MEMORANDUM OF UNDERSTANDING

Among:
Bureau of Reclamation
National Marine Fisheries Service
United States Fish and Wildlife Service
United States Environmental Protection Agency
United States Army Corps of Engineers

National Environmental Policy Act (42 U.S.C. 4321 et seq)

and

Clean Water Act Section 404 (33 U.S.C. 1344)

and

DRAFT

Rivers and Harbors Act of 1899 Section 10 (33 U.S.C. 403)

and

Rivers and Harbors Act of 1899 Section 14 (33 U.S.C. 408)

Integration Process

for the

California Bay Delta Conservation Plan

Draft May 2011

Table of Contents

Section I. Introduction..... 2

Section II. Overview..... 3

Section III. The NEPA/404/408 Integration Process.....5

Section IV. Elevation Procedures and Other Region-Specific Dispute Resolution Tools.....12

Section V. Modification and Termination..... 13

Section VI. General Provisions..... 14

Section VII. Effective Date and Duration..... 15

Appendix A. Dispute Resolution System

DRAFT

Acronyms and Definitions

BDCP:	Bay Delta Conservation Plan
BOR:	Bureau of Reclamation
CWA:	Clean Water Act
DMP:	Draft Mitigation Plan
EIS:	Environmental Impact Statement
EPA:	U.S. Environmental Protection Agency
FWS:	U.S. Fish and Wildlife Service
LEDPA:	Least Environmentally Damaging Practicable Alternative
MOU:	Memorandum of Understanding
NEPA:	National Environmental Policy Act
NMFS:	National Marine Fisheries Service
RHA:	Rivers and Harbors Act
USACE:	U.S. Army Corps of Engineers

"Lead Federal Agencies"-the three federal agencies which are NEPA co-leads for the BDCP; FWS, NMFS, and BOR.

"Project" – a project of the BDCP to which this MOU applies, *i.e.*, the specific action seeking

ED_000733_DD_NSF_00080003-00002

USACE permitting.

"Responding Agencies" – the Signatory Agencies with resource or regulatory responsibilities: EPA and USACE.

"Signatory Agencies" – FWS, EPA, USACE, BOR and NMFS.

DRAFT

ED_000733_DD_NSF_00080003-00003

Section I. Introduction

The parties to this Memorandum of Understanding (MOU) are the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), Bureau of Reclamation (BOR), U.S. Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (EPA). The goal of this MOU is to facilitate compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. section 4321 *et seq*), Clean Water Act (CWA) section 404 (33 U.S.C. section 1344) (hereinafter "Section 404"), Rivers and Harbors Act of 1899 section 10 (33 U.S.C. section 403) (hereinafter referred to as "Section 10"), and Rivers and Harbors Act of 1899 section 14 (33 U.S.C. section 408) (hereinafter referred to as "Section 408") processes for the project or projects of the BDCP seeking USACE permitting. The integration of these processes is intended to expedite decision-making while improving the overall quality of those decisions. The purpose of this MOU is to foster agreement among the Signatory Agencies and to make it possible for the USACE to more efficiently adopt the EIS for which FWS, NMFS, and BOR are the lead Federal agencies.

The USACE has agreed to participate as a cooperating agency under NEPA for the BDCP EIS. The EIS will evaluate the entire BDCP programmatically for the purpose of independent FWS, NMFS, and BOR decision making, and will also evaluate a project or projects for USACE permitting in site-specific detail through further consultation with EPA and USACE regarding the Section 404, Section 10, and Section 408 permitting processes, to support decision-making for any necessary USACE (1) Section 404 permit decisions to discharge dredged or fill material into waters of the U.S., (2) Section 10 permit decisions to authorize work in, over, or under navigable waters of the U.S., including the diversion of water from navigable waters of the U.S., and (3) Section 408 permit decisions for alterations/modifications to existing USACE projects.

DRAFT

Section II. Overview

This MOU has the following components:

1. **Procedures (Section III)**. This section outlines: a) the procedures the Lead Federal Agencies will follow in presenting information to Responding Agencies, b) procedures the Responding Agencies will follow in replying to the information, and c) the Lead Federal Agencies options once a response is received. This section equates to the "who, what, when, and how" of the MOU. For a conceptual overview of this section, see Figure 1, *Overview of the California Bay Delta Conservation Plan MOU Process* and Figure 2, *Coordination and Checkpoint Process*.
2. **Dispute Resolution (Section IV)**. This section describes the dispute resolution tools that may be used when the Lead Federal Agencies receive a negative

ED_000733_DD_NSF_00080003-00004

comment, disagreement, or non-concurrence (defined below). The primary resolution tool in

this agreement is the "mid-level elevation." The mid-level elevation is a management meeting that relies on a cooperatively developed staff document, called the briefing paper, to frame the issues for resolution. Procedures for the mid-level elevation and other dispute resolution tools are also presented.

3. **Modification and Termination (Section V).** This section provides details on modification and termination of the MOU. This MOU may be modified and superseded by written agreement of all the Signatory Agencies through the execution of an amendment of the MOU.

4. **General Provisions (Section VI).** This section provides details on the legal import of this document. The MOU provides a framework for cooperation. The signatories to this MOU encourage ongoing formal and informal cooperation not specifically described in this MOU.

5. **Effective Date and Duration (Section VII).** This final section provides details on when the MOU becomes effective and the duration of the legal force and effect of the MOU.

Section III. The NEPA/404/10/408 Integration Process

DRAFT

This section lays out the Signatory Agencies' roles at each checkpoint, outlines the Lead Federal Agencies options for resolving a negative comment, disagreement, or non-concurrence, and describes each of the three checkpoints.

1. **Project Inclusion.** This MOU applies to all of the projects of the BDCP evaluated in the EIS at a site-specific detail for USACE permitting.

2. **Withdrawal**.

   (a) By the Lead Federal Agencies.

   The Lead federal Agencies may jointly withdraw from applying this agreement upon written notice to the Responding Agencies.

   (b) By the USACE.

   If at any time, USACE concludes that its comments/substantive requirements are not being satisfactorily addressed in the EIS, USACE will communicate that conclusion to the other Signatory Agencies in writing. Thereafter, the USACE will initiate the mid-level elevation, and may continue elevation as needed, as provided in Section IV. Completion of

ED_000733_DD_NSF_00080003-00005

the elevation process should be within 60 calendar days of receipt of written notification to initiate elevation. Following completion of elevation without resolution, the applicable USACE District will no longer integrate the Section 404, Section 10 and/or Section 408 permitting processes and the MOU process as to that particular project section.

3. **Appointment of Elevation Representatives**. Each Signatory Agency will identify the appropriate representatives for elevation. This process is described in more detail in Section IV of the MOU.

4. **Focus of the MOU**. The formal commitment of Signatory Agencies for early and continuous involvement in BDCP EIS development. The required steps are shown in Figure 1, *Overview of the California Bay Delta Conservation Plan MOU Process.*

5. **Lead Federal Agency Responsibilities**. The Lead Federal Agencies are ultimately responsible for implementation of this MOU. The Lead Federal Agencies are responsible for issuing closure letters for the checkpoints.

6. **Checkpoints**. The integration process comprises three checkpoints, which punctuate ongoing coordination efforts. These checkpoints are:

   (a) Definition of Basic Purpose, Overall Purpose, and Need for the project or projects seeking Corps permitting;

   (b) Identification of the Range of Alternatives to be Studied in the EIS; and

   (c) Preliminary LEDPA Determination; USACE Section 408 Draft Response ; and Draft Mitigation Plan (DMP) consistent with 33 C.F.R. Part 332 and 40 C.F.R. Part 230 (73 FR 19,593 dated April 10, 2008).

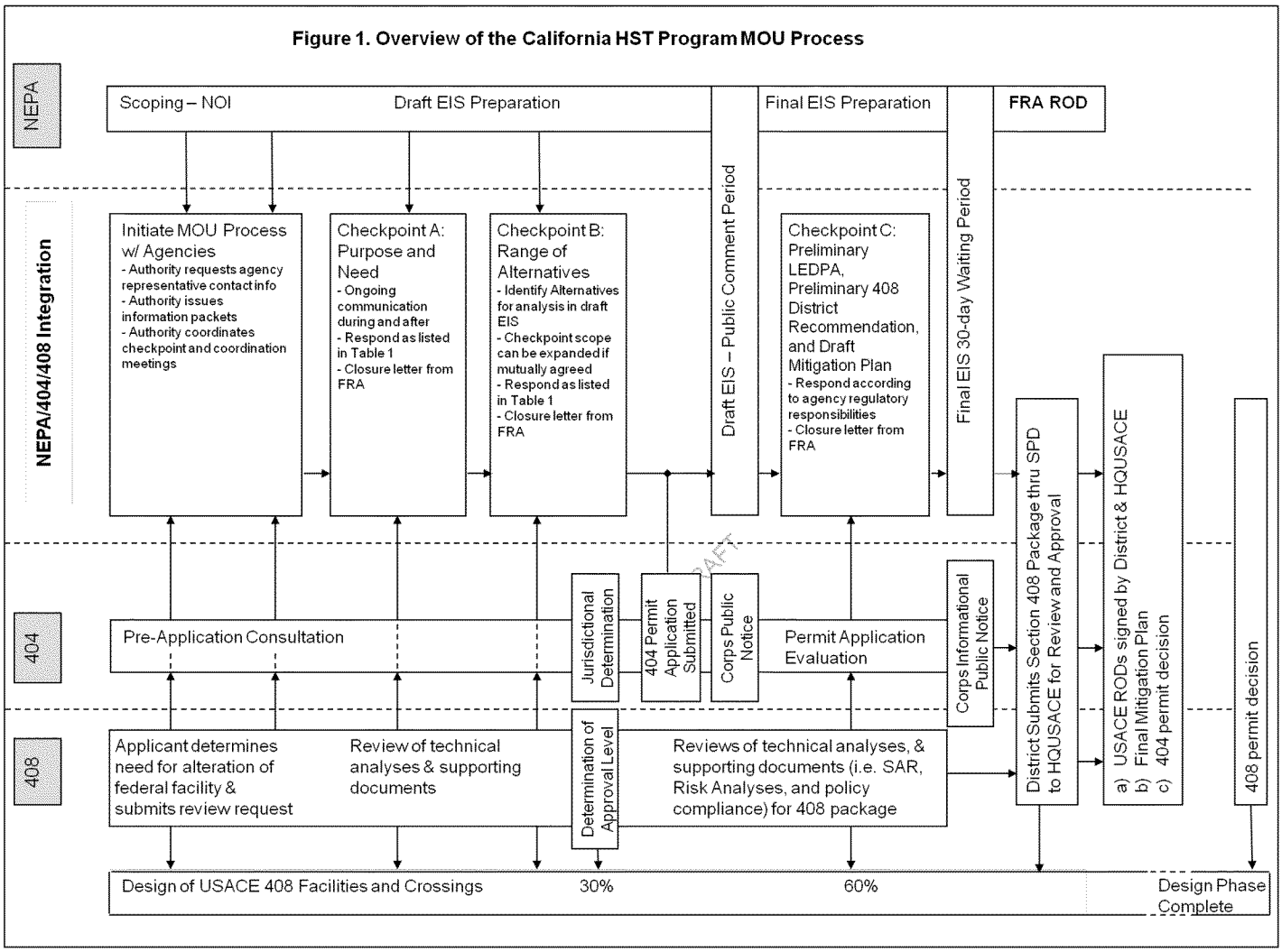
7. **Participants**. All Signatory Agencies may participate in the checkpoints. The level of participation by the agencies differs by agency and by checkpoint as described in Table 1, *Types of Response by Agency and Checkpoint*. The flow of information and decision points within each checkpoint is described in Figure 2, *Coordination and Checkpoint Process*.

8. **Coordination Meetings**. The integration process may involve a series of coordination meetings to exchange information about the BDCP project and potential impacts. In-person meetings are preferred. Among other objectives, coordination meetings provide an opportunity for the Responding Agencies to identify what additional information will be necessary to make a decision about an upcoming checkpoint. Care should be taken in scheduling meetings, such that they are well-organized, and focused on making progress towards a specific project issue

DRAFT

ED_000733_DD_NSF_00080003-00006

or issues. Timeframes for information exchange and response will be mutually determined by the Signatory Agencies.

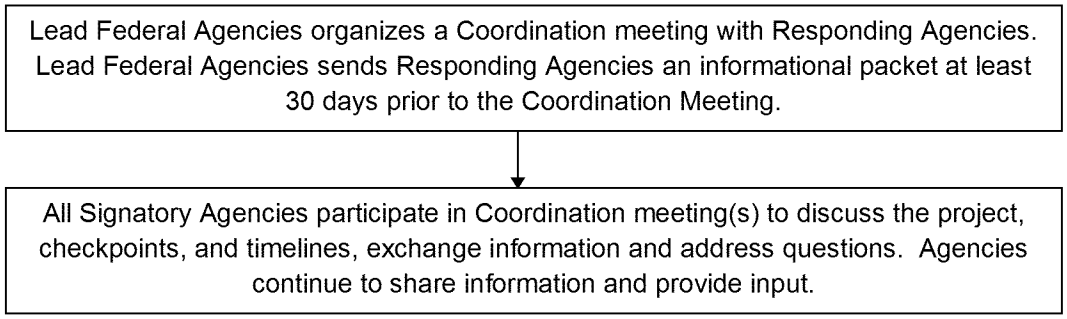


[Editors note, I didn't have time to re-do Figure 1.]

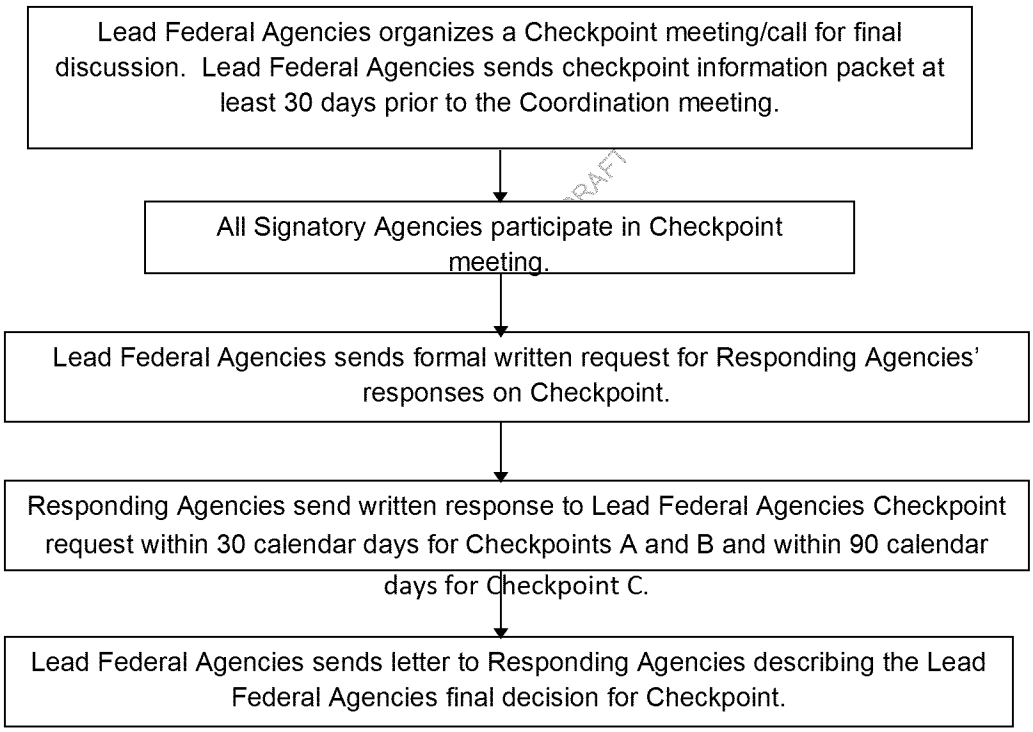
ED_000733_DD_NSF_00080003-00007

Figure 2. Coordination and Checkpoint Process[1,2]

1. Start with informal coordination process for information exchange and agency input.



2. When ready for formal Checkpoint process, proceed as follows:



[1] If the response is Concurrence, Recommendation, Agreement, or Comment with no request for elevation – Lead Federal Agencies proceed to next Checkpoint.

[2] If response is Non-Concurrence, Not Recommend, Disagreement, or Comment with request to elevate – Lead federal Agencies initiates mid-level elevation.

ED_000733_DD_NSF_00080003-00008

9. **Checkpoint Meetings**. A Checkpoint is initiated when the Lead Federal Agencies sends a checkpoint informational packet to the Signatory Agencies. The Lead Federal Agencies will convene a "checkpoint meeting" when they determine it is appropriate and necessary to make a checkpoint decision. If a negative comment, disagreement, or non-concurrence is pending, this should be identified by the Signatory Agency raising the comment, disagreement, or non-concurrence at or preferably before the checkpoint meeting. Throughout this MOU process, all Signatory Agencies share responsibility for providing informal "heads up" of pending problems/potential issues as early as possible so that the other agencies can begin to prepare for a mid-level elevation or other intervention before the formal responses are made. If a mid-level elevation appears likely, the Lead Federal Agencies should begin framing the elevation briefing paper, coordinating the development of the briefing paper with the Signatory Agencies, and scheduling the mid-level elevation during or immediately after the checkpoint meeting.

10. **Information Packet**. The Lead Federal Agencies are responsible for sending information packets to the Signatory Agencies at least 30 calendar days or as otherwise agreed upon timeframe in advance of each checkpoint meeting. Information packets should identify critical issues of concern to the other Signatory Agencies. As the Lead Federal Agencies are preparing the information packet, issues should be identified and communicated informally to the Signatory Agencies.

11. **Lead Federal Agencies Request for Response and Responding Agency Responses.** Following a checkpoint meeting, the Lead Federal Agencies will send the Responding Agencies a request for response. Upon receipt of a request for response, each agency that chooses to respond will send the response in writing or by e-mail to the Lead Federal Agencies within 30 calendar days for Checkpoints A and B and within 90 calendar days for Checkpoint C. The response will be a comment, agreement, or disagreement. Additionally, the USACE may submit a concurrence or non-concurrence concerning the Preliminary LEDPA/ Draft Mitigation Plan (DMP). Also, the USACE Sacramento District would either preliminarily recommend or not recommend Section 408 approval at checkpoint C as specified in Table 1, Types of Response by Agency. The response terms (comment, agree, disagree and for the USACE, concur/non-concur/recommend/not recommend) will reflect the regulatory responsibilities of the Responding Agencies at different points in the NEPA, Section 404, Section 10, and Section 408 processes. Table 1 summarizes the only types of response an agency may give at a checkpoint.

ED_000733_DD_NSF_00080003-00009

Table 1. Types of Response by Agency.

Agency	Purpose & Need	Alternatives	Preliminary LEDPA/FMP	USACE Section 408 Draft Response
USACE	Agree/Disagree	Agree/Disagree	Concur/Non-concur	Recommend/Not Recommend
EPA	Agree/Disagree	Agree/Disagree	Agree/Disagree	N/A

12. **Types of Response**. As summarized in Figure 2, *Coordination and Checkpoint Process*, the Responding Agency sends a formal comment, agreement or disagreement, (and the USACE may also send a concurrence or non-concurrence at the Preliminary LEDPA/DMP and recommend/not recommend at the USACE Section 408 Draft Response checkpoint) to the Lead Federal Agencies, as follows:

(a) **Comments**. The Responding Agency provides written comments in response to the Checkpoint proposal. If the Responding Agency does not respond within 30 calendar days for Checkpoint A and B and within 90 calendar days for Checkpoint C, the Lead Federal Agencies may not assume the Responding Agency has no comments. The Lead Federal Agencies must contact the Responding Agency and confirm their no comment intent. During the interim, the Lead Federal Agencies may proceed with the EIS preparation. The Lead Federal Agencies are not required to address or resolve negative comments except as specified in paragraph 13. The Responding Agencies may request a mid-level elevation in writing at the time they respond. The Lead Federal Agencies also may choose to resolve the issue or may choose to use the elevation process.

(b) **Agreement/Disagreement**. The Responding Agency provides a written response agreeing or disagreeing with the Lead Federal Agencies checkpoint proposal. If there is a disagreement, then the Responding Agency's letter must identify the basis for the disagreement. If the Responding Agency does not respond within 30 calendar days for Checkpoint A and B and within 90 calendar

ED_000733_DD_NSF_00080003-00010

days for Checkpoint C, the Lead Federal Agencies may not assume the Responding Agency agrees but may proceed with EIS preparation and the Lead Federal Agencies may initiate the mid-level elevation, and may continue elevation as needed. In the case of a disagreement, the Lead Federal Agencies must convene a mid-level elevation.

If the mid-level elevation does not resolve the issues, the Lead Federal Agencies at their discretion may: (i) continue to attempt to resolve the problem through other forms of dispute resolution (such as continued elevation or use of a facilitator), (ii) may proceed without resolution, or (iii) may proceed while concurrently attempting to resolve the problem. If the Lead Federal Agencies choose to move on, any Responding Agency may concurrently request a senior-level elevation within seven calendar days of notification by the Lead Federal Agencies of the decision to proceed. The senior-elevation group will decide whether or not they wish to review the issue.

(c) **Concurrence/Non-concurrence by the USACE**. The USACE provides a written response concurring or non-concurring with the Preliminary LEDPA and DMP at checkpoint C. If the USACE issues a non-concurrence letter, then it must identify the basis for non-concurrence. If the USACE does not respond within 90 calendar days, the Lead Federal Agencies may initiate the mid-level elevation, and may continue elevation as needed. If the Lead Federal Agencies receive a non-concurrence from the USACE, the Lead Federal Agencies may not proceed with EIS preparation until the USACE concurs with the Preliminary LEDPA and DMP.

(d) **Recommend/Not recommend by a USACE District Office**. Checkpoint C also requires a written response from USACE District Office(s) preliminarily recommending or not recommending Section 408 approval. If the USACE District Office's response letter does not preliminarily recommend Section 408 approval, then it must identify the basis for the decision. If the USACE District Office does not respond within 90 calendar days, the Lead Federal Agencies may initiate the mid-level elevation, and may continue elevation as needed. If the Lead Federal Agencies receive a "not recommending" letter from the USACE District Office(s), the Lead Federal Agencies may not proceed with EIS preparation until the USACE District Office(s) preliminarily recommends Section 408 approval.

13. **Closure at Each Checkpoint.** At each checkpoint, the Lead Federal Agencies will send the Signatory Agencies a letter identifying the status of each issue that received a negative comment, disagreement, or non-concurrence. This letter will be sent

ED_000733_DD_NSF_00080003-00011

before the next checkpoint, before the draft EIS is issued, before the final EIS is issued, or within 90 days after the checkpoint, whichever is sooner. If a mid-level elevation has been triggered, and resolution is reached prior to the mid-level elevation, the Lead Federal Agencies will send notification to the Signatory Agencies.

14. **Mid-level elevation.** The procedure for the mid-level elevation is described in Section IV.

Section IV. Elevation Procedures and Other Region-Specific Dispute Resolution Tools

Elevation, as necessary, is encouraged. The elevation process is intended to resolve issues quickly, and to maintain constructive working relationships. Detailed guidance and recommendations are available in Appendix A. In keeping with the spirit of the integration process, nothing in this section precludes any other traditional or nontraditional approaches to dispute resolution.

1. **Flexibility**. The specific dispute resolution tools are intended to be expeditious, practical, respectful, and accessible. All the tools are available at any point on a voluntary basis. However, the mid-level elevation is required for disagreements or non-concurrences. For these, the briefing paper should be used as described in Appendix A. The mid-level elevation may be used any time (including outside the checkpoints) all the Signatory Agencies agree it would be effective.

2. **Representatives for Elevation**. When the Lead Federal Agencies initiates the MOU, it will request that each Responding Agency initiate its internal actions for preparing to engage in the elevation process, including the review of the briefing paper and confirmation of the appropriate mid-level and senior-level representatives who have been identified to speak for their agency (Appendix A). The senior-level representative should include the top regional/state decision-maker for each agency, or his/her designee.

3. **The Mid-level Elevation**. The mid-level elevation is a tool to resolve disagreement or non-concurrence at a checkpoint. Though the Responding Agencies should have given the Lead Federal Agencies informal notice prior to and at the checkpoint meeting, the formal trigger for a mid-level elevation is the receipt by the Lead Federal Agencies of a letter of disagreement or non-concurrence or non-recommendation as described in Section III.12(b),12(c), and 12(d) above or a letter requesting formal elevation to resolve an issue(s). Upon receiving the letter, the Lead Federal Agencies has 30 calendar days to convene a mid-level elevation. Convening a mid-level elevation requires the Lead Federal Agencies to:

ED_000733_DD_NSF_00080003-00012

(a) Notify and schedule the managers who will resolve the dispute and the staff who will brief them;

(b) Coordinate, develop, and distribute an elevation briefing paper; and

(c) Arrange for and fund a neutral facilitator, as necessary.

4. **Briefing Paper**. A cooperatively prepared briefing paper is a key component of the mid-level elevation and is recommended for subsequent elevation to senior managers if the latter elevation is determined to be necessary. The briefing paper should be sent by the Lead Federal Agencies to the mid-level managers along with a draft agenda at least 10 calendar days prior to the mid-level elevation. The briefing paper should follow the format as discussed in Appendix A.

5. **Senior-level elevation**. If the mid-level elevation does not result in resolution, the involved Signatory Agencies may raise the issue to the senior management. Eventually, an issue may need to enter a more formal dispute resolution process organized by the Lead Federal Agencies.

Section V. Modification and Termination

1. **Modification.**

DRAFT

(a) Any Signatory Agency may propose modifications to this MOU.

(b) The Signatory Agencies will have 30 calendar days from receipt of the proposed modification(s) to submit comments. Upon written acceptance of a proposal by all Signatory Agencies, the Lead Federal Agencies will circulate an MOU amendment for execution.

(c) The amended MOU will become effective 15 calendar days after execution by the last Signatory Agency and will supersede any previous version of the MOU.

2. **Termination.** Any Signatory Agency may terminate participation in this MOU upon 30 days written notice to all other Signatory Agencies.

Section VI. General Provisions

1. The integration process does not include all environmental review and permitting requirements. The USACE has authority to determine if the EIS prepared by the Lead Federal Agencies is sufficient for its permitting decisions. The USACE may also need additional information and analysis beyond what is in the EIS to complete its permitting processes. The EPA has authority under the Clean Air Act

ED_000733_DD_NSF_00080003-00013

section 309 to review and comment on the NEPA documents of other Federal agencies. This is independent of EPA's role in the MOU. Specific approvals not addressed by this MOU include, but are not limited to, the following: any real estate permissions, Endangered Species Act Section 7 compliance, CWA Section 401 water quality certification, Coastal Zone Management Act consistency determination, National Historic Preservation Act Section 106 compliance, and Department of Transportation Act Section 4(f) compliance.

2. Signatory agency participation in this process does not imply endorsement of all aspects of a BDCP project or the BDCP itself. Nothing in this MOU is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the Signatory Agencies.

3. Documents, data, maps, and other information provided pursuant to this MOU may be pre-decisional (intra-agency or inter-agency memoranda or letters) or privileged Signatory Agency information, or information that is prohibited from disclosure pursuant to applicable law. For public requests of such information, under the Freedom of Information Act or otherwise, the releasing party will notify the other Signatory Agencies and provide an opportunity to comment on whether the information is pre-decisional, privileged, or prohibited from disclosure by applicable law.

DRAFT

4. A Signatory Agency's participation in the integration process is not equivalent to serving as a cooperating agency as defined by regulations promulgated by the Council on Environmental Quality, 40 C.F.R. Part 1500, which is a separate process established through a formal written agreement from a Signatory Agency to the Federal lead agency.

5. As required by the Anti-deficiency Act, 31 U.S.C. Sections 1341 and 1342, all commitments made by Federal agencies in this MOU are subject to the availability of appropriated funds. Nothing in this MOU, in and of itself, obligates Federal agencies to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or incur other financial obligations that would be inconsistent with agency budget priorities. The non-Federal signatory to this MOU agree not to submit a claim for compensation for services rendered to any Federal agency in connection with any activities it carries out in furtherance of this MOU. This MOU does not exempt the non-Federal parties from Federal policies governing competition for assistance agreements. Any transaction involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures under separate written

ED_000733_DD_NSF_00080003-00014

agreements.

6. This MOU does not confer any right or benefit, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.

7. If all Signatory Agencies decide not to participate in this agreement any further, the Lead Federal Agencies will provide written documentation to all Signatory Agencies that the MOU is terminated.

8. The parties recognize that EPA and the USACE have existing agreements on the processes that those agencies will use to collaboratively and expeditiously resolve specific issues in Section 404 permit program implementation. Nothing in this MOU is intended to supersede, expand, or void any part of those existing agreements. If either the EPA or the USACE initiates any dispute resolution mechanism under these existing agreements as to an issue arising in the context of the BDCP, the initiating agency will communicate that fact to the other parties of this agreement in writing. EPA and the USACE will keep the other Signatory Agencies of this MOU apprised of any developments in the dispute resolution process.

Section VII. Effective Date and Duration

DRAFT

This MOU will become effective on the date of signature by the last party. This MOU shall remain in force, subject to Section II.2, until whichever of these events occurs first: a) the USACE issues the last of the RODs, Section 404, Section 10, and 408 permit decisions, or b) the MOU is terminated pursuant to Section V.2.

IN WITNESS WHEREOF, this MOU is executed by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Bureau of Reclamation, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency, acting by and through their respective authorized officers.

_____ _____

_____ _____

Jared Blumenfeld Date

ED_000733_DD_NSF_00080003-00015

Regional Administrator
U.S. Environmental Protection Agency, Region IX

_____ _____

DRAFT

ED_000733_DD_NSF_00080003-00016

Appendix A. Dispute Resolution System

The Briefing Paper

At every mid-level elevation, staff of each of the Signatory Agencies involved in the dispute will prepare a cooperative briefing paper. This paper may also be used for senior-level elevations. The briefing paper should offer salient information precisely framing the issues requiring resolution. The briefing paper:

- Encourages neutral presentation of issues, rather than polarizing;
- Maximizes the likelihood of resolution of at least some of the issues as staff prepare for the elevation;
- Ensures that the problem statement is robust, clear, and focused; and
- Fosters improved communication.

The briefing paper should be short and will need to be developed quickly – in 21 calendar days in most cases. A format for the briefing paper is presented below.

The issues to be addressed in the briefing paper should be framed at the checkpoint meeting. The Lead Federal Agencies should begin the first draft shortly after the checkpoint meeting. Once the Responding Agencies reply formally to the Lead Federal Agencies request for responses, the Lead Federal Agencies will complete the first draft of the briefing paper and send it to all the Signatory Agencies. A person from each agency responsible for the development of the briefing paper (a point of contact) should be identified informally at the checkpoint meeting, if possible, and formally in the response letter.

Upon receipt of the first draft, any of the Signatory Agencies may contribute to the briefing paper; use of the "Track Changes" tool in Word is preferred. A single set of changes will be sent by each agency's point of contact. The Lead Federal Agencies may either accept the changes or move them to one of the "alternate" columns, and this document becomes the second draft. The Lead Federal Agencies then distributes the second draft to the contributors and makes requested changes prior to sending a final document to the elevation decision-makers. There may be other iterations as needed and as the schedule allows.

Informal telephone conversations and e-mails should occur in support of all stages of the development of the briefing paper.

The specific timing for reviews, changes, and incorporation of changes may be modified by mutual agreement at or shortly after the checkpoint meeting, or whenever a mid-level elevation is first anticipated.

ED_000733_DD_NSF_00080003-00017

When the Lead Federal Agencies initiates the MOU process, it will request that each Responding Agency initiate its internal actions for preparing to engage in the elevation process, including the review of the briefing paper and confirmation of the appropriate mid-level and senior-level representatives who have been identified to speak for their agency. The following are the identified mid-level and senior level representatives for each agency.

Signatory Agency	**Mid-level Elevation**	**Senior-level Elevation**
EPA	Division Director, Communities & Ecosystems Division	Regional Administrator of Region IX
USACE	District Commander	South Pacific Division Commander

ED_000733_DD_NSF_00080003-00018

Figure A-1. Sample Briefing Paper

Project Name: Checkpoint:		
As the briefing paper is developed, alternate views that are not easily incorporated into the main body of the document can be dropped into columns on the right, and sized to fit in whatever way makes graphic sense. If the alternate view columns prove to be unnecessary, they can be taken out.	Alternate comments	Alternate comments
Background:		
Issue 1: A Word or Phrase Naming the Issue. A succinct summary. Ideally, the list of issues will have been sketched out at the checkpoint meeting. QA: At the end of the summary of the issue, end with a question. This helps keep the decision-makers in the elevation focused. QB: Sometimes within an issue there is more than one question. For instance, there might be a question about whether an alternative is practicable or not, and there might be a separate question about which agency ought to make the determination on a specific technical issue.		
Issue 2: A Word or Phrase Naming the Second Issue. A succinct summary. Q:		
Resolution:		
Issues Still Requiring Resolution:		
Dates: Checkpoint meeting ___/___/___; Request for Response ___/___/___; Negative assessment or non-concurrence ___/___/___; Mid-level elevation; ___/___/___; Resolution ___/___/___.		

ED_000733_DD_NSF_00080003-00019

Use of Facilitators The use of a facilitator may be an effective way to conduct a coordination meeting, checkpoint meeting, or elevation. Here are some approaches to involving facilitators that have been useful in the past:

The process for hiring the facilitator should be as collaborative as practicable. Involving agencies in the selection of a facilitator sets a neutral tone from the outset.

Involve the facilitator in the development of the agenda.

Strike the right balance in terms of substantive knowledge. A facilitator who has to stop and ask 'What is section 404 of the CWA?' is likely to delay resolution. Yet it is not necessary to find someone who knows the details of the BDCP EIS process and each of the statutes and all of the regulations. It is probably more important that the facilitator be truly skilled at facilitation and have a general natural resources background.

Timely retention of a facilitator. Identifying and hiring a facilitator on short notice can be a challenge, but not an insurmountable one. Many of the agencies participating in this MOU have trained facilitators who could assist with the meeting or elevation. The U.S. Institute for Environmental Conflict Resolution maintains a roster of qualified facilitators who can be easily accessed by many federal agencies.

ED_000733_DD_NSF_00080003-00020

ED_000733_DD_NSF_00080003-00021