

**MEMORANDUM OF UNDERSTANDING  
ON A PERMIT CLEARINGHOUSE FOR  
THE CALFED BAY DELTA PROGRAM**

This Memorandum of Understanding on a Permit Clearinghouse for the CALFED Bay Delta Program is being entered into by the United States Fish and Wildlife Service (“USFWS”), National Marine Fisheries Service (“NMFS”), United States Army Corps of Engineers (“Corps”), United States Bureau of Reclamation (“USBR”), United States Environmental Protection Agency (“USEPA”), California Department of Fish and Game (“CDFG”), California Department of Water Resources (“CDWR”), California Environmental Protection Agency (“CEPA”), State Water Resources Control Board (“SWRCB”), the Reclamation Board, and other signatory agencies.

**RECITALS**

1. On July 21, 2000, certain state and federal agencies participating in the CALFED Bay-Delta Program effort released the Final Programmatic Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) and Preferred Alternative for the CALFED Bay Delta Program.
2. On August 28, 2000, certain state and federal agencies signed the Record of Decision and certified the Final Programmatic EIS/EIR and Preferred Program Alternative for the CALFED Bay Delta Program (“Record of Decision”).
3. In addition to the Programmatic EIS/EIR, certain state and federal agencies released on August 28, 2000, a Clean Water Act (“CWA”) Section 404 Memorandum of Understanding (“MOU”), a CWA Section 401 MOU, a Programmatic Coastal Zone Management Act Consistency Determination, a Multi-Species Conservation Strategy (“MSCS”) for programmatic compliance with the Federal Endangered Species Act (“FESA”) and the Natural Community Conservation Planning Act (“NCCPPA”) and a programmatic evaluation in compliance with Section 106 of the National Historic Preservation Act.
4. During the first seven years of implementing the Record of Decision (“Stage 1”), a substantial number of specific Program actions will need to comply with existing legal requirements for securing permits, completing environmental reviews, and/or complying with other environmental statutes, regulations, policies, and executive orders.

5. The Record of Decision committed the CALFED agencies to establish a permit clearinghouse to coordinate and facilitate permit applications and environmental compliance across all CALFED programs. As required in the Record of Decision, this MOU provides the basis for the permit clearinghouse.

## **DEFINITIONS**

**Project manager:** A project manager is the agency or person implementing a project or activity of the CALFED Bay Delta Program pursuant to an agreement with a CALFED agency. A project manager is not always a CALFED agency.

**Program manager:** CALFED managers are the agencies tasked with Program Management in Attachment B of the CALFED Bay-Delta Program Implementation Memorandum of Understanding, Attachment 3 of the Record of Decision.

**Permit Clearinghouse:** The process to coordinate and facilitate permit applications and approvals and compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA).

## **UNDERSTANDINGS**

### **I. General Understandings**

1. The permit clearinghouse described in this MOU applies to actions contained within the Preferred Program Alternative that are undertaken by a CALFED Agency or funded with money designated for meeting CALFED purposes. The Policy Group or its successor can recommend that the permit clearinghouse be applied to related projects, programs, and activities that are being coordinated by the Policy Group. Persons eligible to use the permit clearinghouse are (a) agencies that are participants in the CALFED Policy Group (“CALFED Agencies”), and (b) other agencies or persons implementing a project, program, or activity of the CALFED Bay Delta Program pursuant to an agreement with a CALFED Agency.
2. The undersigned recognize that public entities have specific statutory and regulatory authority and responsibilities, and that actions of public agencies must be consistent with applicable procedural and substantive requirements. Nothing in this MOU is intended to or shall have the effect of constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this MOU constitutes an admission by any party as to the proper interpretation of any provision of law; nor is anything in this MOU intended to, nor shall it have the

effect, of waiving or limiting any public entity's rights and remedies under any applicable law. The permit clearinghouse does not change the substantive requirements nor standard of review of any applicable regulatory agency nor does it eliminate any rights or privileges otherwise available to a permit applicant or project manager under existing regulatory provisions.

3. The permit clearinghouse does not provide CALFED projects with any higher priority than non-CALFED projects.

4. Availability of Appropriated Funds

The commitments and obligations under this MOU of each Party that is a federal agency are subject to the requirements of the federal Anti-Deficiency Act and the availability of appropriated funds. The Parties acknowledge that this MOU does not require any federal agency to expend its appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing. Consistent with federal law, nothing in this document constrains the discretion of the President or his or her successor from making whatever budgetary or legislative proposals he or his successors deem appropriate or desirable.

The commitments and obligations under this MOU of each Party that is a State agency is subject to the availability of appropriated funds. The Parties acknowledge that this Understanding does not require any State agency to expend its appropriated funds unless and until an authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

5. The undersigned recognize that certain departments, boards, and commissions have adjudicative responsibilities with respect to contested matters that are brought before them. Such responsibilities include the requirement that the adjudicative entity and its members avoid bias, prejudice, or interest in the adjudicative matters before them, e.g., they cannot decide the outcome of a matter before completion of any required hearing or equivalent proceeding. Some such adjudicative entities exist within the undersigned agencies. This MOU does not in any way require or commit an adjudicative entity to participate in proposing a project that will come before it for approval. Under this MOU, the role of adjudicative entities in connection with matters that may require an adjudicative decision is limited to promptly and diligently processing any applications, petitions, or other requests for approval. Nothing in this MOU commits an adjudicative entity to an approval or disapproval of any project subject to the authority of the adjudicative entity, nor to a term or condition in any approval of a project by the adjudicative entity.

## **II. Understandings as to the Permit Clearinghouse**

1. This MOU establishes a permit clearinghouse to coordinate and facilitate permit applications as well as NEPA and CEQA compliance across all CALFED programs. The permit clearinghouse will be staffed by the CALFED Bay Delta Program staff, or by the staff of any successor to the CALFED Bay Delta Program.
2. Expenses of maintaining the permit clearinghouse shall be included in the budget of the CALFED Bay Delta Program staff, as approved annually by the CALFED Policy Group or its successor.
3. **Permit coordinators**
  - a. The CALFED Bay-Delta Program staff will provide, as part of the permit clearinghouse, one or more permit coordinators to assist the CALFED project managers, program managers, and regulatory agencies with implementation of this MOU.
  - b. Permit coordinators will provide project managers and program managers with advice on tiering environmental compliance documents from the Final Programmatic EIS/EIR, the Multi-Species Conservation Strategy, and other programmatic documents, developing an environmental compliance strategy for individual CALFED projects, completing permit applications, and general environmental compliance issues on a project or program level. Permit coordinators will encourage CALFED project managers and program managers to utilize existing regulatory agency processes to resolve outstanding issues. Permit coordinators will also advise project managers and program managers that the ultimate authorities on environmental compliance issues are the regulatory agencies rather than the permit coordinator. Permit coordinators can also refer project managers to other appropriate existing resources such as the State of California's Permit Assistance Centers, various written and web-based materials provided by regulatory agencies, and/or to agency ombudsmen or other staff who can assist them.
  - c. Permit coordinators will provide advice to project managers and regulatory agencies on development of mitigation measures and permit conditions designed to implement adaptive management. They will also assist in the coordination of mitigation measures and permit conditions with other CALFED programs where ever possible. However, permit coordinators will emphasize that final decision making authority is with

the regulatory agency and that prior to engaging in any activity project managers should contact the regulatory agency to determine the legality of the proposed action.

- d. Permit coordinators will assist in establishing multi-agency, multi-disciplinary teams to work with project managers to develop and review a project or, where appropriate, a bundle of projects.
- e. As appropriate, permit coordinators will assist in developing regional permits, standard mitigation measures, study plans, or any other aspect of the implementation of this MOU.
- f. Permit coordinators will work with the CALFED Science Program, program and project managers, and regulatory agencies to assure that environmental commitments, permit conditions, and mitigation measures are implemented and tracked for each project and that a monitoring program, consistent with the Programmatic mitigation monitoring plan, is prepared and implemented. Permit coordinators will work with the CALFED program and project managers and the Science program to ensure that the monitoring information for each project is collected.

#### **4. Permit Handbook**

- a. The CALFED Bay Delta Program staff will prepare a Permit Handbook. The Permit Handbook will provide guidance to program and project managers on which permits will be needed for projects and the process involved in obtaining those permits.
- b. The Permit Handbook will discuss how environmental documents can tier from the CALFED Programmatic EIS/EIR and ROD. It will also include an Environmental Consequences-Mitigation Strategies Checklist that program and project managers can use to ensure that tiered CEQA/NEPA documents are consistent with the Final Programmatic EIS/EIR and ROD.
- c. The Permit Handbook will discuss how permit applications can tier from the Programmatic Environmental Compliance documents attached to the ROD. These include the CWA 404 MOU, the Conservation Agreement Regarding Multi-Species Conservation Strategy, the Programmatic FESA Section 7 Biological Opinions, the NCCPA Determination, the CWA Section 401 MOU, and the Coastal Zone Management Act Programmatic Consistency Determination. It will provide guidance on the preparation of

an Action Specific Implementation Plan under the MSCS.

- d. The Permit Handbook will reflect the commitments in this Memorandum of Understanding. It will build on the existing permitting handbooks prepared by the State of California and by the US Fish and Wildlife Service through the Anadromous Fish Restoration Program.
- e. The Permit Handbook draft will be reviewed by the CALFED agencies, and revised as appropriate to incorporate agency comments.
- f. The Permit Handbook will be made widely available and will be available on the CALFED Bay Delta Program website. The Handbook will be updated as needed.

## 5. **Permit Tracking Database**

- a. The permit tracking database will be developed and maintained by the CALFED Bay Delta Program staff. It will be linked by a CALFED project identifying number to the Comprehensive Reporting System being developed by the CALFED Bay Delta Program staff to track budget and schedule.
- b. The information in the permit tracking database will generally track the steps associated with environmental review and permitting (i.e., submittal of a permit application, public notice of that application, issuance of a permit).
- c. The permit tracking database will be developed so that it can be linked with a database that tracks permit conditions, mitigation measures, other environmental commitments, and monitoring results for each CALFED project. Program and project managers are responsible for collection of data on implementation and assessment.
- d. Project managers will be required to provide timely and complete information to their respective program manager and to the CALFED Program to ensure that the database is current and accurate.
- e. If the database includes information on steps that are the responsibility of a CALFED regulatory agency (IE. Public notice of an application, agreement that an application is complete, transmittal of an application to the next step in the internal process), CALFED will work with that agency to include current and accurate information in the database. Nothing in this

Memorandum of Understanding is intended to delegate any legal responsibility of a CALFED Agency to the CALFED Bay Delta Program staff.

- f. The information in the database will be available to the CALFED program managers, project managers, and regulatory agencies. In addition, after evaluation and agreement by the CALFED Agencies, appropriate parts of the database may be made available to the public under terms and conditions to be determined by the CALFED Agencies. Any information that an agency deems to be confidential will not be included in the database.

#### **6. Unified application format**

- a. The CALFED Bay Delta Program staff may develop one or more permit application formats so that a single permit application can be completed for each project or a single cover sheet can accompany individual permit applications. It is envisioned by the Signatories that different application formats or cover sheets may be developed for different geographic areas or for different types of projects.
- b. In developing a unified application format, CALFED Bay Delta Program staff will rely to the greatest extent possible on available and relevant efforts to simplify and standardize application formats.

#### **7. Annual reports**

The annual CALFED report will include summary information on implementation of this Memorandum of Understanding.

#### **8. Estimated workload**

The CALFED Bay-Delta Program staff will work with regulatory agencies to develop estimated workloads for the, development, review and permitting of CALFED projects and to identify ways to meet this workload. CALFED staff will work with regulatory and implementation agencies to identify and implement more effective methods to maintain active agency involvement in the permit clearinghouse process. Examples can include e-mail reflectors, video conferencing, and web-based applications.

### **III. Understandings on Dispute Resolution**

1. The signatories agree to work to identify and resolve issues as early as possible and at the lowest staff level possible. Staff will use existing issue resolution processes where possible. This can include bringing in ombudsmen appointed by regulatory agencies.
2. In the event that an issue cannot be resolved in a timely manner, an agency or a permit coordinator can ask that the issue be considered at the next CALFED Management Group meeting. The permit coordinator will notify the regulatory agency, the project manager and the program manager that they will be requesting elevation of the issues. If the issue is ready for consideration, the permit coordinator will provide a summary of the issue for the CALFED Management Group, the regulatory agency, the project manager, and the program manager in advance of the meeting.
3. The CALFED Management Group or an appropriate subset of the Management Group will discuss the issue and make any appropriate recommendations to the interested parties. It is up to the sole discretion of a CALFED agency to determine if it is appropriate for their Management Group representative to participate in discussions. The recommendations of the Management Group can include, but are not limited to, the following: recommending the use of professional facilitation, recommending technical or scientific review by one or more components of the CALFED Science Program, recommending elevation to the CALFED Policy Group, and/or recommending utilization of existing elevation procedures in the interested agencies. A written summary of any CALFED Management Group recommendation will be provided to all CALFED Policy Group members.
4. If an issue is elevated to the CALFED Policy Group by the CALFED Management Group, the CALFED Policy Group or an appropriate subset of the Policy Group may make any appropriate recommendations for resolving the issue. It is up to the sole discretion of a CALFED agency to determine if their representative to the CALFED Policy Group should participate in the preparation of the recommendations.
5. Any recommendation from the Management Group or Policy Group is non-binding on the parties involved.
6. Nothing in this elevation process is intended to supplant or delay existing issue resolution processes or to abrogate agency authorities consistent with Section V. 3. below.

#### **IV. Understandings of CALFED Agency Commitments in Permit Clearinghouse Process**

1. Each CALFED Agency agrees to designate a lead person for each permit or project as appropriate. Each CALFED agency will have a single contact responsible for identifying the lead person for each permit or project.
2. Each CALFED Agency lead person for a permit or project shall make their best efforts to coordinate with the permit coordinators and other CALFED Bay Delta Program staff to implement the activities outlined in Section II, above.
3. Each CALFED Agency agrees to participate as appropriate in the dispute resolution process outlined in Section III, above.

#### **V. Additional Provisions**

1. **Applicability of this Understanding.** This Understanding was developed in response to a unique circumstance, namely the CALFED Bay-Delta Program, and does not have broader applicability beyond the CALFED Program.
2. **Reservation of Authorities.** This Understanding does not modify existing agency authorities by reducing, expanding or transferring any of the statutory or regulatory authorities and responsibilities of any of the Signatories.
3. **Statutory Authority** The Parties shall not construe this Understanding to require any Party to act beyond, or inconsistent with, its statutory authority.
4. **Reservation of Agency Position.** No Signatory to this Understanding waives any administrative claims, positions, or interpretations it may have with respect to the applicability or enforceability of any law or regulation.
5. **Obligation of Funds, Commitment of Resources.** Nothing in this Understanding shall be construed as obligating any of the Signatories to the expenditure of funds in excess of appropriations authorized by law or otherwise commit any of the Signatories to actions for which it lacks statutory authority.
6. **Nature of Understanding.** This Understanding is not intended to, and does not, create any other right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, the State of California, any agencies thereof, any officers or employees thereof, or any other person.
7. **Public Officials Not To Benefit.** No member of or delegate to Congress shall be

entitled to any share or part of this Understanding, or to any benefit that may arise from it.

8. **Effective Date.** The Effective Date of this Understanding is December --, 2000
9. **Duration.** This Understanding shall be in effect for seven years following the Effective Date, unless extended by amendment or terminated.
10. **Amendments.** This Understanding may be amended by written agreement of all the Parties.
11. **Addition of New Parties.** Any CALFED Agency may execute this Understanding and thereby become a Party. Execution by a CALFED Agency shall not be construed as an amendment to this Understanding.
12. **Withdrawal** Any Party may withdraw from this Understanding upon thirty days written notice to the other Parties.
13. **Termination .** A majority of the signatory agencies may terminate this Understanding.

## VI. Signature in Counterparts

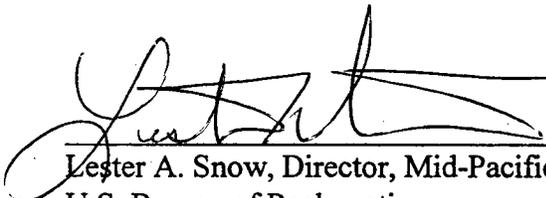
This Memorandum of Understanding may be executed in counterparts.

Signed and dated:

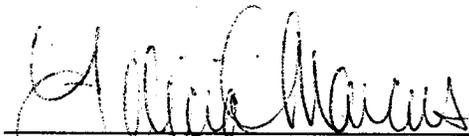
**United States of America**

  
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Wayne S. White, Field Supervisor  
Sacramento Fish and Wildlife Field Office  
U.S. Fish and Wildlife Service

1/16/01  
Date

  
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Lester A. Snow, Director, Mid-Pacific Region  
U.S. Bureau of Reclamation

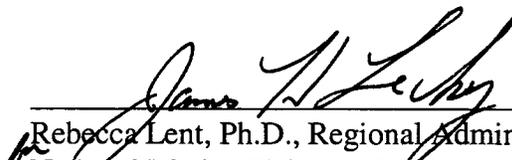
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Felicia Marcus, Regional Administrator  
U.S. Environmental Protection Agency

1/16/01  
Date

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

5 Feb 01  
Date

  
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Rebecca Lent, Ph.D., Regional Administrator  
National Marine Fisheries Service

2/2/01  
Date

State of California



Mary D. Nichols, Secretary  
California Resources Agency

1/16/01  
Date



Thomas M. Hannigan, Director  
California Department of Water Resources

1/16/01  
Date



Robert C. Hight, Director  
California Department of Fish and Game

2/15/01  
Date



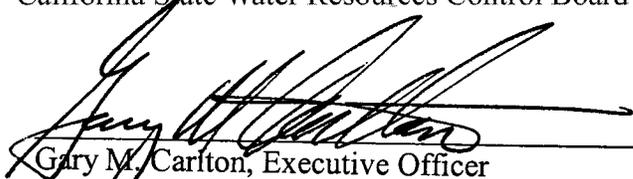
Barbara LeVake, President  
The Reclamation Board

12/15/00  
Date



Edward C. Anton, Acting Executive Director  
California State Water Resources Control Board

1/24/01  
Date



Gary M. Carlton, Executive Officer  
Central Valley Regional  
Water Quality Control Board

1-23-01  
Date



Loretta Barsamian, Executive Officer  
San Francisco Bay Regional  
Water Quality Control Board

1-29-01  
Date