

## DEPARTMENT OF WATER RESOURCES

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AUG 0 1 1995

Mr. Roger K. Patterson  
Regional Director  
Mid-Pacific Regional Office  
Bureau of Reclamation  
United States Department of the Interior  
2800 Cottage Way  
Sacramento, California 95825-1898

Dear Mr. Patterson:

Enclosed is your copy of the fully executed "Agreement Pursuant to Article VII Negotiations for Interim South Delta Facilities Concerning Fish in the Sacramento-San Joaquin Estuary."

If you need further information or would like to discuss this further, please call me at (916) 653-7007 or have your staff call Kathlin Johnson, Chief of the Department's Division of Planning, at (916) 653-1099.

Sincerely,

A handwritten signature in black ink, appearing to read "David N. Kennedy".

David N. Kennedy  
Director

Enclosure

cc: Article VII Distribution List

# Memorandum

Date : AUG 01 1995

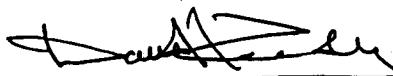
To : Chuck Raysbrook  
Interim Director  
Department of Fish and Game  
1416 Ninth Street, 12th Floor  
Sacramento, California 95814

From : Department of Water Resources

Subject: Agreement Pursuant to Article VII

Enclosed is your copy of the fully executed "Agreement Pursuant to Article VII Negotiations for Interim South Delta Facilities Concerning Fish in the Sacramento-San Joaquin Estuary."

If you need further information or would like to discuss this further, please call me or have your staff call Kathlin Johnson, Chief of the Department's Division of Planning, at (916) 653-1099.



David N. Kennedy  
Director  
(916) 653-7007

Enclosure

cc: Article VII Distribution List

Article 7 - Distribution List

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Ted Sommer  
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Agreement Pursuant to Article VII Negotiations  
for Interim South Delta Facilities Concerning  
Fish in the Sacramento-San Joaquin Estuary

I. Recitals

- A. This agreement is among the Department of Water Resources (DWR), the Department of Fish and Game (DFG), and the U.S. Bureau of Reclamation (USBR), pursuant to the terms and conditions of the "Framework of Process to Address Fish and Wildlife Impacts of the State Water Project and Central Valley Project in the Sacramento-San Joaquin Estuary" (Framework Agreement, see Appendix A), Article VII of the "Agreement Between the Department of Water Resources and the Department of Fish and Game to Offset Direct Fish Losses in Relation to the Harvey O. Banks Delta Pumping Plant" (1986 Agreement), and Article V of the "Agreement Between U.S. Bureau of Reclamation and the California Department of Fish and Game to Reduce and Offset Fish Losses Associated with the Operation of the Tracy Pumping Plant and the Tracy Fish Collection Facility" (1992 Agreement).
- B. Other agreements, laws, regulations, and policies that affect management of the Estuary and influence this agreement are:
1. The parties recognize that there are several processes through which regulatory agencies will require State Water Project (SWP) and Central Valley Project (CVP) operations be modified to offset the existing and unavoidable future impacts of the projects or to offset the impacts of other factors affecting the Estuary fish and wildlife resources. Among these processes are the State Water Resources Control Board's (SWRCB) promulgation of standards for the Estuary, the U.S. Environmental Protection Agency's approval of SWRCB standards or promulgation of federal standards, the U.S. Army Corps of Engineers' issuance of permits, consultations with the U.S. Fish and Wildlife and National Marine Fisheries Service under the Federal Endangered Species Act, and consultations with DFG under the California Endangered Species Act.
  2. On April 6, 1992, Governor Wilson announced his comprehensive water policy, which, in part, called for "immediate interim actions in the South Delta that will help restore the environment and improve the water supply", and "link South Delta facilities to improved, interim standards for protection of fish and

wildlife", (see Appendix B, Interim South Delta Facilities).

3. On August 2, 1994, all of the major State and federal agencies with responsibilities in the Sacramento-San Joaquin Estuary adopted the "Framework Agreement Between the Governor's Water Policy Council of the State of California and the Federal Ecosystem Directorate" (CALFED Framework Agreement, see Appendix C) for coordination of:
  - State and federal processes for setting water quality standards for the Bay-Delta Estuary.
  - Coordinating CVP/SWP operations with endangered species, water quality, and CVP Improvement Act requirements.
  - A joint State-federal process to develop long-term solutions for the problems affecting fish and wildlife, water supply reliability, flood control, and water quality in the Bay-Delta Estuary.
4. On December 15, 1994, State and federal agencies, urban and agricultural water users, and environmental interests signed "Principles for Agreement on Bay-Delta Standards Between the State of California and the Federal Government" (December 15 Agreement) for an interim Bay-Delta protection plan. Concurrently, the SWRCB issued a draft Water Quality Control Plan, embodying the same standards and measures.

## II. Agreement


The parties agree to the following:

- A. The December 15 Agreement sufficiently addresses existing impacts in the Sacramento-San Joaquin Estuary to satisfy Article VII of the 1986 Agreement and Article V of the 1992 Agreement as they pertain to proceeding with the Interim South Delta Facilities.
- B. Any incremental impacts of the Interim South Delta Facilities will be addressed through environmental documentation and permitting processes, such as the National Environmental Policy Act, California Environmental Quality Act, Federal Endangered Species Act, and California Endangered Species Act.




- C. Any remaining obligations under Article VII of the 1986 Agreement and Article V of the 1992 Agreement will be addressed in agreements developed for a long-term solution for the Delta. The planning process for the long-term solution is presented in the CALFED Framework Agreement.
- D. If, after a long-term solution is implemented, project caused indirect effects on fish and wildlife still remain, these will be resolved through additional agreements pursuant to Article VII and Article V.
- E. Nothing herein precludes any party from any comment on the Interim South Delta Facilities during the environmental documentation and permitting process. Further, DWR and USBR shall incorporate appropriate mitigation measures in the project environmental document.
- F. This Agreement shall become effective when signed by the designated representatives for the parties hereto and shall remain in effect until terminated by mutual agreement of the parties.
- G. Amendments to this Agreement may be proposed by any party to this Agreement and shall become effective upon approval by all parties in writing.

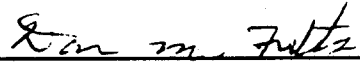
Approved:

  
Director  
Department of Water Resources

Date 3-22-95

 3/28/95  
Director  
for Department of Fish and Game

Date \_\_\_\_\_

  
for Regional Director  
U.S. Bureau of Reclamation

Date June 27, 1995

FRAMEWORK OF PROCESS TO ADDRESS FISH AND WILDLIFE IMPACTS OF THE  
STATE WATER PROJECT AND CENTRAL VALLEY PROJECT IN THE  
SACRAMENTO-SAN JOAQUIN ESTUARY<sup>1</sup>

Introduction

- A. The Department of Fish and Game (DFG) and Department of Water Resources (DWR) entered into an agreement on December 30, 1986, entitled "Agreement Between Department of Water Resources and Department of Fish and Game to Offset Direct Fish Losses in Relation to the Harvey O. Banks Delta Pumping Plant".
- B. Article VII in the 1986 agreement specifies that the DWR will not increase the diversions beyond those set forth in the Corps of Engineers Public Notice 5820A, amended, dated October 31, 1981, until agreement is reached between DFG and DWR on offsetting those adverse fish impacts of the State Water Project (SWP) not already addressed in the 1986 agreement. Article VII also specifies that DFG shall not unreasonably withhold its approval of such an agreement.
- C. As a start towards satisfying their obligations under Article VII, DWR and DFG now wish to enter into this Framework Agreement.
- D. The U.S. Bureau of Reclamation (USBR) has determined that it is in its best interests to participate with DWR and DFG as a signatory to this Agreement. Activities taken pursuant to this Agreement may necessitate the inclusion of USBR and its Central Valley Project (CVP) facilities.
- E. Fish and wildlife populations in the Estuary are influenced by many complex interacting factors, including facilities and operations of the SWP and CVP. At the present time, this complexity makes it difficult to quantify the impacts of the SWP and/or the CVP on those populations.
- F. Because of the uncertainty of SWP/CVP impacts, the parties have chosen to take a negotiated approach to address these impacts. The intent of this approach is to ascertain and characterize factors adversely affecting fish and wildlife populations of the Estuary, regardless of cause or fault; to identify measures likely to avoid, eliminate, or offset those adverse impacts; and then to negotiate a proper, fair, and

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<sup>1</sup> For purposes of this Agreement, the Sacramento-San Joaquin Estuary (Estuary) is the Delta as defined in Section 12220 of the California Water Code, Suisun Bay, San Pablo Bay, San Francisco Bay, and connecting waters.

reasonable share of those measures to be implemented by DWR and/or USBR in satisfaction of Article VII or for other purposes, and in compliance with relevant State and federal statutes including the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Such an approach does not necessitate the resolution of the uncertainties attending the identification of the precise SWP/CVP impacts on fish and wildlife resources, or the uncertainties attending the overall condition of these resources.

The parties agree to the following:

#### I. Purpose

The purpose of this Framework Agreement is to expedite the implementation of measures to avoid, eliminate, or offset identifiable problems affecting fish and wildlife resources in the Estuary by:

- A. establishing a comprehensive, fish and wildlife resource-oriented program as described in Article II of this agreement in which other parties may later participate; and
- B. providing a framework to guide negotiations towards one or more agreements as described in Article III to:
  - 1. avoid, eliminate, or offset SWP and/or CVP adverse impacts; and
  - 2. comply with the environmental requirements of future water management projects, including those related to CEQA and NEPA. The specific agreements will draw upon the information and measures developed under the comprehensive program.

#### II. Comprehensive Program

The Program will:

- A. Identify systemwide problems faced by fish and wildlife resources in the Estuary, regardless of nature or cause. Problems outside the Estuary will also be considered where such consideration is useful in understanding the relative importance of a problem, assuring that measures implemented do not adversely affect fish and wildlife resources outside the Estuary, and identifying offsite measures to alleviate problems not reasonably solvable in the Estuary. Exhibit 1 lists some of the problems to be addressed.

- B. Identify and evaluate measures that could solve the fish and wildlife problems, regardless of responsibility for those problems. Exhibit 2 lists some of the measures already identified that will be evaluated.
- C. Develop an implementation plan which shall include identification of needed authorizations and funding sources, a timetable for implementation, provisions for evaluating and, if needed, revising the Program as new information becomes available, and recruitment of other parties to participate in the implementation of the plan. In selecting measures to be included in the plan the following will be considered:
1. magnitude of potential benefits;
  2. likelihood of achieving the intended result;
  3. costs of a measure in relation to other measures and to its expected benefits;
  4. ability to evaluate the success of a measure;
  5. environmental considerations; and
  6. effect on other beneficial uses.

Priority will be given to measures which are designed to protect or improve fish habitat and which preserve the genetic diversity of fish stocks in preference to hatchery and stocking programs.

### III. Negotiation Process

#### A. General Considerations

DWR, DFG, and USBR commit to the negotiation of an agreement or series of agreements designed to ultimately:

1. Eliminate or offset identified adverse impacts on the Estuary's fish and wildlife of existing SWP and CVP facilities and operations, other than losses of fish after they enter existing SWP and CVP intake facilities which have been or will be provided for in other agreements;
2. Avoid, to the extent feasible, the potential adverse impacts on the Estuary's fish and wildlife of future SWP and CVP facilities and operations, and offset unavoidable adverse impacts;

3. Provide for the future monitoring and evaluation of the effects of SWP and CVP facilities and operations on fish and wildlife in the Estuary; and for the implementation of measures to eliminate or offset adverse impacts as they are identified; and
4. Solve additional fish and wildlife problems in the Estuary which are not caused by SWP and CVP operations but are within the authority of the involved agencies and for which funding can be found.

Each agreement shall include a schedule for facility construction, operational changes, and other management measures. The facilities, operating criteria and management measures to be included in these agreements will be selected through the negotiation process and are not agreed upon now.

#### B. Specific Considerations

1. The negotiating process may consider other combinations of measures and facilities, but will initially consider measures that can be incorporated into the proposed South Delta Water Management Program and the proposed North Delta Water Management Program<sup>2</sup>. Exhibit 3 lists measures to be considered for inclusion in the South Delta and North Delta Water Management Programs.
2. Each agreement will include provisions for continuing evaluation and, if needed, subsequent modification of the facilities or fish and wildlife protective measures. Consideration will be given to including specific provisions which provide for:
  - a. The continued evaluation of changes in biota of the Estuary, including those changes caused by the SWP and CVP. This evaluation will include experimental manipulation of project operations designed to test effects on fish and wildlife. The parties will seek

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<sup>2</sup> For general descriptions of these two programs refer to the Department of Water Resources' Central District planning reports, South Delta Water Management Program, April 1988, and North Delta Water Management Program, March 1988.

to accomplish this evaluation through the Interagency Ecological Study Program for the Sacramento-San Joaquin Estuary.

- b. The modification of the agreement if resource protection goals are not achieved as expected, due to such things as unavoidable delays in construction, failures of operational measures or facilities to perform as expected, or unforeseen changes in the Estuary.
- c. The preparation of an annual report describing progress on the implementation of the agreements, status of fish and wildlife resources, results of studies to evaluate the status of resources, and changes needed to meet goals of the agreements.

#### IV. General Provisions

- A. Nothing in this agreement shall be construed as obligating any agency in the expenditure of funds or for the future payment of money. Such obligation will be described in any subsequent agreement(s) entered into as provided by this Agreement.
- B. Amendments to this Agreement may be proposed by any party to this Agreement and shall become effective upon approval by all parties in writing.
- C. Any party to this Agreement may withdraw and have no further obligation hereunder upon 120 days written notice to the other parties. The withdrawal of one party shall not terminate the rights and obligations of the remaining parties.
- D. All notices shall be mailed to each party to this Agreement.
- E. This Agreement shall become effective when signed by the designated representatives for the parties hereto and shall remain in effect until the program

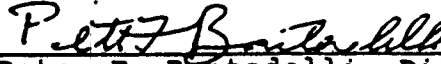
implementation is completed or until terminated by mutual agreement of all of the parties.

APPROVED:

  
\_\_\_\_\_  
David N. Kennedy, Director  
Department of Water Resources

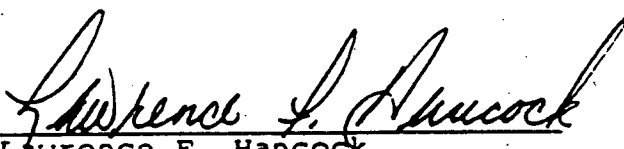
Date: SEP 19 1990

APPROVED:

  
\_\_\_\_\_  
Peter F. Bontadelli, Director  
Department of Fish and Game

Date: 10 - 9 - 90

APPROVED:

  
\_\_\_\_\_  
Lawrence F. Hancock  
Regional Director  
Mid-Pacific Region  
U. S. Bureau of Reclamation

Date: 10/24/90



Fish and Wildlife Resource Problems

1. The adult population of striped bass in the Estuary has declined substantially.
2. Naturally spawned populations of chinook salmon in the Central Valley have declined since the early 1950's. Declines have been much greater in some parts of the system and for some races than others. (Note: Increased hatchery production has resulted in total populations remaining relatively stable.)
3. Naturally spawned populations of steelhead trout in the Central Valley have significantly declined. (Note: These reductions have only been partially offset by hatchery production.)
4. The American shad population has declined since the early 1900's, with pronounced declines having occurred in some parts of the system since the 1960's.
5. The populations of some native and other introduced resident fish in the Estuary have also declined.
6. The populations of some species of wildlife and the area of wetland and riparian habitat, including that of rare, endangered or threatened plants, have declined in the Estuary.
7. Populations of some lower trophic level organisms have declined in recent years.
8. Recent introductions of exotic species have caused undesirable changes in the estuarine community.

Measures to be Evaluated as Potential Solutions  
to Fish and Wildlife Problems

Among the measures to be evaluated are:

1. Reducing water exports for specific periods to reduce diversion of juvenile salmon and other fish.
2. Increasing Sacramento River and San Joaquin River flows to improve the survival of juvenile salmon migrating through the Estuary.
3. Constructing a barrier at the head of Old River to improve the survival of juvenile salmon migrating through the Estuary.
4. Closing the Delta Cross Channel gates for specific periods in the spring to reduce diversion of juvenile salmon and striped bass eggs and larvae from the Sacramento River into the interior Delta.
5. Improving regulations and/or enforcement procedures to better protect fishery resources in conjunction with other measures.
6. Using Delta outflow to position the entrapment zone in Suisun Bay to improve habitat conditions for juvenile striped bass and other fish.
7. Reducing discharges of toxic substances into and upstream of the Estuary to improve the survival and health of the estuarine biota.
8. Controlling the introduction of new species into the Estuary to prevent interspecific competition and predation detrimental to desirable species.
9. Changing SWP and/or CVP operations to speed fish outmigration through the Estuary to increase survival of juvenile salmon.
10. Installing and monitoring the effects of temporary barriers to increase the survival of juvenile salmon and other fish.
11. Relocating and consolidating Delta diversions to reduce fish entrainment losses.

12. Transporting juvenile salmon by truck or barge from the Sacramento River above the Delta to various downstream release sites to improve survival.
13. Eliminating or reducing reverse flows in Delta channels to reduce entrainment of fish in export pumps and improve migrations of anadromous fish through the Delta.
14. Installing fish screens on the Contra Costa Canal, agricultural, and/or other Delta diversions to reduce fish losses.
15. Expanding artificial production to increase fish populations.
16. Gating and closing Georgiana Slough for specific periods to reduce diversion of juvenile salmon and striped bass eggs and larvae into the interior Delta.
17. Developing and installing a device to divert juvenile salmon from the Sacramento River into Sutter and/or Steamboat Slough(s) to improve survival.
18. Constructing a new channel with an appropriate fish screen to connect the Mokelumne River and the Sacramento River and close the Delta Cross Channel to reduce diversion of juvenile salmon and other fish into the interior Delta.
19. Enlarging cross sections of Delta water transfer channels to reduce water velocities to improve conditions for resident fish and benthic organisms.
20. Constructing an isolated water transfer facility to reduce the entrainment of fish in the export pumps, improve the productivity of the interior Delta, and reduce straying of downstream migrating anadromous fish.
21. Constructing new or additional fish screens to improve the survival of fish drawn into SWP and/or CVP intakes.
22. Reconfiguring the intake systems for the SWP and/or CVP to improve survival and reduce the number of fish drawn into the intakes.
23. Identifying optimal stocking locations and other measures to improve survival of hatchery-reared striped bass.

24. Reducing predation in Clifton Court Forebay to improve survival of fish.
25. Rehabilitating existing seasonal and permanent wetlands and developing new seasonal and permanent wetlands to increase wildlife populations.
26. Increasing Delta outflow to protect fishery resources and their food supplies downstream of Chipps Island.
27. Augmenting Delta inflow during the spring to increase American shad production.
28. Augmenting Delta outflow to protect tidal marshes.

Fish and Wildlife Protection Measures to be Considered  
for the Proposed South Delta and  
North Delta Water Management Programs

A. Among the measures to be considered in the South Delta Water Management Program are:

1. Install barriers in South Delta channels for specific periods in the spring and fall to improve downstream and upstream migration of salmon in the San Joaquin River and to improve water quality for fish.
2. Modify the intake system and fish screens at the SWP and CVP Delta diversion facilities to reduce losses of fish.
3. Release water from New Melones Reservoir to improve water quality for fish in the South Delta and improve flows for fish in the Stanislaus River and the San Joaquin River.
4. Modify South Delta channels to provide flexibility to change project operations to reduce entrainment of fish at the SWP/CVP pumping plants and improve fish habitat.
5. Modify limitations on SWP and CVP exports to reduce numbers of fish drawn into the export facilities and improve fish habitat.
6. Change minimum Delta outflows to improve fishery habitat in the Estuary.
7. Remove predators from Clifton Court Forebay to improve survival of fish.
8. Release of pulses of water in the Sacramento and San Joaquin Rivers to improve transport of juvenile striped bass and outmigration of salmon.
9. Close the Delta Cross Channel gates for specified periods in the spring to improve transport of juvenile striped bass and outmigration of salmon.

B. Among the measures to be considered for the first phase of the North Delta Water Management plan are those identified but not selected above, and:

1. Increase the capacity of the Mokelumne River and modify SWP and CVP operations to reduce the frequency and magnitude of reverse flow in the lower San Joaquin River.
  2. Modify the Delta Cross Channel gates to facilitate regulation of diversion of water and fish through the Cross Channel.
  3. Construct facilities to divert juvenile salmon from the Sacramento River into Sutter and/or Steamboat Slough(s) to improve survival.
  4. Develop fish screens to incorporate into a second phase of the North Delta Water Management Program.
  5. Transport juvenile salmon by truck or barge from the Sacramento River above the Delta to various downstream release sites to improve survival.
- C. Among the measures to be considered for incorporation into later phases of the North Delta Water Management Program are those identified and not selected above, and:
1. Constructing and screening a new channel connecting the Sacramento River and the Mokelumne River;
  2. Closing the Delta Cross Channel; and
  3. Gating and closing or restricting flows into Georgiana Slough.

## Appendix B

### INTERIM SOUTH DELTA FACILITIES

The Interim South Delta Program facilities consist of measures to improve operational flexibility and yield of the State Water Project, improve water levels and circulation for local agricultural diverters, and reduce fishery impacts. The components of the preferred alternative are:

#### Construction of an Additional Forebay Intake Structure

A multi-gate intake structure is proposed for the northeastern corner of the existing Clifton Court Forebay near the confluence of Old River and Victoria and North Canals (Figure 1). This additional intake structure will facilitate diversions into Clifton Court Forebay in amounts that will support the full pumping capability of Banks Pumping Plant. It will be operated according to tidal water elevations to increase peak forebay diversions from 12,000 cfs to more than 25,000 cfs for short periods. The existing gate structure, located at the southeastern corner of the Forebay, will be kept operable.

#### Limited Channel Dredging

It will be necessary to increase the existing channel capacity by dredging in the reach of Old River from the Western Canal to the confluence of Old River and North Victoria Canal to allow the diversions during high flow periods necessary to support the full pumping capability of Banks Pumping Plant. Approximately 1.25 million cubic yards of material will be dredged from a 4.9-mile reach of Old River to increase the channel capacity north of the new intake. The existing channel will be dredged to increase the average channel depth no greater than five feet.

#### Increase Diversions into Clifton Court Forebay

DWR proposes to increase diversions into Clifton Court Forebay via the existing and proposed intake structures such that the diversions into the Forebay shall not exceed, on a monthly averaged basis, 20,430 acre-feet per day for any given month. Based on model studies which DWR has conducted to date, the increased rate of diversion into the Forebay will utilize the full pumping capability of the existing Banks Pumping Plant. This action will require that the U.S. Army Corps of Engineers revise the present conditions contained in Public Notice 5820-A and issue a permit under Section 10 of the Rivers and Harbors Act allowing for such diversions. All diversions will continue to be subject to compliance with other existing constraints governing the operation of the SWP, such as SWRCB water rights decisions and applicable federal and State laws (i.e., the Endangered Species Act and Clean Water Act).

## Fish Barrier

A proposed barrier will operate seasonally in both the spring and fall to improve fishery conditions for salmon migrating along the San Joaquin River. The barrier will be constructed at the confluence of the head of Old River and the San Joaquin River. The structure will be concrete with vertical lift gates, boat docking facilities, and a jib crane. The jib crane will be used to transfer boats from one side to the other via a sling apparatus when the gates are in place. This structure will only be operated during the spring and fall periods of each year. During other times of the year, the gates will remain fully raised.

## Flow Control Structures

Flow control structures are proposed for three locations: Middle River, Grant Line Canal, and Old River east of the Delta Mendota Canal. These flow control structures will improve water levels and circulation in the south Delta.

The Middle River structure will be located on Middle River, near the confluence of Middle River, North Canal, Victoria Canal and Trapper Slough, approximately 13 miles east of Stockton. This barrier will consist of two radial gates housed in a reinforced concrete gate bay structure and a boat ramp. The boat ramp will be used to transfer boats and people across the structure.

The Grant Line Canal and Old River flow control structures are very similar in design. Grant Line Canal barrier will be located at the confluence of Grant Line Canal and Old River. The Old River structure, east of the Delta Mendota Canal, will be approximately 4,000 feet southeast of the intersection of the Alameda, Contra Costa, and San Joaquin County lines. The two barriers will consist of concrete control structures with radial gates. A 50-foot-wide by 105-foot-long boat lock will also be included in each structure.

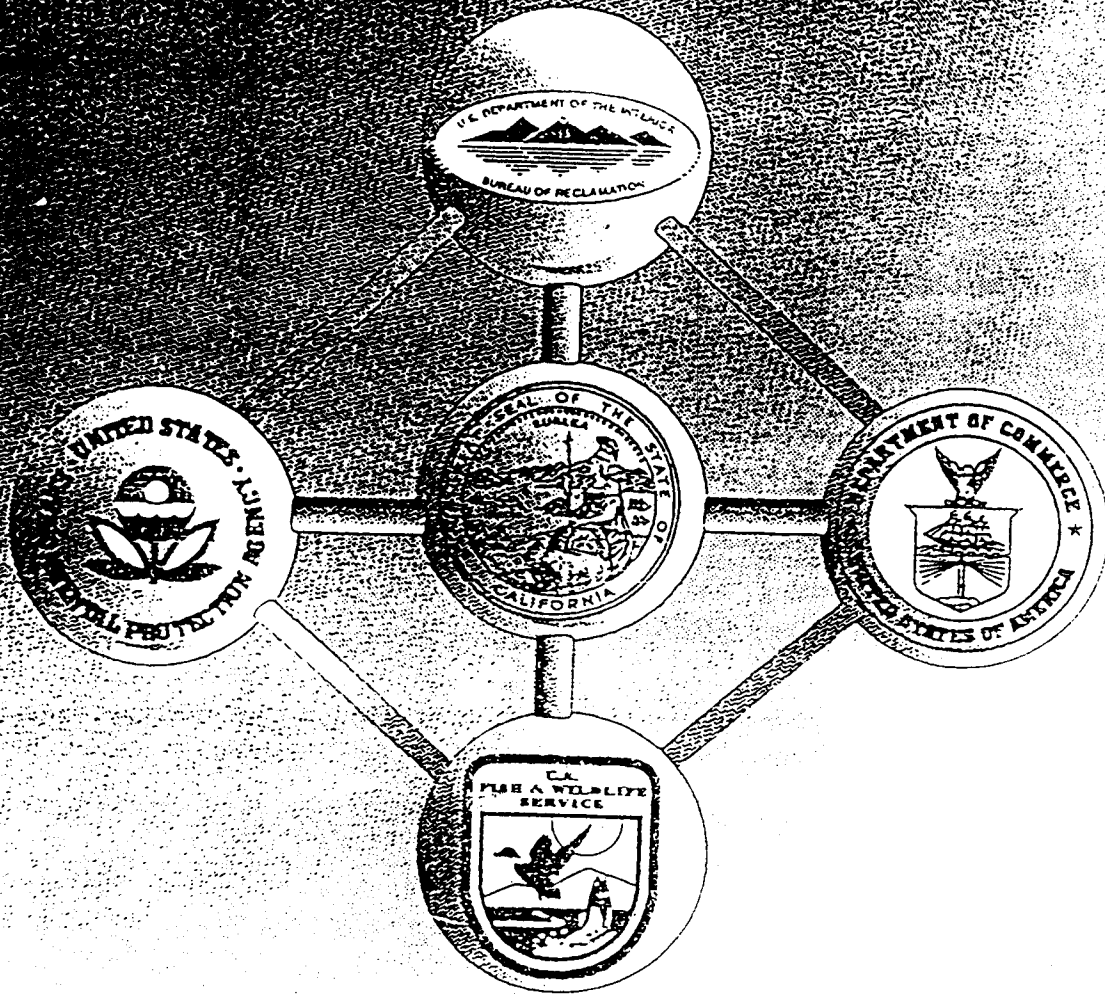
All of the flow control structures will be operated during the agricultural irrigation season only, to tidally pump water from the northwest direction to the southeast. The radial gates will be raised when the water level is rising according to the tide. When the tide reverses and water levels begin to drop, the gates will be lowered to capture the water.

## Mitigation Measures

In addition to this agreement, concurrent actions will be undertaken in connection with the EIR/EIS process and existing consultation and conferencing for sensitive species and adopted biological opinions. Mitigation measures for impacts in addition to the fishery, such as any terrestrial impacts, also will be addressed in the EIR/EIS.



APPENDIX C



# FRAMEWORK AGREEMENT

# **FRAMEWORK AGREEMENT**

## **BETWEEN THE GOVERNOR'S WATER POLICY COUNCIL OF THE STATE OF CALIFORNIA AND THE FEDERAL ECOSYSTEM DIRECTORATE**

This Memorandum of Agreement (Agreement) is entered into between the Governor's Water Policy Council of the State of California (Council) and the Federal Ecosystem Directorate (FED). The purpose of the Agreement is to establish a comprehensive program for coordination and communication between the Council and the FED with respect to environmental protection and water supply dependability in the San Francisco Bay, Sacramento-San Joaquin Delta Estuary and its watershed (Bay-Delta Estuary). In particular, this Agreement is intended to provide for increased coordination and communication with respect to:

- Substantive and procedural aspects of water quality standard setting;
- Improved coordination of water supply operations with endangered species protection and water quality standard compliance; and
- Development of a long-term solution to fish and wildlife, water supply reliability, flood control, and water quality problems in the Bay-Delta Estuary.

### **RECITALS**

1. The Agreement set forth in this document is in acknowledgement of the critical importance of the Bay-Delta Estuary to the natural environment and economy of California, in recognition of the multiple, complex resource management decisions that must be made to stabilize, protect, restore, and enhance the Bay-Delta Estuary, and in appreciation of the close interconnection of Federal and State interests and responsibilities in the Bay-Delta Estuary.

2. In April 1992, Governor Pete Wilson announced a comprehensive water policy for the State of California. That policy was aimed at meeting the needs of all the State's water users for safe, reliable water supplies while mitigating for past water-related harms to fish and wildlife and restoring and maintaining fish and wildlife populations and habitat. Governor Wilson placed special emphasis on solving the problems of the Bay-Delta Estuary, recognizing it as "the centerpiece of California's most intractable water problem."

3. As part of his policy, the Governor announced that he would appoint an Oversight Council to help guide the State's long-term planning and decision-making process.

On December 9, 1992, the Governor created the Bay-Delta Oversight Council (BDOC) and directed it to develop a comprehensive program to protect and enhance the Bay-Delta Estuary by addressing water quality issues, design and operation of water export systems, levee and channel maintenance, and means of protecting the Bay-Delta Estuary and its fish and wildlife resources. He proposed using the California Environmental Quality Act (Cal. Pub. Res. Code § 21000 *et seq.*) and the National Environmental Policy Act NEPA (42 U.S.C. § 4321 *et seq.*) as the planning framework for the decision-making process.

4. Also on December 9, 1992, Governor Wilson created the California Water Policy Council consisting of representatives of eight State departments and agencies with responsibilities for implementing State water policy. Governor Wilson charged the Council with sharing information and coordinating activities related to the State's long-term water policy.

5. The Governor's water policy also directed the State Water Resources Control Board (SWRCB) to work closely with the U.S. Environmental Protection Agency (EPA) to develop interim water quality standards for the Bay-Delta Estuary. The SWRCB released a draft interim water right decision in December 1992, but subsequently withdrew it. On March 25, 1994, the SWRCB announced plans to hold additional workshops, and to prepare a draft water quality control plan for release in December 1994.

6. On September 10, 1993, the U.S. Bureau of Reclamation (USBR), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS) and EPA signed an Agreement for Coordination creating the Federal Ecosystem Directorate with the goal of coordinating Federal resource protection and management decisions in the Bay-Delta Estuary and its watershed. Federal responsibilities affecting the Bay-Delta Estuary include listing species as threatened or endangered and conducting consultations under the Federal Endangered Species Act, implementing the Central Valley Project Improvement Act (CVPIA) (Public Law 102-575, Title XXXIV), operating the Central Valley Project, reviewing and, where necessary, promulgating water quality standards under the Clean Water Act (33 U.S.C. § 1251 *et seq.*), and reviewing water development proposals under the Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*), NEPA, Section 404 of the Clean Water Act (33 U.S.C. § 1344), and the Rivers and Harbors Act (33 U.S.C. § 401 *et seq.*). The Agreement for Coordination also states the Federal agencies' commitment "to work closely with all involved agencies of the State of California and the Federal government so that, to the greatest extent possible, our implementation of Federal law in the Bay-Delta Estuary complements the State's role in allocating water resources and the State's continuing efforts to preserve, protect, and enhance the natural resources of the estuary."

7. On December 15, 1993, the FED announced a series of coordinated actions and proposals to protect the fish and wildlife resources of the Bay-Delta Estuary. These included EPA's proposed water quality standards under the Clean Water Act, USFWS and NMFS actions to protect winter-run salmon, delta smelt and Sacramento splittail under the Endangered Species Act (ESA) (16 U.S.C. § 1531 *et seq.*), and USFWS and USBR proposals under the CVPIA.

8. Additional water management and resource protection and management actions by State and Federal agencies with responsibility in the Bay-Delta Estuary will be required over the next several years. Close coordination between affected State and Federal agencies is desirable to achieve regulatory consistency and certainty and provide environmental protection in a manner which minimizes impacts on the State's economy and water resources.

9. There are three areas in which Federal-State coordination and cooperation with respect to the Bay-Delta Estuary are particularly important:

a. **Water Quality Standards Formulation.** Under the Federal Clean Water Act and the State of California's Porter-Cologne Act (Cal. Water Code § 13000 *et seq.*), the SWRCB and the EPA have complementary and closely related roles with respect to formulation of water quality standards for the Bay-Delta Estuary. Therefore, coordination between EPA and SWRCB is vital if adequate Bay-Delta protections are to be achieved and maintained.

b. **Coordination of Federal and State Project Operations with Regulatory Requirements.** There are numerous hydrological, contractual, and operational connections between the Federal Central Valley Project (CVP) and the State Water Project (SWP). These include the Coordinated Operation Agreement, approved by Congress in 1986 (Public Law 99-546); joint obligations to meet State water quality standards, State water rights permits, and Federal and State endangered species requirements; and joint ownership and operation of San Luis Reservoir and San Luis Canal (the Joint-Use Facilities). The projects face a shared challenge in reconciling operational requirements with current and future statutory and regulatory requirements, particularly those relating to endangered species and water quality. Close coordination is necessary to identify operational issues related to statutory and regulatory compliance and to provide a forum for addressing problems and issues promptly as they arise.

In recognition of the complexity of fishery, habitat, water quality, and hydrodynamic issues confronting resource managers in the Bay-Delta Estuary, State and Federal agencies have participated for several years in the scientific study effort known as the Interagency Ecological Program (IEP). The IEP serves as an example of State-Federal cooperation in the Bay-Delta Estuary. The IEP data base and its programs provide a valuable source of scientific information as efforts are made to coordinate operational requirements with regulatory compliance.

c. **Long-Term Bay-Delta Solution.** State and Federal interests and responsibilities in the Bay-Delta Estuary are inextricably intertwined in the areas of fish and wildlife protection and enhancement, water quality protection, flood control, and water supply project operation. There is a shared State-Federal interest in pursuing long-term solutions that adequately address the multiple environmental, economic, and water supply interests in the Bay-Delta ecosystem. Federal and State agencies with responsibilities in the Bay-Delta Estuary must participate. Neither the Federal nor the State government, acting alone, can accomplish this vital task.

# AGREEMENT

The Council and the FED agree as follows:

1. We commit to promoting maximum coordination, communication, and cooperation among the State and Federal agencies with interests and responsibilities in the Bay-Delta Estuary within the limits of existing law.

2. We commit to meeting the requirements of State and Federal law in a manner that considers how the overall costs in water and dollars for achieving environmental protection can be minimized.

3. We agree that a major goal of all State and Federal regulatory processes affecting the Bay-Delta Estuary should be to provide meaningful regulatory stability for beneficial uses of the Bay-Delta Estuary's resources. We believe that the best means to this goal is to develop a single, cohesive program consisting of water quality standards and other appropriate actions that meet all requirements of State and Federal law and which will remain in effect, absent unforeseen circumstances, for a period of years.

4. We agree that a primary component of providing regulatory stability is to integrate current and future implementation of the Federal and State Endangered Species Acts into a coordinated approach to resources management in the Bay-Delta Estuary. This can best be accomplished by taking a comprehensive ecosystem approach to the problems of the Bay-Delta Estuary.

5. We agree that it is essential for the State and Federal agencies with regulatory and resources management responsibilities in the Bay-Delta Estuary to reach consensus, consistent with applicable procedural limitations, on the appropriate level of protection to be achieved for the Bay-Delta Estuary.

6. We agree to quarterly joint meetings between the membership of the Council and the FED to discuss resources management issues of mutual concern in the Bay-Delta Estuary, and to evaluate the progress being made in the areas of water quality protection, restoration of ecosystems, operations coordination, and development of a long-term Bay-Delta Estuary solution.

7. We agree that the Interagency Ecological Program will be used as one of the sources of technical support for State-Federal cooperative efforts in the Bay-Delta Estuary.

8. We endorse and concur with the points of agreement attached to this Framework Agreement and incorporated in it by this reference as Exhibits A, B, and C, dealing respectively with:

- State and Federal Processes for Setting Water Quality Standards for the Bay-Delta Estuary

- **Coordinating CVP/SWP Operations With Endangered Species, Water Quality, and CVPIA Requirements**
- **A Joint State-Federal Process to Develop Long-term Solutions for the Problems Affecting Public Values in the Bay-Delta Estuary.**

**9. We recognize that as public agencies we each have specific statutory and regulatory authority and responsibilities, and that our actions must be consistent with applicable procedural and substantive requirements. This Agreement is intended to be in furtherance of the agencies' discharge of their respective authority and responsibilities, and its provisions are to be interpreted and implemented accordingly. Nothing in this Agreement is intended to or shall have the effect of constraining or limiting the agencies in carrying out their statutory responsibilities. Nothing in this Agreement constitutes an admission by any party as to the proper interpretation of any provision of law, including, without limitation, Clean Water Act Sections 101(g) and 303, nor is anything in this Agreement intended to, nor shall it have the effect, of waiving or limiting any party's rights and remedies under any applicable law.**

UNITED STATES OF AMERICA

*Elizabeth Ann Rieke*

Elizabeth Ann Rieke  
Assistant Secretary for Water and Science  
Department of the Interior

*June 30, 1994*

Dated

*Roger K. Patterson*

Roger K. Patterson  
Regional Director  
U.S. Bureau of Reclamation

*7/19/94*

Dated

*George T. Frampton, Jr.*

George T. Frampton, Jr.  
Assistant Secretary for Fish and Wildlife  
and Parks, Department of the Interior

*July 7, 1994*

Dated

*Michael J. Spear*

Michael J. Spear  
Regional Director  
U.S. Fish and Wildlife Service

*7/28/94*

Dated

*Bob Perciasepe*

Robert Perciasepe  
Assistant Administrator for Water  
Environmental Protection Agency

*7-8-94*

Dated

*Felicia Marcus*

Felicia Marcus  
Regional Administrator  
Environmental Protection Agency

*8/2/94*

Dated

*Douglas K. Hall*

Douglas Hall  
Assistant Secretary for Oceans  
and Atmosphere, Department of Commerce

*July 15, 1994*

Dated

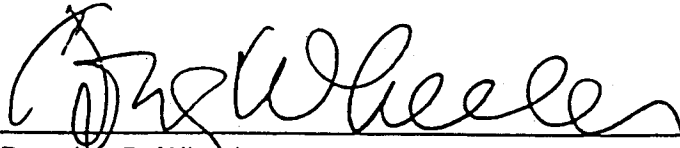
*Rodney R. McInnis*

Rodney R. McInnis  
Acting Regional Director  
National Marine Fisheries Service

*7-29-94*

Dated

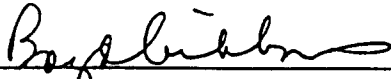
STATE OF CALIFORNIA



Douglas P. Wheeler  
Secretary, California Resources Agency  
Chair, California Water Policy Council

7-1-94

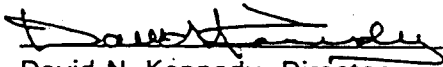
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Boyd Gibbons, Director  
California Department of Fish and Game

6/30/94

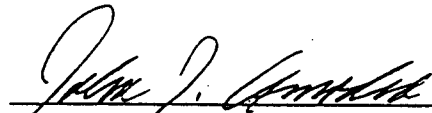
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David N. Kennedy, Director  
California Department of Water Resources

6-29-94

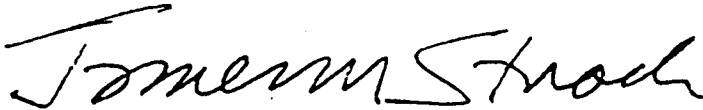
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John J. Amodio, Executive Officer  
California Bay-Delta Oversight Council

6-30-94

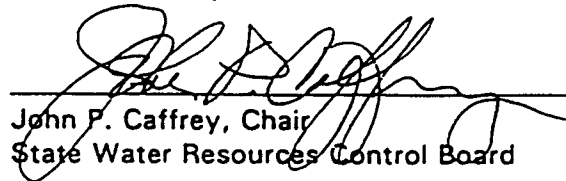
Dated



James M. Strock  
Secretary for Environmental Protection  
California Environmental Protection Agency

July 5, 1994

Dated



John P. Caffrey, Chair  
State Water Resources Control Board

6-30-94

Dated



**POINTS OF AGREEMENT**  
**ON**  
**STATE AND FEDERAL PROCESSES FOR SETTING**  
**WATER QUALITY STANDARDS FOR THE BAY-DELTA ESTUARY**

1. EPA has proposed and received public comments on draft water quality standards for the Bay-Delta Estuary pursuant to Section 303(c)(3) and 303(c)(4) of the Clean Water Act (33 U.S.C. § 1313(c)(3), (4)). EPA will take final action on the proposed standards by December 15, 1994. These standards are intended to supersede and supplement 1991 SWRCB standards disapproved by EPA relating to estuarine habitat and other fish and wildlife uses of the Bay-Delta Estuary. Upon its approval of State-submitted standards meeting the requirements of the Clean Water Act, EPA will initiate necessary rulemaking action, consistent with the Clean Water Act, to withdraw the Federal standards. Prior to any action on State-submitted standards, EPA will consult with USFWS and NMFS as required by Section 7 of the Federal Endangered Species Act (16 U.S.C. § 1536).

2. Commencing with workshops in April 1994, SWRCB will update and revise its 1991 Water Quality Control Plan for the Bay-Delta Estuary, including revision of the State standards to meet Federal Clean Water Act requirements, and will release a new draft Plan by December 1994. The workshops will solicit comments and recommendations from interested parties on the scope of the review, the level of protection that should be provided to fish and wildlife beneficial uses, the alternatives available to achieve that level of protection, and related issues.

3. The results of this process will be used to prepare a draft water quality control plan and an evaluation of the environmental and economic effects of the draft plan and its alternatives pursuant to all applicable provisions of the California Water Code, the Federal Clean Water Act, and the California Environmental Quality Act (CEQA). A hearing will be held approximately 60 days after the release of the draft plan to solicit comments on the draft plan. The SWRCB will then consider adoption of the draft plan at a subsequent public meeting. After adoption of the plan and its approval by the California Office of Administrative Law (OAL), the new or revised water quality standards contained in the plan that are subject to Federal authority will be submitted to EPA for its review and approval.

4. The SWRCB will initiate a water right proceeding for the purpose of allocating responsibility to comply with water quality standards meeting the requirements of the Clean Water Act among the water right holders in the Bay-Delta watershed and to establish terms and conditions in appropriate water right permits. A CEQA document (probably an EIR) will be prepared before adoption of a water right decision.

5. The SWRCB will seek agreement with the California Department of Water Resources and the U.S. Department of the Interior to operate the SWP and CVP to make an equitable contribution to meeting the standards, starting in calendar year 1995, while the

SWRCB is working on a water rights decision to equitably allocate responsibility among water right holders in the Bay-Delta watershed.<sup>1/</sup>

6. The time schedule for these State Board activities is provided below.

- March 1994           Distribute workshop notice initiating review of the water quality control plan
  
- April-July 1994     Conduct workshops to receive input on the 1994 following subjects, and possibly others:
  - April - - EPA/Federal Ecosystem Directorate proposed standards
  - Level of protection necessary for the Bay-Delta Estuary
  
  - May   - ESA issues
  - Western Delta industrial diversions
  - Other Delta diversions
  - Striped bass
  
  - June - Exotic species
  - Fishery declines from other causes
  - Operations by CVP/SWP for ESA and other species of concern
  - Effects of projects other than SWP/CVP
  
  - July - Potential methods of economic analysis
  - Recommendations for alternative standards
  - Interim implementation of standards by SWP/CVP during 1995 and until water rights decision is implemented
  
- July-November 1994   Analyze data and write draft Water Quality Control Plan
  
- December 1994       - Release draft Water Quality Control Plan and Notice of Hearing to Consider Plan
- Negotiate agreements for compliance with draft standards during 1995 and until water rights decision is implemented (see footnote #1)
  
- January 1995         Commence SWP/CVP operations under interim compliance standards<sup>2/</sup>

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1. It may be possible for the standards to be phased, with the initial phase implemented by the projects during the water rights hearings. Compliance with Endangered Species Act requirements affecting the Bay-Delta may result in actions which contribute to or result in meeting the standards' initial phase.

2. Because of procedural complexities and numbers of diversions affected, the water rights process could take up to two years to complete.

- February 1995 Conduct Water Quality Control Plan hearing
- March 1995 Adopt Water Quality Control Plan
- June 1995 Commence water rights process

**POINTS OF AGREEMENT  
ON  
COORDINATING CVP/SWP OPERATIONS WITH  
ENDANGERED SPECIES, WATER QUALITY, AND CVPIA REQUIREMENTS**

1. Listing of the winter-run Chinook salmon and delta smelt under the State and Federal Endangered Species Acts has resulted in biological opinions by NMFS, USFWS and the California Department of Fish and Game (DFG) containing constraints on CVP and SWP operations. Additional listing of other species, such as the Sacramento splittail, could require additional constraints on project operations.
2. The 1993 winter-run Chinook salmon biological opinion issued by NMFS and adopted by DFG includes a reasonable and prudent alternative (RPA) and incidental take statement that set requirements for Sacramento River flows and temperature, Delta Cross-Channel gate operation, Delta channel flows, SWP-CVP coordination and cooperation, take limits, carry-over storage requirements at Shasta Reservoir, operation restrictions at Red Bluff Diversion Dam, monitoring and studies, and creation of a monitoring work group and an operations and management work group to coordinate implementation of the RPA.
3. The 1994 delta smelt biological opinion issued by USFWS and under consideration for adoption by DFG includes an RPA and incidental take statement that set requirements for transport and habitat flows, San Joaquin River transport flows, late spawning protection, Suisun Marsh salinity control structure operation, SWP-CVP coordination and cooperation, take limits, monitoring and studies, and provide for creation of a working group and a management group to coordinate implementation of the RPA.
4. A high level of coordination by resource managers, water operators, and biologists is needed to provide comprehensive and effective implementation of the complex requirements for resource protection affecting Bay-Delta resources and the CVP and SWP operations.
5. A CVP/SWP Operations-Endangered Species Coordination Group ("Coordination Group") shall be established consisting of representatives of USFWS, USBR, NMFS, EPA, DFG, DWR, and staff of the SWRCB. The Coordination Group will exchange information and facilitate the coordination of water project operations with requirements of the RPAs under the winter-run salmon and the delta smelt biological opinions, the State and Federal water quality standards, and the CVPIA.
6. Issues that may be presented within the Coordination Group include:
  - Review of project operations;
  - Review of operating parameters in biological opinions;

- Review of fish distribution and fish population levels;
- Review of status of endangered species take;
- Review of fish identification procedures;
- Discussion of strategies for implementation of fishery protections to resolve conflicts between operations, water quality requirements, and fishery needs in the Bay-Delta Estuary and its watershed;
- Coordination of the winter-run salmon monitoring and operations and management work groups with the delta smelt management and work groups and with the Interagency Ecological Program;
- Discussion of strategies for implementation of Bay-Delta Estuary standards;
- Review of and comment on the annual CVPIA water allocation and on other CVPIA activities related to the Bay-Delta Estuary such as the Anadromous Fish Restoration Program; and
- Cooperation with the Interagency Ecological Program as well as others to determine factors affecting Delta habitat and health of fisheries, and to identify appropriate corrective measures for the CVP and SWP.

7. The Coordination Group shall meet as necessary to accomplish the purposes of this Agreement.

8. The Coordination Group shall periodically provide briefings on its reviews, recommendations, and activities to the Governor's Water Policy Council and the FED. The Coordination Group shall also provide periodic briefings to other interested parties.

**POINTS OF AGREEMENT  
ON  
DEVELOPMENT OF JOINT STATE-FEDERAL PROCESS TO  
DEVELOP LONG-TERM SOLUTIONS  
FOR THE PROBLEMS AFFECTING PUBLIC VALUES  
IN THE BAY-DELTA ESTUARY**

To secure California's water future, the Council and the FED commit to work together to equitably reconcile the economic and environmental values that are dependent on the Bay-Delta Estuary consistent with achieving and maintaining statutory objectives.

The Council and the FED are committed to the principles detailed herein. Taken together, they provide a foundation for a joint process to develop a long-term solution for the problems affecting public values in the Bay-Delta Estuary. The process will be assisted by citizen-advisors gathered from California's agricultural, environmental, urban and other affected interests. The process will be administered through cooperative and coordinated activities of responsible State and Federal agencies, will incorporate full and coordinated compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), and will ensure maximum opportunities for public involvement.

The Council and the FED jointly commit to the following:

1. Alternative solutions will be evaluated to address the underlying causes of problems affecting the Bay-Delta Estuary's public values. These values include:

- A. Water quality
- B. Guarantees for protection of the Bay-Delta Estuary and its fish and wildlife resources
- C. Effective planning and operation of water export systems
- D. Maintenance of Delta levees and channels

2. The Public will have a central role. A committee of citizen-advisors, representing California's agricultural, environmental, urban and other affected interests will be created to advise the responsible agencies. This committee will meet the requirements of applicable State and Federal laws. It will include existing members of the State's Bay-Delta Oversight Council as appropriate, with additional appointments as needed to ensure balanced representation. Activities of the citizen-advisors include:

- A. Recommend objectives to be met, including both the problems to be addressed and a specific set of objectives.

B. Recommend neutral evaluation criteria to measure the effectiveness of alternative solutions consistent with statutory and regulatory authorities.

C. Recommend specific solution alternatives to be evaluated in a formal CEQA/NEPA process carried out by one or more agencies.

D. As part of the CEQA/NEPA environmental documentation process, recommend the best solution alternative for implementation by the appropriate agencies.

3. The State and Federal agencies will coordinate the joint comparative evaluation within the CEQA/NEPA framework. To assure thoroughness, objectivity, and credibility, the comparative evaluation of selected solution alternatives will be conducted within the CEQA/NEPA framework. This will ensure that all reasonable alternatives will be fully and fairly considered, and that formulation of the solution alternatives and the detailed study of them will occur in an open forum.

4. The State and Federal Agencies agree to coordinate and cooperate in the joint management of the solution-finding process. The Agencies also commit to the provision of information to the citizen advisory committee. The Bay-Delta solution-finding process will also utilize the ongoing Interagency Ecological Program as an additional source of appropriate technical support.

5. The Bay-Delta solution-finding process will be linked to the Central Valley Project Improvement Act and other ongoing processes. The CVPIA is major legislation influencing the management of the CVP, the single largest source of developed water in California. Management of the CVP is linked to operation of the State Water Project through the Coordinated Operation Agreement, through operation of Joint Use Facilities, and through joint obligations to meet water quality standards and endangered species requirements. There is a long history of joint planning and cooperation between the State and Federal governments regarding operations in the Delta. Where appropriate, implementation of the CVPIA and the Bay-Delta Estuary solution-finding processes will be closely coordinated to support and complement one another.

Finally, similar coordination will be developed between the Bay-Delta solution-finding process and other existing State and Federal programs focused on the Bay-Delta Estuary.

6. Implementation. The State and Federal agencies commit to develop as soon as practicable such details as are necessary to commence joint management of the long-term solution-finding process. In the interim, the FED agrees to cooperate, as appropriate, with the State's current long-term solution finding process.