

MEMORANDUM OF UNDERSTANDING FOR PREPARATION OF ENVIRONMENTAL DOCUMENTS

This Memorandum of Understanding (MOU) is entered into among:

the Applicant,

the Consultant,

and the State of California, acting by and through the State Water Resources Control Board (SWRCB), Division of Water Rights (Division), to provide for the preparation of an Initial Study (IS), and, upon further authorization by Applicant, for preparation of additional environmental documentation pursuant to the California Environmental Quality Act (CEQA).¹

**ARTICLE I.
STATEMENT OF FACTS**

Applicant has submitted:

- 1. Water Right Application _____
- Petition to Change: Permit _____
- License _____
- Water Right Application _____

describing either a water development project requiring an appropriate water right permit from the SWRCB, or a modification to a water development project that has a permitted or licensed appropriate water right. Such proposed water development project or modification to a water development project shall hereinafter be referred to as the Project.

- 2. Pursuant to CEQA, the Lead Agency is to conduct an environmental analysis of the Project and prepare appropriate environmental documents. The SWRCB has determined that it is the Lead Agency for the above-referenced Project, and that an IS must be prepared for the Project. The results of the IS will be used by the SWRCB to determine whether a Negative Declaration (ND), Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR) must be prepared to comply with CEQA.²
- 3. Pursuant to California Code of Regulations, title 14, section 15084, the SWRCB is authorized to execute a MOU with the Applicant to govern the environmental analysis of the

¹ Public Resources Code section 21000 et seq.

² The requirements for the preparation and public circulation of these environmental documents are described in CEQA and the State CEQA Guidelines (Cal. Code Regs. tit. 14, section 15000 et seq.)

Project and preparation of the above-described environmental documents using assistance provided by an independent consultant (Consultant).

ARTICLE II.
RESPONSIBILITIES OF THE PARTIES

A. APPLICANT

1. Applicant agrees to select a Consultant who is acceptable to the SWRCB Manager (Manager). Consultant shall be responsible for preparing any required documents to the satisfaction of the SWRCB. Applicant agrees to enter into a consulting contract with the Consultant that is consistent with the terms of this MOU. Applicant shall not employ or contract with Consultant to assist in the preparation of environmental documents for this Project on a contingency fee basis.
2. Applicant shall pay all costs associated with Consultant's assistance to the SWRCB in conducting the IS, and, if subsequently agreed upon, the further environmental analysis of the Project. Such costs may include additional studies or analyses, preparation and distribution of all of the environmental documents discussed below, costs of reproducing copies for public review and comment, and preparation for and participation in all SWRCB public meetings and hearings regarding the environmental documents. Applicant shall pay Consultant's costs directly to Consultant.
3. Applicant shall not direct or participate in the preparation of the environmental documents for this Project except to the extent that Applicant provides data and information requested by Consultant and/or the Manager, and provides access to the Project site. Prior to the public release of any documents, Applicant shall have the right to review the documents only for technical accuracy and consistency with the Project description and purpose.

B. SWRCB

1. The SWRCB shall appoint a Manager from the Division. The Manager shall be the day-to-day representative for administration of this MOU and, except as otherwise specifically provided, shall have full authority to act on behalf of the SWRCB with respect to this MOU. Except as otherwise expressly provided, all communications relative to this MOU shall be given to the Manager.
2. The SWRCB shall determine the scope and content of the IS for the Project and the time frame for its preparation, shall determine the scope and content of additional environmental study and documents as may be required, and shall act as liaison with the State Clearinghouse of the Office of Planning and Research.
3. The SWRCB alone shall direct Consultant's work towards conducting the environmental analysis of the Project, and in preparing environmental documents for the Project under the

statutes and regulations implementing CEQA. Consultant shall report directly to the SWRCB, not to the Applicant. The SWRCB shall have sole responsibility for determining the adequacy of any written material or testimony prepared or submitted by Consultant pursuant to SWRCB direction given under this MOU.

4. The SWRCB shall not be obligated in any manner to pay for the services rendered by Consultant.

C. CONSULTANT

1. Consultant, including its employees, agents, subcontractors, or any other representatives for this Project shall, from the time of execution of this MOU until formally released, take direction solely from, and be responsible to, the designated Manager in all matters pertaining to the preparation of the IS, any and all supporting documentation, and any and all additional environmental studies and/or documents.
2. Although Consultant will be paid by the Applicant, Consultant is obligated to take direction from the SWRCB, not the Applicant. The Applicant may take appropriate measures, however, to determine whether the costs being charged for the work performed by Consultant are reasonable.
3. Consultant shall not employ any person who holds or has held an interest in this Project or any other proposed project of the Applicant requiring approval by the SWRCB, without the prior written consent of the Manager. Consultant shall execute the Disclosure Statement attached hereto as Attachment 1.

ARTICLE III. SCHEDULE AND PERFORMANCE OF WORK

1. Consultant shall assist the SWRCB in preparing an IS for the Project, including all supporting documentation and suggested mitigation measures for any significant environmental impacts which the IS identifies. Within 60 days of execution of this MOU, the Consultant shall submit a preliminary work plan to the Manager for the preparation of the IS for the Project. The preliminary work plan shall include a description of the tasks to be performed, including at least the following items:
 - A. The scope of the water availability analysis to be performed;
 - B. the specific environmental studies to be performed;
 - C. a schedule of specific tasks to be performed in order to carry out the required environmental studies;
 - D. a list of permits required to construct and implement the Project;
 - E. a schedule for consultation with the California Department of Fish and Game and the National Marine Fisheries Service; and

- F. a schedule for consultation with any local, state or federal agency from whom an environmental approval may be required.
- 2. Based on this preliminary work plan, the Manager and Consultant shall then prepare a final work plan and schedule for completion of tasks.
- 3. After approval of the final work plan and schedule by the Manager, the Consultant shall implement the final work plan and prepare a draft IS, including suggested mitigation measures and a Mitigation Monitoring Plan (MMP), if necessary.
- 4. Upon review and acceptance of the IS, the SWRCB shall determine the scope of further environmental review and documentation that may be necessary for SWRCB action on the Project. The Manager shall notify Applicant and Consultant of that determination.
- 5. If additional environmental studies and/or documents are required to be prepared by the Consultant (which may include, but are not limited to, a draft and final ND, MND, EIR, MMP, and/or Responses to Comments), Consultant shall provide Applicant and the SWRCB a supplemental work plan, subject to the approval of the Manager, which shall include at least the following items:
 - A. A list of the specific tasks required;
 - B. a schedule for the completion of these tasks; and
 - C. an estimate of the costs to complete the tasks, including participation in any SWRCB hearings on these environmental documents.

The supplemental work plan shall be presented to the Manager for approval no later than 90 days after the Manager's notification to Consultant that additional environmental review and documentation is necessary.

- 6. After approval of the supplemental work plan by the SWRCB, the Applicant shall within 30 days approve or reject the implementation of the supplemental work plan tasks.
- 7. The SWRCB reserves the right to change the scope of work from that originally identified in any work plan. Such changes may be necessitated by the need for new or additional information, or by the discovery of additional environmental issues during the course of the environmental analysis. The Manager shall give the Applicant and Consultant timely notice of the requirement for such change in scope of work and the reasons therefor. Upon such notice, within 60 days the Consultant shall provide the Manager and Applicant an estimate of the cost and timetable for completing the additional work.

ARTICLE IV.
GENERAL TERMS OF THE MOU

1. **Term and Effective Date:** This MOU shall be effective from the date of execution by the parties, the last signature to be that of the SWRCB, and shall continue in full force and effect through the completion of the IS or, if subsequently authorized, the end of the further environmental review, environmental document preparation, and hearing process, when the Notice of Determination is filed with the State Clearinghouse, unless terminated earlier by the parties.
2. **Dispute Resolution:** Except as otherwise provided in this MOU, any dispute concerning a question of fact arising under or relating to the performance of this MOU, which is not disposed of by agreement, shall be decided by the SWRCB. The Manager shall transmit the written decision to the Applicant and Consultant. The decision of the SWRCB shall be deemed final and conclusive unless, within 30 days from the date of receipt of such copy, the Applicant or Consultant transmits to the Manager a written appeal. Said appeal shall include specific arguments supporting the appeal. In connection with any appeal proceeding under this clause, Applicant and Consultant shall be afforded an opportunity to be heard before the SWRCB and to offer factual evidence in support of, or in opposition to, the appeal. Pending the final resolution of any such dispute, Applicant and Consultant shall proceed diligently with the performance of their responsibilities in accordance with the written decision of the SWRCB, which is the subject of the appeal.
3. **Termination:** Applicant or Consultant shall have the option of terminating this MOU by written notice to the other parties. Applicant acknowledges that if Applicant terminates the MOU, SWRCB may cancel Applicant's water right Application or Petition for the Project. Applicant shall continue to be liable for Consultant's costs up to the date Consultant receives notice of Applicant's MOU termination. If, for any reason, Applicant's water right Application or Petition is withdrawn or cancelled, this MOU shall automatically terminate.
4. **Progress Reports:** Consultant shall provide the Manager and Applicant with written progress reports every two months. Within 14 days of receipt of each progress report, the Manager may notify the Applicant and Consultant if progress is found to be unsatisfactory, and identify corrective measures that should be implemented by Consultant to achieve satisfactory progress by the time the next progress report is due.
5. **Due Diligence:** All parties are cognizant of the statutory and regulatory time limits imposed upon the Lead Agency for the completion of the environmental documents described herein. Therefore, the parties agree to act with due diligence in the performance of their respective tasks to complete such environmental documents within the mandated time frames.
6. **Failure to Comply:** Failure of Applicant or Consultant to comply with any or all provisions of this MOU, or to provide complete work products to the satisfaction of the SWRCB on a timely basis, may result in the unilateral termination of this MOU by the SWRCB. Upon termination of this MOU, SWRCB may provide the Applicant the opportunity to hire a new Consultant and enter into a second MOU. Applicant's failure to enter into a second MOU shall constitute and be deemed as withdrawal of the Project Application or Petition described in Article I, Paragraph 1.

7. Notices and Designation of Representatives:

A. The Applicant's Representative shall be:

(Name)

(Mailing Address)

(Phone Number) (Email Address)

The Applicant's Representative shall have full authority to act on behalf of Applicant for administration of this MOU. All communication given by the SWRCB Manager to the Applicant's Representative shall be as binding as if given to the Applicant.

B. The SWRCB Manager (Manager) shall be:

Division of Water Rights
State Water Resources Control Board Phone: (916) 341- _____
P.O. Box 2000
Sacramento, CA 95812-2000 Email: _____

The Manager shall represent the SWRCB during the administration of this MOU and shall serve as coordinator and director for the environmental analysis of the Project and preparation of the environmental documents.

C. Consultant shall name a Representative who shall be responsible for assisting the SWRCB in conducting the environmental analysis of the Project and preparing the environmental documents, and who shall serve as the liaison with the SWRCB. All communications given by the Manager to the Consultant's Representative shall be as binding as if given to the Consultant.

The Consultant's Representative shall be:

(Name)

(Mailing Address)

(Phone Number)

(Email Address)

- D. Any party may change its designated representative or may change its address by written notice to the other parties.

Dated: _____

By: _____
(Signature)

(Printed Name)

(Title)

(Applicant Name)

Dated: _____

By: _____
Chief, Division of Water Rights
State Water Resources Control Board

Dated: _____

By: _____
(Signature)

(Printed Name)

(Title)

(Consultant's Name)

ATTACHMENT 1

WATER RIGHT APPLICATION _____

OR

PETITION TO CHANGE:

WATER RIGHT PERMIT _____,

WATER RIGHT LICENSE _____,

WATER RIGHT APPLICATION _____.

DISCLOSURE STATEMENT OF ENVIRONMENTAL CONSULTANT

_____ has no financial or economic interest in the
outcome of the State Water Resources Control Board proceedings on the subject water right
application or change petition.

Dated: _____

By: _____

(Signature)

(Printed Name)

(Title)

(Name of Consulting Firm)