

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

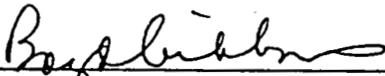
STATE OF CALIFORNIA



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

7-1-94

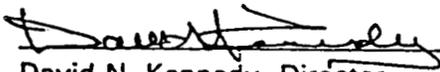
Dated



Boyd Gibbons, Director
California Department of Fish and Game

6/30/94

Dated



David N. Kennedy, Director
California Department of Water Resources

6-29-94

Dated



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.^{1/}

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^{2/}

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.