Joaquin Delta. DWR continues to administer the Delta Levee Program through five legislative actions (SB 34, SB 1065, AB 360, SB 900 (Prop 204) the Safe, Clean, Reliable Water Supply Act, and AB 1584 (Prop 13) the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act):

- A. SB 34 (enacted 11 March 1988) established specific procedures to provide levee maintenance, flood control, and environmental mitigation for numerous projects throughout the Delta, and provided direction for DFG to ensure there would be no long-term habitat loss.
- B. SB 1065 (enacted 14 October 1991) provided supplemental guidance for SB 34 program activities, provided \$3 million to DFG for environmental construction projects, and required preparation of an MOU between DWR, DFG, The Resources Agency, and The Reclamation Board to coordinate agency involvement.
- C. AB 360 (enacted 19 September 1996) extended financial provisions of SB 34 until 1 July 2006, and extended the eligibility for participation in the Delta Subventions Program to certain federal flood control project levees and a portion of levees on islands bordering the northern Suisun Bay from Van Sickle Island westerly to Montezuma Slough. AB 360 also increased the previous SB 34 guidance of “no net loss” to a new mandate of “net long-term habitat enhancement.”
- D. SB 900 (Proposition 204, the Safe, Clean, Reliable Water Supply Act), enacted 5 November 1996, required that the SB 34 MOU be amended to require that levee projects or plans be consistent with a net long-term habitat improvement plan in the Delta and appropriated a total of \$25 million for the program.
- E. AB 1584 (Prop 13, the Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act), approved on 7 March 2000, appropriated \$15 million for local assistance under the Delta Levee Maintenance Subventions Program and \$15 million for Special Flood

Protection Projects consistent with the aquatic and wetland habitat goals of the CALFED Ecosystem Restoration Program Plan;

WHEREAS, DWR administers the existing Subventions Program under California Water Code authority (Division 6, Part 9, Delta Levee Maintenance, et. al.) and the existing Special Projects Program under California Water Code authority (Division 6, Part 4.8, Special Flood Control Projects, et al) as defined by State statute;

WHEREAS, the Levee Program also contains an element that calls for the evaluation of Suisun Marsh Levees and rehabilitating and maintaining those levees where appropriate;

WHEREAS, the USACE has missions and expertise in flood control, navigation, and ecosystem restoration, all which involve the Delta;

WHEREAS, the USACE has authority Under PL84-99 to provide assistance in emergency preparedness and response when State and local capabilities are exceeded;

WHEREAS, the USACE and DWR entered into an MOU entitled, "Memorandum of Understanding between U. S. Army Corps of Engineers (South Pacific Division) and California Department of Water Resources for Cooperative Actions Authorized under P.L. 84-99 for Responding to Flood Emergencies" dated June 1999;

WHEREAS, the USACE entered into a Feasibility Cost Sharing Agreement and subsequent amendment with the DWR and the Reclamation Board for the Sacramento-San Joaquin Delta Investigation, California (Special Study);

WHEREAS, the USACE and the Reclamation Board are conducting a Comprehensive Study to develop a system-wide, comprehensive flood management plan for the Central Valley to reduce flood damage and integrate ecosystem restoration;

WHEREAS the CALFED Implementation MOU recognizes that public agencies have specific statutory and regulatory authority and responsibilities, and that actions of these public entities must be consistent with applicable procedural and substantive requirements. This MOU does not constrain or limit any public agency in carrying out its statutory responsibilities or discretion. Nor does this MOU supercede or alter the terms of the CALFED Implementation MOU;

WHEREAS the CALFED Implementation MOU states that the CALFED Program Staff, under the direction of the Policy Group and in coordination with the Agencies will perform, among others, the following functions; provide support for the Policy Group, provide oversight of, and coordination among, agencies responsible for managing and implementing each Program Element and ensure integration and coordination is

occurring between Program Elements, manage the Comprehensive Reporting System, draft the Annual Report, manage legislative outreach on behalf of the Policy Group, and manage public, regional, and tribal involvement;

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I – MANAGEMENT STRATEGIES

DWR and the USACE agree that the implementation of the CALFED Levee Program requires a short and a long-term strategy. Under the short-term strategy, DWR and the USACE will use their existing authorities to implement the CALFED Levee Program to the greatest extent possible. The long-term implementation strategy is for DWR, USACE, and local interests to work collaboratively to accomplish the full extent of the Levee Program.

ARTICLE II – MANAGEMENT AND COORDINATION

- A. This MOU establishes the Levee Program Co-Management Planning Team consisting of the USACE Sacramento District's Deputy District Engineer for Project Management and DWR's Chief, Division of Planning and Local Assistance, or their designees.
- B. The Levee Program Co-Management Planning Team shall develop and pursue CALFED's long-term implementation strategy. In the development of a long-term strategy for the Levee Program, DWR and the USACE will act on a consensus basis and work collaboratively with local interests.
- C. DWR and the USACE will implement CALFED's short-term implementation strategy by using their existing authorities to the greatest extent possible and will coordinate with federal, State, and local interests.
- D. The Levee Program Co-Management Planning Team will prepare periodic reports on the progress of the Levee Program for CALFED's Management Team.
- E. The Levee Program Co-Management Planning Team will fully coordinate with all federal, State, and local agencies having statutory or contractual responsibilities related to this program.
- F. DWR shall continue to administer the existing Subventions Program under California Water Code authority (Division 6, Part 9, Delta Levee Maintenance, et. al.) and the existing Special Projects Program under California Water Code authority (Division 6,

Part 4.8, Special Flood Control Projects, et al) as defined by State statute.

- G. The CALFED Implementation MOU defines Category A Programs as those programs and funds that should be managed and implemented consistent with the CALFED objectives. Category A includes both long-term existing programs that should be managed consistent with CALFED objectives and more recent funding and programs specifically targeted at CALFED objectives and actions. The Parties, as CALFED Agencies responsible for management and/or implementation of Category A programs associated with the Levee Program, agree to coordinate with CALFED Program Staff and other CALFED Agencies to develop program priorities, workplans, proposed budgets, and significant program products. The Parties shall then submit these priorities, workplans, budgets and significant products to the Policy Group for review, recommended approval, and statement of consistency with the CALFED Program objectives. Final approvals will remain with the Parties' program and funding authority.

ARTICLE III – CALFED LEVEE PROGRAM

- A. The CALFED Levee Program Co-Management Planning Team will provide a formal definition of the CALFED Levee Program to the Policy Group for adoption. This definition will be specifically based on individual State and federal agency programs, projects, and studies.
- B. The definition of the CALFED Levee Program will be reviewed by all CALFED agencies and stakeholders prior to the presentation to the Policy Group.
- C. The definition of the CALFED Levee Program can be changed and adapted as necessary and appropriate with approval of the Policy Group.

ARTICLE IV – GOALS AND OBJECTIVES

The USACE shall continue to pursue levee investigations using existing authorities and laws to seek authorizations for CALFED projects, which include ecosystem restoration, flood control, navigation, water quality, and water supply reliability.

- A. The Co-Management Planning Team will seek CALFED funding for the CALFED Levee Program. A short-term funding goal is to seek consistent and adequate funding that will enable districts to plan and finance their work with greater certainty of reimbursement. Therefore, the USACE supports DWR seeking funds for the existing Delta Subventions Program and Special Projects Program.
- B. The Parties will develop a Delta Risk Management Strategy that identifies risks to

Delta levees, evaluates consequences, and recommends actions.

- C. The Parties will jointly develop an Integrated Emergency Response Program for the Delta that is consistent with the Standardized Emergency Management System, the Incident Command System, and the existing 1999 MOU.
- D. The Parties will work with the other CALFED programs and interested agencies to facilitate beneficial reuse of dredged materials, targeting 2 million cubic yards of dredged material applied in Stage 1.
- E. As co-managers of the Levee Program, both agencies fully understand the importance of coordinating the program activities with all of the agencies participating in implementation of the CALFED Program. In addition, DWR and USACE will work closely with CALFED Program staff to assure they receive all necessary information to coordinate program activities. Key policies such as public involvement, environmental justice, and tribal involvement will be incorporated into the management of the Levee Program as appropriate.
- F. Management of the Levee Program will adhere to the following directives:
 - 1. To work closely with CALFED Science Program staff to develop and incorporate adaptive management strategies into the projects' plans of implementation;
 - 2. To conduct an environmental planning process in accordance with the tools and guidance set forth in the Permit Clearinghouse MOU and the Implementation MOU;
 - 3. To assist CALFED staff in the support of the comprehensive reporting system by providing the necessary information on the status of the schedule, expenditures, and meeting objectives;
 - 4. To use existing groups as much as possible to resolve issues on a continuous basis (such as the Delta Levees and Habitat Advisory Committee); and
 - 5. To assess the relationship of individual projects to the Sacramento-San Joaquin Comprehensive Study and coordinate appropriately.

ARTICLE V – OUTREACH

- A. The Levee Program Co-Management Team will develop an outreach process that will include all interested agencies and stakeholders, including the Reclamation Board, U.S. Bureau of Reclamation, the Delta Protection Commission, DFG, the U.S. Fish and Wildlife Service, National Marine Fisheries Service, the California Water Commission, local agencies, and members of the public. These parties will

also be included in the development of the outreach process.

- B. DWR will seek input from representatives of the levee and reclamation districts and other stakeholders prior to any modifications of the current management operation and funding of the existing subventions program.

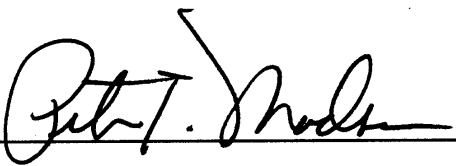
ARTICLE VI – MODIFICATION

This agreement can be modified if agreed to in writing by the USACE and DWR.

ARTICLE VII – TERM AND REVIEW OF MOU

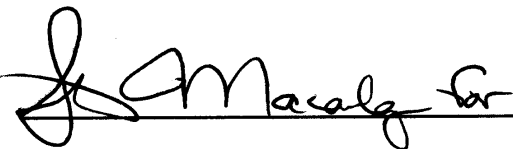
- A. This MOU shall expire on September 30, 2007, the anticipated end of Stage 1 of the CALFED Program, unless extended by written agreement or terminated.
- B. The USACE or DWR may terminate this agreement upon 30-day written notice to the other party and the CALFED Director.
- C. This agreement will be reviewed upon the modification, termination, or expiration of the CALFED Program Implementation MOU.

IN WITNESS WHEREOF, the Parties hereto have entered into this MOU on the date first written above.



Peter T. Madsen
Brigadier General
U. S. Army Corps of Engineers,
South Pacific Division

Date: 16 July 01



Thomas Hannigan
Director, Department of Water Resources
State of California

Date: 7-11-2001