

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION
AND

FOR
COOPERATIVE DEVELOPMENT OF THE ENVIRONMENTAL IMPACT STATEMENT
FOR THE REMANDED BIOLOGICAL OPINIONS ON THE COORDINATED LONG-TERM
OPERATION OF THE CENTRAL VALLEY PROJECT AND STATE WATER PROJECT
(REMAND EIS)

This Memorandum of Understanding (MOU) is entered into jointly by the following parties: the Bureau of Reclamation (Reclamation), and _____.

I. Purpose

The purpose of this MOU is to formalize the commitment among the parties to work collaboratively in preparation of the Environmental Impact Statement (EIS) in compliance with the National Environmental Policy Act (NEPA) for the Remanded Biological Opinions (BOs) on the Coordinated Long-Term Operation of the Central Valley Project (CVP) and State Water Project (SWP). This MOU is intended to clarify and define the roles and responsibilities of Reclamation (NEPA Lead Agency) and _____ (Cooperating Agency) in preparation of the Remand EIS.

II. Introduction

The U.S. District Court for the Eastern District of California remanded portions of the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) BOs to their respective agencies. The Remand EIS responds to the District Court's order that Reclamation analyze and disclose, in accordance with NEPA, the potential impacts of implementing the Reasonable and Prudent Alternatives developed pursuant to the remanded USFWS and NMFS BOs.

Reclamation is the Federal Lead Agency in preparation of the Remand EIS in compliance with NEPA. The USFWS, NMFS, U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, Bureau of Indian Affairs are Federal cooperating agencies under NEPA. Reclamation is also providing non-Federal agencies with the opportunity to participate in the NEPA process for the Remand EIS as a cooperating agency. Under the U.S. Department of the Interior's NEPA regulations, eligible governmental entities include State, tribal, and local agencies that are qualified to participate in an EIS by virtue of jurisdiction by law, or by virtue of special expertise in regard to any environmental impact associated with the action being considered. More than 740 non-Federal agencies were provided the opportunity to participate in the Remand EIS as a cooperating agency.

On March 28, 2012, Reclamation issued a Notice of Intent (NOI) to conduct public scoping meetings and prepare an EIS on the remanded BOs. Five scoping meetings were held in April/May in

Marysville, Sacramento, Madera, Los Banos, and Diamond Bar, California. The public comment period originally ended on May 29, 2012, and was extended to June 28, 2012. Reclamation is moving forward with the process of developing the environmental analysis to be included in the Remand EIS.

III. Statutory and Regulatory Authority

This MOU is being entered into pursuant to NEPA, 42 U.S.C. Section 4331, *et seq.*, the Council on Environmental Quality's NEPA regulation regarding Cooperating Agencies, 40 C.F.R § 1508.5, the U.S. Department of the Interior's NEPA regulations, 43 C.F.R §46 *et seq.*, and its regulation regarding Cooperating Agencies, 43 CFR §26.225(d). The purpose of this MOU is to document the roles, responsibilities and commitments of the Lead Agency and cooperating agencies pursuant to NEPA and implementing regulations.

IV. Responsibilities

The parties to this MOU herein commit as follows:

a. NEPA Lead Agency

As the NEPA Lead Agency, Reclamation is responsible for the preparation, quality, and content of the Draft and Final Remand EIS. Other responsibilities of the NEPA Lead Agency include:

1. Providing invitations and adequate notice for meetings and/or workshops with the Cooperating Agency (if any);
2. Providing direction to and reviewing the work products of the EIS consultants;
3. Clearly identifying and acknowledging the roles and responsibilities of all NEPA cooperating agencies in the Remand EIS;
4. Informing the public and decision-makers of the potential direct, indirect, and cumulative impacts of the alternatives that are reviewed during the EIS process, as well as about potential means to mitigate those impacts;
5. Identifying opportunities to avoid, minimize, or compensate for significant adverse effects due to Federal actions;
6. Providing preliminary EIS deliverables, as appropriate, to the Cooperating Agency for review and comment;
7. Providing technical analyses and information to the Cooperating Agency and soliciting its review and comment, particularly with respect to key subject areas pertaining to issues within its jurisdiction by law or special expertise as appropriate;
8. Taking those actions necessary to permit the Cooperating Agency to accomplish its responsibilities, including the provision of those documents to be reviewed by Cooperating Agency, as determined to be appropriate by the NEPA Lead Agency; provided that the entire Administrative Draft EIS shall be provided to the Cooperating Agency when it is available following review by the NEPA Lead Agency;
9. Assuring compliance with all applicable laws and regulations pertaining to preparation of the Remand EIS;
10. Making all decisions on the content of public documents;
11. Informing the Cooperating Agency of schedule changes that could affect its input to the Remand EIS or ability to provide timely review of the document; and

12. Making all decisions contained in the Record of Decision (ROD).

b. Cooperating Agency

As a Cooperating Agency pursuant to NEPA for the Remand EIS, to the extent that its limited fiscal, staff, and other resources permit, the responsibilities of the Cooperating Agency include taking the following actions in a timely manner consistent with the schedule for developing and completing the EIS and with direction provided by the NEPA Lead Agency:

1. Devoting staff resources sufficient to provide technical assistance to fulfill its role as a Cooperating Agency;
2. Attending meetings/workshops (if any);
3. Providing review and comment on preliminary EIS deliverables;
4. Providing responses to data requests pertaining to issues within its special expertise;
5. Providing technical information and expertise directly associated with its statutory responsibilities or related experience, including review of technical analyses of key subject areas, as requested by the NEPA Lead Agency;
6. Raising issues as early in the process as reasonably feasible to avoid delay and inefficiency;
7. Identifying data and analysis in the EIS that may be needed to fulfill any requirements regarding jurisdictional permits and/or other approvals required for implementation of the project;
8. Following consolidation of review comments by the NEPA Lead Agency, providing review and comment on individual chapters of the Administrative Draft EIS prior to public review of the Draft EIS, as requested by the NEPA Lead Agency;
9. Reviewing comments on the Draft EIS and assisting with responses to comments as requested by the NEPA Lead Agency;
10. Following consolidation of review comments by the NEPA Lead Agency, providing review of portions of the Administrative Final EIS that deal with subjects within the scope of the Cooperating Agency's expertise, as requested by the NEPA Lead Agency, prior to public release of the Final EIS;
11. Complying with the confidentiality requirements and procedures specified below for all documents received as a part of this MOU; and
12. Except as funds may be made available pursuant to 40 C.F.R. §1501.6(b)(5), funding its own expenses associated with its participation in the NEPA process, including development of information, reviewing, and providing comments on the EIS pertaining to the Cooperating Agency's special expertise as outlined above.

V. Representation

The NEPA Lead Agency and the Cooperating Agency shall designate its representative for purposes of this MOU. The representatives shall be responsible for ensuring that the information sharing, collaboration, and document review procedures established by this MOU are implemented: (1) by the employees and consultants of the NEPA Lead Agency directly responsible for the technical analyses and preparation of the environmental documents, and (2) by the employees and consultants of the Cooperating Agency.

The Cooperating Agency shall designate one representative responsible for attendance at meetings/workshops (if any) and as the single point of contact for the exchange of materials and documents. Changes to the identified representative shall be provided in writing and subject to approval by the NEPA Lead Agency.

VI. Confidentiality

The Cooperating Agency agrees to keep all documents, including drafts, provided by the NEPA Lead Agency in accordance with its Cooperating Agency status and pursuant to this MOU confidential to the extent allowable by law. The Cooperating Agency will provide notice to the NEPA Lead Agency before disclosing any document required by law to be disclosed to outside parties that has been shared with the Cooperating Agency in accordance with its Cooperating Agency status and pursuant to this MOU.

Notwithstanding the foregoing, the Cooperating Agency may disclose such materials to its officers, members of its staff, and its contractors.

VII. Additional Provisions

- 1. Effect of MOU.** This MOU shall take effect as to the Cooperating Agency when signed by the Cooperating Agency and the NEPA Lead Agency.
- 2. Termination of the MOU.** This MOU shall terminate upon issuance of the ROD by the NEPA Lead Agency, or upon written agreement of the parties.
- 3. Withdrawal from the MOU.** Any party may withdraw from the MOU with 30 days written notice to the NEPA Lead Agency. If the Cooperating Agency withdraws from this MOU it will no longer be considered a Cooperating Agency for the purposes of the Remand EIS.
- 4. Modification of the MOU.** This MOU may be modified by written agreement of the parties.
- 5. Contingent on Apportionment or Allotment of Funds.** The expenditure or advance of any money or the performance of any obligation of the United States under this MOU shall be contingent upon appropriation or allotment of funds. No liability shall accrue to the United States for failure to perform any obligation under this MOU in the event that funds are not appropriated or allotted.
- 6. Liability of the Cooperating Agency.** It is acknowledged that the Cooperating Agency may have limited fiscal, staff, and other resources to devote to the performance of its obligations hereunder. Consequently, the Cooperating Agency may not be able to fully or timely perform its obligations hereunder. By executing this MOU, the Cooperating Agency commits only to participate to the extent that it reasonably determines to be feasible. No liability shall accrue to the Cooperating Agency for failure to perform any obligation under this MOU.

7. **Reservation of Rights.** The Cooperating Agency waives no rights under NEPA or other law to comment upon, dispute, or otherwise challenge the EIS or the remanded BOs.
8. **Conflicts of Interest.** Nothing in this document, nor any of the activities undertaken by the Cooperating Agency under this document, shall constitute, be asserted as, or construed as, a conflict of interest or representation by any office holder, employee, or agent of the Cooperating Agency under Federal or California law.
9. **Counterparts.** This MOU may be signed in counterparts.

VIII. Conclusion

In signing this MOU, the undersigned recognize and accept the roles and responsibilities assigned to each party. Each of the parties agrees to pursue maximum cooperation and communication to ensure that the EIS fully comply with all applicable State and Federal requirements and minimizes duplication of effort and project delays.

BUREAU OF RECLAMATION

By: _____ Date: _____

By: _____ Date: _____