AGREEMENT REGARDING PREPARATION OF A JOINT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT FOR THE BAY DELTA CONSERVATION PLAN

A. Parties and Purpose of the Agreement

1. This Agreement Regarding Preparation of a Joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Bay Delta Conservation Plan (Agreement) is among the California Department of Water Resources (DWR), the National Marine Fisheries Service (NMFS), the United States Fish and Wildlife Service (USFWS), the Bureau of Reclamation (Reclamation), and HDR, Inc. (Consultant), referred to collectively as the Parties. DWR, NMFS, USFWS, and Reclamation are referred to collectively as the Lead Agencies. NMFS, USFWS, and Reclamation are referred to collectively as the National Environmental Policy Act (NEPA) Co-lead Agencies. DWR is also referred to as the California Environmental Quality Act (CEQA) Lead Agency.

2. The purpose of this Agreement is to define the roles and responsibilities of the Parties with respect to preparation of the EIR and EIS for the Bay Delta Conservation Plan (BDCP).

B. Background

1. The BDCP process is an effort by State and Federal resource agencies, regional and local water agencies, and non-governmental organizations to develop a plan for conserving at-risk species and ecosystems in the Sacramento-San Joaquin Delta (Delta) and ensuring reliability of Delta water supply.

2. DWR and others are developing the BDCP as a conservation plan for activities associated with the movement and diversion of State Water Project (SWP) and Central Valley Project (CVP) water through and from the Statutory Delta, as defined at §12220 of the California Water Code, as well as activities associated with ecosystem restoration in the Delta. DWR operates the SWP, and Reclamation operates the CVP. DWR intends to use this plan as the basis for an application to the USFWS and NMFS for permits under Section 10(a)(1)(B) of the Endangered Species Act (ESA), 16 U.S.C. §§1531 *et seq.*, and to the California Department of Fish and Game (DFG) for a permit under either Section 2081 or Section 2835 of the California Fish and Game Code.

3. DWR, in consultation with DFG, a Responsible Agency under CEQA, has determined that the State must prepare an EIR pursuant to CEQA.

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4. The USFWS, NMFS, and Reclamation have determined that Federal agencies must prepare an EIS pursuant to NEPA, 42 U.S.C. §§ 4321-4347, prior to USFWS and NMFS making decisions on the Section 10 permit applications or Reclamation implementing one or more components of the BDCP.

5. Both the CEQA and NEPA allow preparation of a joint environmental document to satisfy State and Federal requirements. The Lead Agencies have agreed that a joint EIR/EIS is the preferred environmental document for the BDCP. A consultant acting under the direction of the NEPA Co-lead Agencies may prepare an EIS, in accordance with 40 CFR §1506.5(c) and 516 DM 6, 516 DM 8, and 516 DM 14. The Lead Agencies have selected HDR, Inc. to prepare the EIR/EIS.

C. Roles and Responsibilities of the Parties

1. Lead Agencies

a. *Termination or modification of the Consultant's terms of engagement.* The Consultant has been engaged under DWR Agreement Number 4600008148, dated June 19, 2008, as amended January 22, 2010. DWR will consult with the NEPA Co-lead Agencies before it makes any substantive modifications to, or terminates, Agreement Number 460008148. DWR will consult with the NEPA Co-lead Agencies before engaging any other consultant for the BDCP EIR/EIS.

b. *Direction and supervision of the Consultant's work.* All decisions regarding direction, scope of work, schedule, and key staffing shall be agreed to by all Lead Agencies. The Lead Agencies have joint authority to direct the Consultant's work, and any direction that will result in changes to scope, costs, or schedule shall be administered by DWR. DWR shall be responsible for contract administration consistent with the direction provided by the Lead Agencies.

c. *Task Orders.* DWR will work with the NEPA Co-lead Agencies to prepare and submit Task Orders to obtain information that the NEPA Co-lead Agencies believe is essential for an informed decision under their respective authorities. The Lead Agencies will agree on the content of any Task Orders or amendment to Task Orders before they are submitted to Consultant by DWR.

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d. *Designation of agency representative for communication with the Consultant and other Lead Agency representatives.* Each Lead Agency shall designate a representative who will be the primary contact for communication with other Lead Agency representatives and with the Consultant, for the purposes of making Lead Agency decisions, reviewing and discussing draft Task Orders, submitting requests for new or modified tasks to the other Lead Agencies, receiving information directly from the Consultant, and resolving disputes among the Lead Agencies, in accordance with Paragraphs C.1.b, C.2.a, and D.1 of this Agreement. The NEPA Co-lead Agencies jointly will designate a single point of contact for purposes of coordination.

e. *Resolution of disagreements as to inclusion of material.* When there is a disagreement as to inclusion of material between or among the CEQA Lead Agency, and Reclamation, USFWS, or NMFS, either individually or collectively, due to differences in the requirements between CEQA and NEPA, the material shall be included, with an explanation of the differing requirements for inclusion.

f. *Receipt of comments on the Draft EIR/EIS and reviewing responses.* The Lead Agencies will receive all comments on the Draft EIR/EIS resulting from public review and will submit them to the Consultant to prepare responses. Lead Agencies will review draft responses and submit revisions to the Consultant.

g. *Modification of the Draft EIR/EIS.* The Lead Agencies will review the revised Draft EIR/EIS and have authority to approve the Final EIR/EIS. The Lead Agencies will file the Final EIR/EIS with Environmental Protection Agency (EPA) and the State Clearinghouse.

2. <u>NEPA Co-lead Agencies</u>

a. *Determination of material to be included in the EIR/EIS.* The NEPA Co-lead Agencies shall make the final determination of what material shall be included in the EIR/EIS for purposes of satisfying NEPA requirements, as well as the material that will comprise the Administrative Record for NEPA purposes.

b. *Filing of Draft EIR/EIS with EPA.* The NEPA Co-lead Agencies will determine which agency will be responsible for filing the Draft EIR/EIS with the EPA for publication of its Notice of Availability in the Federal Register and will notify DWR and the Consultant once that decision is made.

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c. *Decision.* Not less than 30 days after the Final EIR/EIS is filed with the EPA, the NEPA Co-lead Agencies will prepare a Record of Decision(s) (ROD), and USFWS and NMFS will render decisions on the permit applications.

3. CEQA Lead Agency

a. *Determination of material to be included in the EIR/EIS.* The CEQA Lead Agency shall make the final determination of what material shall be included in the EIR/EIS for purposes of satisfying CEQA requirements, as well as the material that will comprise the Administrative Record for CEQA purposes.

b. *Filing of Draft EIR/EIS with the State Clearinghouse.* The CEQA Lead Agency shall be responsible for filing the Draft EIR/EIS with the State Clearinghouse.

c. *Certification of Final EIR/EIS.* The CEQA Lead Agency will certify the Final EIR/EIS and prepare and file a Notice of Determination when the project is approved.

4. Consultant

a. *Reporting and submitting information.* Consultant agrees to report directly to DWR and the NEPA Co-lead Agencies concurrently, such that all Lead Agencies are provided information and draft and final materials at approximately the same time. Without regard to by whom or how the Consultant is paid for its services, DWR will ensure that the Consultant follows the directions of the NEPA Co-lead Agencies for purposes of satisfying NEPA requirements.

b. *Organizing public meetings, compiling comments, and preparing responses to comments.* Upon completion of the Draft EIR/EIS, the Consultant will be responsible for organizing public meetings, compiling comments received from the public, and drafting initial responses to public comments.

c. *Assuring that no conflict of interest exists.* Consultant will ensure it does not have a financial or economic interest in the outcome of the project through the measures identified in Agreement Number 4600008148 and 40 C.F.R, § 1506.5(c).

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d. *Preparing documents.* Consultant will have the primary responsibility for writing and revising the EIR/EIS, at the direction of the Lead Agencies. The Lead Agencies will be given the opportunity to comment on and make changes to the EIR/EIS at agreed upon stages of its development. The requirements for production of the Administrative Drafts, Public Draft, and Final EIR/EIS and deliverables are specified in Agreement Number 4600008148, as amended. The Consultant will be responsible for providing sufficient copies of the documents on a timely basis to meet the Lead Agencies' circulation requirements.

D. Dispute Resolution, Termination and Modification

1. In the event a dispute arises under this Agreement, the Parties shall meet as soon as practicable to resolve the dispute.

2. This Agreement remains in effect until a decision is made by DFG regarding the CESA Section 2081 or 2835 permit application and by USFWS and NMFS regarding the ESA Section 10(a)(1)(b) permit applications, and or until the applications are withdrawn.

3. Any Party may terminate this Agreement at any time by giving written notice to the other Parties, after engaging in dispute resolution efforts required in Paragraph D.1.

4. This Agreement may be modified or amended only by written instrument signed by all of the Parties.

E. Waiver of Rights

No party to this Agreement waives any rights or duties it may have pursuant to Federal or State laws or regulations.

F. Payment for Services

USFWS and NMFS are not obligated to pay for the services rendered by the Consultant under Agreement Number 4600008148. Contribution to payment of the Consultant by DWR and Reclamation is outside the subject of this Agreement and will be the subject of a separate Agreement.

G. Conflicts between Agreements

In case of a conflict between the terms of Agreement Number 460008148 and this Agreement, this Agreement shall prevail.

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H. Notice

Any notice or communication that any Party is required to give to the others shall be in writing and be served personally or sent by first class mail, postage prepaid, addressed as follows:

DWR:	State of California Department of Water Resources 1416 Ninth Street, Room 406-8 Sacramento, CA 94236-0001 Attn: Richard Sanchez
Reclamation:	U.S. Department of the Interior, Bureau of Reclamation Mid-Pacific Regional Office 2800 Cottage Way Sacramento, CA 95825 Attn: Federico Barajas
USFWS:	U.S. Fish and Wildlife Service San Francisco Bay-Delta Fish and Wildlife Office 2800 Cottage Way, W-2606 Sacramento, CA 95825 Attn: Dan Castleberry
NOAA Fisheries:	National Marine Fisheries Service 650 Capitol Mall, Suite 8-300 Sacramento, CA 95814 Attn: Maria Rea
Consultant:	HDR, Inc. 1610 Arden Way, Suite 175 Sacramento, CA 95815-4041 Attn: Jason Neil

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The Parties have executed this Agreement on June 1 ____, 2010. Documentation must be provided that the person signing below for the Consultant has the authority to do so.

CALIFORNIA DEPARTMENT OF WATER RESOURCES

By: _____
RICHARD SANCHEZ

Title: DHCCP EXECUTIVE MANAGER & CHIEF DIVISION OF ENGINEERING

HDR, Inc.

By: _____

Title: Senior Vice President

UNITED STATES FISH AND WILDLIFE SERVICE

By: _____

Title: Regional Director

NATIONAL MARINE FISHERIES SERVICE

By: _____

Title: Deputy Regional Administrator
for Rod Mathews, Regional Administrator

BUREAU OF RECLAMATION

By: _____

Title: Regional Director

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State of California

California Natural Resources Agency

Memorandum

Date: June 2, 2010

To: Distribution List

Federico 6/2/10

From: Richard Sanchez, Executive Manager
Delta Habitat Conservation and Conveyance Program
Department of Water Resources

Subject: Transmittal Memorandum

BUREAU OF RECLAMATION
OFFICIAL FILE COPY
RECEIVED
JUN 15 2010

CODE	ACTION	SURNAME & DATE
100	✓	6/24
115	copy	made
400	copy	made
150	copy	Made

Enclosed is a copy of the fully executed "Agreement Regarding Preparation of a Joint Environmental Impact Report/Environmental Impact Statement for the Bay Delta Conservation Plan".

If you have any questions or concerns, please do not hesitate to contact me at (916) 653-3927.

Classification: ENV-6.00
Project: 214
Control No.:
Folder I.D.: 115157
Date Input & Initials:

DWR 9045 (Rev. 1/09)

cc: Mark W. Cowin, Director
California Department of Water Resources
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Sacramento, California 95814

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United States Fish and Wildlife Service
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Sacramento, California 95825

Rodney Mcinnis, Regional Administrator
National Marine Fisheries Service
501 West Ocean Blvd.
Long Beach, California 90802-4213

Donald Glaser, Regional Director
U.S. Bureau of Reclamation
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Sacramento, California 95825

Jerry Johns, Deputy Director
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