

**AGREEMENT FOR IMPLEMENTATION OF AN ADAPTIVE MANAGEMENT  
PROGRAM  
FOR PROJECT OPERATIONS**

**1.0 PURPOSES OF THIS AGREEMENT**

Scientific uncertainty exists regarding the Delta ecosystem, including the effects of Central Valley Project/State Water Project (CVP/SWP) operations and the related operational criteria on the Protected Species and their habitats. To address this uncertainty, the Parties to this agreement will establish a robust program of collaborative science, monitoring, and adaptive management. The purposes of this Agreement are to set forth the Parties shared intentions to: 1) confirm the Parties' commitment to implementation of an Adaptive Management Program (Program) for the California Water Fix, including the Adaptive Management Framework (attached), and Current Biological Opinions on the combined operations of the Central Valley and State Water Projects consistent with the Biological Opinions and Permits, 2) clarify the provisions related to Adaptive Management expressed in related documents and the processes the Parties intend to follow to ensure successful implementation of the Adaptive Management Program, and 3) delineate responsibilities among the Parties in implementing the Adaptive Management Program.

**2.0 PARTIES TO THIS AGREEMENT**

This Agreement is made and entered into by and among the State of California, acting through the California Department of Water Resources (DWR) and the California Department of Fish and Wildlife (CDFW) of the State of California Natural Resources Agency, certain State Water Project and Central Valley Project contractor water agencies (SWP/CVP Contractors), and the United States Bureau of Reclamation (Reclamation) of the United States Department of the Interior, the United States Fish and Wildlife Service (USFWS) of the United States Department of the Interior, and the National Marine Fisheries Service (NMFS) of the United States Department of Commerce (collectively referred to as the Parties).

**3.0 AUTHORITIES**

**3.1.1 CDFW**

CDFW is a State Agency within the California Natural Resources Agency charged with responsibility for administering the California Endangered Species Act (CESA). CDFW enters into this Agreement pursuant to CESA and its implementing regulations.

**3.1.2 DWR**

DWR is a State Agency within the California Natural Resources Agency charged with responsibility for operating and maintaining the State Water Project's existing delta facilities,

including the Clifton Court Forebay and the Banks Pumping Plant, and would be responsible for operating new State Water Project delta facilities contemplated under the proposed California WaterFix project. DWR enters this Agreement pursuant to the Burn-Porter Act and other applicable laws of the State of California.

### **3.1.3 NMFS**

NMFS is the federal agency within the United States Department of Commerce charged with responsibility for administering the ESA and providing for the conservation of federally listed anadromous and marine species and their habitats. NMFS enters into this Agreement pursuant to the ESA and its implementing regulations and pursuant to the Fish and Wildlife Coordination Act.

### **3.1.4 Reclamation**

Reclamation is a federal agency within the United States Department of the Interior charged with responsibility for operating and maintaining the Central Valley Project's (CVP) existing delta facilities, and would be responsible for coordinating operations with DWR on the new State Water Project delta facilities contemplated under the proposed California WaterFix project. Reclamation enters this Agreement pursuant to the Rivers and Harbors Act of August 30, 1935, 49 Stat. 1028, 1038 (1935), the Rivers and Harbors Act of August 26, 1937, 50 Stat 844, 850 (1937), as amended and supplemented by various laws, including the Central Valley Project Improvement Act (CVPIA), Public Law 102-575, 106 Stat. 476 (1992).

### **3.1.5 SWP/CVP Contractors**

The SWP/CVP Contractors are public agencies that receive water under contract from the State Water Project and Central Valley Project. These public water agencies fund operation and maintenance of the existing State Water Project and Central Valley Project delta facilities, and will fund a portion of the costs to implement the proposed California WaterFix project, including a portion of the Adaptive Management Program. The SWP/CVP Contractors enter this Agreement pursuant to their individual authorizing legislation under the California Water Code.

### **3.1.6 USFWS**

USFWS is a federal agency within the United States Department of the Interior charged with responsibility for administering the federal Endangered Species Act (ESA) and providing for the conservation of federally listed fresh water and semi-anadromous aquatic and terrestrial species and their habitats. USFWS enters into this Agreement pursuant to the ESA, the Fish and Wildlife Coordination Act, and the Fish and Wildlife Act of 1956.

## **4.0 DEFINITIONS**

The following terms as used in this Agreement will have the meanings set forth below. Terms specifically defined in State or federal statutes, including the ESA or CESA, or the regulations adopted under those statutes, shall have the same meaning when used in this Agreement. Where

such terms are defined in this Section 4.0, those definitions may elaborate on, but are not intended to conflict with, such statutory or regulatory definitions.

#### **4.1 Action**

“Action” means the following components that are subject to the Adaptive Management Program:

- i. Operation of CVP/SWP facilities within the Delta under
  1. Biological Opinions and Permits existing prior to the Conveyance Facilities becoming operational
  2. new Biological Opinions and Permits for California WaterFix
- ii. Design and operations of fish facilities (including existing fish facilities and intake screens)
- iii. Habitat restoration and non-operational mitigation relative to in-Delta CVP/SWP operations under:
  1. Biological Opinions and Permits existing prior to the Conveyance Facilities becoming operational
  2. new Biological Opinions and Permit for California WaterFix
- iv. Other CVP/SWP-related actions as agreed by the “Interagency Implementation Coordination Group”
- v. Monitoring associated with all of the foregoing within the bounds of the Biological Opinions and Permits.

#### **4.2 Adaptive Management**

“Adaptive Management” is defined in California Water Code, section 85052, and means “a framework and flexible decision making process for ongoing knowledge acquisition, monitoring, and evaluation leading to continuous improvements in management planning and implementation of a project to achieve specified objectives.”

#### **4.3 Adaptive Management Changes**

“Adaptive Management Changes” means changes to monitoring schema and management actions that are encompassed in the Action and include changes intended to facilitate hypothesis-driven experiments and changes intended to be implemented on an ongoing basis subject to further adaptive management in the future.

#### **4.4 Agreement**

“Agreement” means this Agreement for Implementation of an Adaptive Management Program.

#### **4.5 Annual Monitoring and Research Plan**

“Annual Monitoring and Research Plan” means the annual plan prepared by the IICG Manager that identifies all of the monitoring and research actions to be carried out by IEP, CSAMP, or other Collaborative Science Workgroups related to the Biological Opinions and Permits during the implementation year in support of the Adaptive Management Program and includes, with respect to the subset of those monitoring and research actions initiated by the IICG, if any, budgets, funding sources, and timelines for those actions.

#### **4.6 Application**

“Application” means an application prepared by DWR in accordance with California Code of Regulations title 14, § 783.2 and § 783.3 to request the issuance of an incidental take permit by CDFW for authorization of take associated with the SWP operations in the Delta or the California WaterFix project under California Fish & Game Code § 2081(b) or a request for a consistency determination related to the 2008 Biological Opinion and 2009 Biological Opinion, submitted under California Fish & Game Code § 2080.1.

#### **4.7 Biological Assessments**

“Biological Assessments” means the information prepared by or under the direction of Reclamation or other federal action agency concerning federally listed and proposed species and designated and proposed critical habitat that may be present in the Action Area and the evaluation of potential effects of the action on such species and habitat, including the August 2008 Biological Assessment on the Continued Long-term Operations of the Central Valley Project and the State Water Project and the 2016 Biological Assessment for the California WaterFix.

#### **4.8 Biological Opinions**

“Biological Opinions” means the Biological Opinions that are issued by USFWS and NMFS to complete the Section 7 consultations associated with the Action, including the 2008 Biological Opinion on the Long-Term Operational Criteria and Plan (OCAP) for coordination of the Central Valley Project and State Water Project issued by USFWS (“2008 Biological Opinion”), the 2009 Biological Opinion on the Long-Term Operations of the Central Valley Project And State Water Project issued by NMFS (“2009 Biological Opinion”), the 2017 Biological Opinions for the California WaterFix issued by NMFS and USFWS, and any subsequent amendments, revisions or superseding Biological Opinions.

#### **4.9 Central Valley Project or CVP**

“Central Valley Project” or “CVP” means the Central Valley Project, as defined in 3404(d) of Title XXXIV of Public Law 102-575, and operated by Reclamation.

#### **4.10 CESA**

“CESA” means the California Endangered Species Act (Cal. Fish & Game Code §§ 2050–2116) and all rules, regulations and guidelines promulgated pursuant to that Act.

#### **4.11 Collaborative Science Workgroups**

“Collaborative Science Workgroups” means the Collaborative Science and Adaptive Management Program/Collaborative Adaptive Management Team (CSAMP/CAMT), Interagency Ecological Program (IEP) and associated scoping and project work teams, Fish Facilities Design and Evaluation Team(s), and Fish Restoration Program/State Federal Water Contractors Association Tidal Wetland Restoration Project Design and Implementation Team(s). Additional workgroups or technical subgroups may be formed where appropriate and useful to carry out the collaborative science efforts.

#### **4.12 Consensus**

“Consensus” means that all members of the Interagency Implementation Coordination Group agree to the proposal at hand.

#### **4.13 Conveyance Facilities**

“Conveyance Facilities” means the proposed new delta conveyance facilities described as part of the Proposed Action in the 2016 Biological Assessment for the California WaterFix and as further described as Alternative 4A in the 2016 Final Environmental Impact Report/Environmental Impact Study for the Bay Delta Conservation Plan/California WaterFix.

#### **4.14 Delta or Sacramento–San Joaquin Delta**

“Delta” or “Sacramento–San Joaquin Delta” means the Sacramento–San Joaquin Delta as defined in California Water Code § 85058.

#### **4.15 Designated Representative**

“Designated Representative” means in the case of DWR and CDFW the official representative designated by the Governor to act on his behalf, and in the case of the SWP/CVP contractors the official representative designated by an elected board of directors to act on their behalf.

#### **4.16 ESA**

“ESA” means the federal Endangered Species Act of 1973, as amended (16 U.S.C §§ 1531–1544) and all rules, regulations and guidelines promulgated pursuant to that Act.

#### **4.17 Fish and Wildlife Agencies**

“Fish and Wildlife Agencies” means USFWS, NMFS, and CDFW.

#### **4.18 Interagency Implementation Coordination Group**

“Interagency Implementation Coordination Group” (IICG) primary responsibility will be for coordination and implementation of the Adaptive Management Program. The membership and functions of the Interagency Implementation Coordination Group are described in Section 5.3.2 of this Agreement.

#### **4.19 IICG Manager**

“IICG Manager” means the individual with responsibility for administration and management of the Adaptive Management Program. The IICG Manager’s functions are described in Section 6.1.

#### **4.20 NPPA**

“NPPA” means the California Native Plant Protection Act (Cal. Fish & Game Code §§ 1900–1913) and all rules, regulations, and guidelines promulgated pursuant to that Act.

#### **4.21 Party and Parties**

“Party” and “Parties” mean the signatories to this Agreement, individually and collectively.

#### **4.22 Permits**

“Permits” means, collectively, the Consistency Determinations issued to DWR pursuant to 2080.1 of the California Fish & Game Code related to the 2008 and 2009 Biological Opinions, the 2009 Incidental Take Permit for take of Longfin Smelt issued to DWR pursuant to Section 2081(b) of the California Fish & Game Code and any successor to that permit, an Incidental Take Permit issued to DWR for the California WaterFix project, and the related NPPA permit issued to DWR pursuant to sections 1907 and 1908 of the California Fish & Game Code.

#### **4.23 Protected Species**

“Protected Species” means the federally listed species that are covered under a Biological Opinion and the State-listed or candidate species for which take is authorized under a Permit. Protected Species are listed in Exhibit A to this Agreement.

#### **4.24 Operational Opportunities**

Operational Opportunities means changes to the Action that may occur within one year, are considered on a case-by-case basis and are for the purpose of addressing a specific short-term ecological or water supply opportunity, without reducing the ability of the SWP or CVP to deliver water, imposing additional funding obligations on the SWP/CVP Contractors, or adversely impacting Protected Species.

## **4.25 State Water Project or SWP**

“State Water Project” or “SWP” means the State Water Project as authorized by California Water Code sections 12930 *et seq.* and California Water Code sections 11100 *et seq.* and operated by DWR.

## **4.26 SWP/CVP Contractors**

“SWP/CVP Contractors” means the individual water agencies that hold water delivery contracts with DWR for SWP water (SWP Contractors) or Reclamation for CVP water (CVP Contractors), or an entity comprising such agencies, and that have executed this Agreement. SWP/CVP Contractors may include the State and Federal Water Contractors Agency (SFWCA), a joint exercise of powers agency, and the San Luis & Delta Mendota Water Authority (SLDMWA), a joint exercise of powers agency. The SWP/CVP Contractors are listed on Exhibit B to this Agreement.

# **5.0 ADAPTIVE MANAGEMENT PROGRAM**

## **5.1 Purpose**

Scientific uncertainty exists regarding the Delta ecosystem, including the needs of the Protected Species, the effects of CVP/SWP operations on those species and their habitats, and the related operational criteria and other actions intended to minimize or mitigate those effects on the Protected Species. The Adaptive Management Program described here and in the Adaptive Management Framework (Exhibit C) is being implemented to enhance application of science to support decision making related to the operations of the CVP and SWP and to advance the co-equal goals of the Delta Reform Act of 2009, providing a more reliable water supply for California and protecting, restoring and enhancing the Delta ecosystem. Implementation of the Adaptive Management Program will support the SWP/CVP operations by helping to address scientific uncertainty where it exists, and as it relates to the benefits and impacts of the construction and operations of the Conveyance Facilities and existing CVP and SWP Delta facilities.

The broad purposes of the Adaptive Management Program are to: 1) promote collaborative science, 2) guide (by identifying, prioritizing, and funding) the development and implementation of scientific investigations and monitoring for both permit compliance and adaptive management, 3) apply new information and insights to management decisions and actions, and recommend changes in the Action to DWR and Reclamation, and 4) establish a long-term, funded science infrastructure,.. The Program relies upon existing and new Collaborative Science Workgroups, working in close coordination with each other, to identify and prioritize needed scientific investigations and monitoring.

## **5.2 Scope of Adaptive Management Program and Actions**

### **5.2.1 Actions**

The focus of the Adaptive Management Program is on the Action. Adaptive management changes would be implemented generally on an annual or longer-term basis. As of this time, the Adaptive Management Program is not intended to apply to real-time operations.

### **5.2.2 Other CVP and SWP-related Actions**

Actions subject to Adaptive Management may also include other CVP and SWP-related actions as agreed by the Interagency Implementation Coordination Group.

### **5.2.3 Collaborative Science**

The IICG, working in coordination with the Collaborative Science Workgroups, will identify and prioritize potential Adaptive Management Changes to be addressed by the collaborative science efforts. Collaborative science efforts will address uncertainties related to the effects of CVP/SWP operations, operational criteria and other actions intended to minimize or mitigate effects to Protected Species to inform implementation of such operations, measures, and actions to provide water supply reliability benefits and maintain compliance with CESA and the ESA. With respect to the Adaptive Management Program, collaborative science will have the following primary functions:

- lead active evaluation through studies, monitoring, and testing of reasonable current and new hypotheses associated with key water operating parameters, habitat restoration, and other minimization and mitigation measures;
- gather and synthesize relevant scientific information;
- develop new modeling or predictive tools to improve water management in the Delta; and
- inform the testing and evaluation of alternative operational strategies and other management actions to improve performance from both biological and water supply perspectives.

The IICG, through the IICG Manager, will report all internal decisions to DWR and Reclamation in the form of meeting notes.

### **5.2.4 Monitoring and Research**

Monitoring and research associated with the Action will be used to facilitate evaluation of effects of components of the Action and guide determinations whether to make changes to improve them. Compliance and effectiveness monitoring program will include the elements as described in the Biological Opinions, Permits, and Applications.

### **5.2.5 Routine and Administrative Matters**

Implementation of the Adaptive Management Program will include decisions on routine scientific matters and administration that do not result in substantive changes to the Action or to the Adaptive Management Program itself, or requirements of the Biological Opinions or Permits. Such routine and administrative matters include, for example, developing and distributing public



communication products to assure transparency and determining meeting frequency and format(s). Decisions on these matters will be made by consensus.

### **5.3 Interagency Implementation Coordination Group**

#### **5.3.1 Purpose and Function**

An Interagency Implementation Coordination Group shall be established as described in this Section 5.3. The Interagency Implementation Coordination Group shall have primary responsibility for support, coordination and implementation of the Adaptive Management Program and shall:

- Be responsible for supporting those priority science needs identified by Collaborative Science Workgroups that the IICG determines are necessary to carry out the Adaptive Management Program.
- Identify priority science needs not addressed by Collaborative Science Workgroups, and route requests for those science needs with, if necessary, appropriate funding to the appropriate entity with the capacity to complete them, or at its discretion, the IICG may initiate work to address priority science needs using its own staff, staff from its members, or any appropriate entity.
- Establish mechanisms for developing and agreeing to Adaptive Management Changes, such as through preparation of an annual adaptive management work plan or development of specific proposals that identify the compliance implications of the proposed change.
- Promote and fund scientific activities/monitoring that the IICG determines are necessary to carry out the Adaptive Management Program.
- Review scientific information and recommend changes to monitoring schema and management actions to the appropriate agency.
- Refer management related actions or proposals, as appropriate, to the Delta Science Program for review by an independent science panel for example, the Long-term operations biological opinions independent review panel (LOBO IRP)).
- Assure transparency consistent with the requirements of the Delta Plan.
- Review funding commitments and any implementation issues relative to priorities and recommendations from the Delta Science Program, CAMT, or related adaptive management fora.
- Identify and secure needed infrastructure and resources to support scientific activities/monitoring.
- Review and approve the Annual Monitoring and Research Plan and progress reports.
- Maintain an Operational Opportunities subcommittee made up of one technical representative from each of its IICG members. The subcommittee shall consider all Operational Opportunities requests by members within 24 hours and simultaneously issue a recommendation to the IICG and the agency with authority to implement the

Operational Opportunities.

### **5.3.2 Membership and Composition**

The Interagency Implementation Coordination Group shall be convened by DWR and Reclamation and chaired by the IICG Manager and shall consist of one representative each of Reclamation, USFWS, and NMFS, and one Designated Representative each of DWR, CDFW, a participating SWP Contractor, and a participating federal CVP Contractor.

### **5.3.3 Decision-making and Review Process**

Adaptive management recommendations by the IICG shall be by consensus of the representatives. In the event of a dispute within the IICG regarding different hypotheses, lines of evidence, or interpretations of science and/or data related to a proposed Adaptive Management Change, any member of the IICG may initiate a non-binding process for a review concerning the matter in dispute by providing IICG members with a written notice of dispute that describes the nature of the dispute and options that may be available to help resolve the matter. In such case, to facilitate dispute resolution the IICG will meet and confer to consider these options and to see if further collaborative work can be undertaken to determine whether agreement can be reached on the matter.

In the event that resolution of the dispute cannot be reached within the IICG, review of the issue in dispute may occur through the presentation of alternative viewpoints as part of the Long-term operations biological opinions annual review or a separate independent science review convened by the Delta Science Program. The members of the IICG, with the assistance of the IICG Manager, will describe the nature of the dispute to be considered by the panel in consultation with the Delta Science Program and the Delta Lead Scientist.

Within 30 days of the completion of panel selection, the parties to the dispute shall present their views in writing. A non-binding opinion shall be issued in writing by a majority of the panel.

Within 30 days of issuance of the panel's non-binding opinion, the entity with final decision-making authority over the matter shall consider the panel opinions and provide a written response prior to final decision.

To the extent consistent with the purposes of this Agreement and allowed by law the entity with final decision making authority over the matter shall refrain from taking any action to implement its decision until the review process has been completed.

### **5.3.4 Meetings of the Interagency Implementation Coordination Group**

The IICG shall determine its meeting schedule and administrative matters. The IICG Manager shall ensure that a record of IICG meetings and its actions are posted to a website or other appropriate electronic medium to ensure public access. The record should include a list of meeting attendees, meeting agenda, decisions and/or recommendations made, conflicting views, if any, of members, assignments to conduct additional work on a matter, audiovisual

presentations or other materials distributed, and other documents relevant to the deliberations of the IICG.

#### **5.3.4.1 Consideration of Adaptive Management Changes**

Members of the IICG can propose Adaptive Management Changes to be considered by the IICG. After consideration of the proposal the IICG may propose Adaptive Management Changes to the Action to Reclamation and DWR. Proposed Adaptive Management Changes made by the IICG may or may not require reinitiation of consultation, subsequent consultation and/or amendment of the Permit prior to implementation. The process set out in the Adaptive Management Framework (Attachment X, Appendix 1) shall be used to effectuate any Adaptive Management change to a component of the Action.

### **5.4 Collaborative Science and Monitoring**

Collaborative Science as described in 5.2.3 will be implemented through Annual Monitoring and Research Plans. The IICG Manager will prepare an Annual Monitoring and Research Plan, working in coordination with the Collaborative Science Workgroups. The Plan will be subject to approval by the IICG.

#### **5.4.1.1 Staff Resources**

Additional staff resources from DWR, Reclamation, the SWP/CVP Contractors, and the Fish and Wildlife Agencies may be utilized in the discretion of each party to support collaborative science and monitoring, provided such staff have the expertise or technical skills that would enable them to meaningfully contribute to the collaborative science and monitoring tasks.

### **5.5 Reinitiation of Consultation or Permit Amendment**

The Parties recognize and agree that a change to a component of the Action subject to adaptive management as described in this Agreement may require reinitiation of consultation under the ESA or an amendment to the Permit issued for the Action.

The Parties agree that any decision on the operational criteria will be based on the best scientific and commercial data available at that time, including data collected and analysis conducted through the Adaptive Management Program pursuant to this Agreement. If those data and analyses indicate that one or more of the water operations flow criteria in the Biological Opinions or Permits should be changed, Reclamation will, if required, reinitiate consultation pursuant to Section 7 of the ESA and/or DWR will, if required, commence a permit amendment process under California law to modify the operating criteria, as appropriate.

## **6.0 IMPLEMENTATION STRUCTURE**

### **6.1 IICG Manager**

DWR or Reclamation will retain the IICG Manager to assist with implementation of the Adaptive Management Program. The IICG Manager will be selected based on the unanimous recommendation of the Interagency Implementation Coordination Group. The Interagency Implementation Coordination Group will manage the selection process, determine required qualifications, and evaluate the candidates. The IICG Manager may be removed upon the recommendation of a majority of the Interagency Implementation Coordination Group.

The IICG Manager will serve as chair of the Interagency Implementation Coordination Group; organize and support meetings of the Interagency Implementation Coordination Group; engage in regular communication and coordination with Collaborative Science Workgroups, and participate in their regularly scheduled meetings as appropriate, and other external science efforts such as the Delta Science Program; develop budgets and manage efforts funded by the Interagency Implementation Coordination Group. Support DWR and Reclamation in implementing adaptive management changes; and oversee the Adaptive Management Program. The IICG Manager shall also manage preparation of the Annual Monitoring and Research Plan.

### **6.2 DWR, Reclamation, and the SWP/CVP Contractors**

DWR and Reclamation are ultimately responsible for implementation of the Action, including adaptive management changes. DWR, Reclamation, and the SWP/CVP Contractors will be responsible for ensuring that the management and implementation of the Action are carried out consistent with this Agreement, and the Biological Opinions and Permits. DWR, Reclamation, and the SWP/CVP Contractors may assign one or more individuals or entities with day-to-day responsibility for management of the Action.

## **7.0 MISCELLANEOUS PROVISIONS**

### **7.1 Nature of Agreement**

Nothing in this Agreement shall cause, or shall be deemed to cause, any delegation of authority from any Party to this Agreement to any other Party. This Agreement is legally nonbinding and in no way: (i) impairs any Party from continuing its own planning or project implementation; (ii) limits a Party from exercising its regulatory authority in any matter; (iii) infers that a Party's governing body or management will act in a particular manner; or (iv) gives any of the Parties any authority over matters within the jurisdiction of any other Party. Nothing in this Agreement creates any legal rights, obligations, benefits, or trust responsibilities, substantive or procedural, enforceable at law or in equity, by a Party against any other Party, a Party's officers, or any person.

## **7.2 Relationship to Other Regulatory Requirements**

The terms of this Agreement are consistent with and will be governed by and construed in accordance with the ESA, CESA and other applicable State and federal laws. In particular, nothing in this Agreement is intended to limit the authority of USFWS, NMFS and CDFW to seek penalties for violations of, or otherwise fulfill its responsibilities under, the ESA or CESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of USFWS or NMFS as agencies of the federal government or CDFW as an agency of the State of California.

## **7.3 References to Regulations**

Any reference in this Agreement, the Biological Opinions, or the Permits to any regulation or rule of the Fish and Wildlife Agencies will be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

## **7.4 Applicable Laws**

All activities undertaken pursuant to this Agreement, the Biological Opinions, or the Permits must be in compliance with all applicable local, State and federal laws and regulations.

## **7.5 Entire Agreement**

This Agreement constitutes the entire agreement among the Parties, supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof, and contains all of the covenants and agreements among them with respect to said matters. Each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied in this Agreement.

## **7.6 Severability**

In the event one or more of the provisions contained in this Agreement is held to be invalid or illegal by any court of competent jurisdiction, the Parties will meet and confer to determine whether such portion will be deemed severed from this Agreement and the remaining parts of this Agreement will remain in full force and effect as though such invalid or illegal portion had never been a part of this Agreement.

## **7.7 Amendments**

This Agreement may be amended only by the written agreement of all of the Parties.

## **7.8 No Third Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to the ESA, CESA, or other applicable law, this Agreement will not create any right or interest in the public, or any

member thereof, as a third party beneficiary thereof, nor will it authorize anyone not a Party to this Agreement to maintain an action at law or equity under the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third party beneficiaries will remain as imposed under existing State and federal law.

### **7.9 Availability of Funds**

All Actions required of the United States or its agencies in implementing this Agreement are subject to appropriations by Congress. Nothing in this Agreement shall be interpreted as or constitute a commitment or requirement that the United States or its agencies obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, or other applicable law. Nothing in this Agreement is intended or shall be construed to commit a Federal official to expend Federal funds not appropriated for that purpose by Congress. To the extent that the expenditure or advance of any money or the performance of any obligation of the United States or its agencies, or any Secretary under this Agreement is to be funded by appropriation of funds by Congress, the expenditure, advance, or performance shall be contingent upon the appropriation of funds by Congress that are available for this purpose and the apportionment of such funds by the Office of Management and Budget. No breach of this Agreement shall result and no liability shall accrue to the United States or its agencies or any Secretary in the event such funds are not appropriated or apportioned. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, reprogramming, or expenditure of any funds by the United States or its agencies, except as otherwise permitted by applicable law.

Implementation of this Agreement by DWR and CDFW is subject to the availability of appropriated funds. Consistent with applicable law, nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge and agree that DWR and CDFW will not be required under this Agreement to expend any State-appropriated funds unless and until an authorized official of that agency affirmatively acts to commit such expenditure as evidenced in writing.

### **7.10 Duplicate Originals**

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement will be maintained in the official records of each of the Parties hereto.

### **7.11 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, as applicable.

### **7.12 Due Authorization**

Each Party represents and warrants that (1) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (2) no other authorization or approval, whether of governmental bodies or otherwise, will be necessary in order to enable it to enter into

