



United States Department of the Interior

BUREAU OF RECLAMATION
Mid-Pacific Region
Bay-Delta Office
801 I Street, Suite 140
Sacramento, CA 95814-2536

IN REPLY REFER TO:

BDO-400
ENV-7.00

APR 23 2014

Ms. Melinda Terry
Manager
North Delta Water Agency
910 K Street, Suite 310
Sacramento, CA 95814

Subject: Participation as a Cooperating Agency in Preparation of the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Environmental Impact Statement/Environmental Impact Report

Dear Ms. Terry:

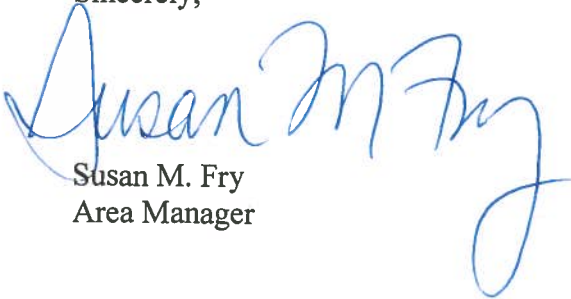
The Bureau of Reclamation has approved your request for cooperating agency status for preparation of the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Environmental Impact Statement/Environmental Impact Report (Yolo Bypass EIS/EIR). Enclosed is a Memorandum of Understanding (MOU) to memorialize your participation as a cooperating agency for the Yolo Bypass EIS/EIR. The cooperating agency MOU is intended to define the roles and responsibilities of Reclamation and the non-Federal cooperating agencies in preparation of the Yolo Bypass EIS/EIR.

Reclamation is distributing the enclosed MOU to all eligible non-Federal cooperating agencies to initiate the required signature and approval process. At your earliest convenience, please print out and sign two copies of the enclosed MOU and mail them to Ms. Traci Michel, Bureau of Reclamation, Bay-Delta Office, 801 I Street, Suite 140, Sacramento, CA 95814. One original signed copy will be returned to you following completion of Reclamation's surnaming process. In addition, please designate one representative from your agency as the single point of contact for the exchange of materials and documents associated with the Yolo Bypass EIS/EIR. Please e-mail the contact information for your designee to Ms. Michel at tmichel@usbr.gov.

Reclamation's Bay-Delta Office website is continually updated with the most current information regarding the National Environmental Policy Act (NEPA) process for this project, and includes details regarding the NEPA public scoping process and a list of governmental entities that were invited to be cooperating agencies. A list of Federal and non-Federal cooperating agencies will be posted to this website following final signature and approval of the cooperating agency MOUs. For further information regarding this project, please refer to the Bay-Delta Office website at <http://www.usbr.gov/mp/BayDeltaOffice/Documents/yolo.html>

We look forward to working with you during preparation of the Yolo Bypass EIS/EIR. If you have any questions or concerns regarding the enclosed MOU or your role as a NEPA cooperating agency, please contact Ms. Michel at 916-414-2420 or via e-mail at tmichel@usbr.gov.

Sincerely,



Susan M. Fry
Area Manager

Enclosure

Identical Letter Sent To:

Mr. Mark Pruner
Chair
Clarksburg Fire Protection District
P.O. Box 513
Clarksburg, CA 95612

Mr. Lewis Bair
General Manager
Reclamation District 108
P.O. Box 50
Grimes, CA 95950

Mr. Marty Scholl
Ecological Management Supervisor
Sacramento-Yolo Mosquito and Vector
Control District
8631 Bond Road
Elk Gove, CA 95624

Mr. Phillip Pogledich
Senior Deputy County Counsel
Yolo County Board of Supervisors
625 Court Street
Woodland, CA 95695

Mr. Byron Buck
Executive Director
State and Federal Contractors Water Agency
1121 L Street, Suite 806
Sacramento, CA 95814

cc: Ms. Kaylee Allen
Assistant Regional Solicitor
Office of the Solicitor
Department of the Interior
Pacific Southwest Region
2800 Cottage Way
Sacramento, CA 95825

Ms. Anastasia Leigh
Regional Environmental Officer
Mid-Pacific Regional Office
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825
(w/o encl to each)

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR, BUREAU OF RECLAMATION
AND
NORTH DELTA WATER AGENCY
FOR
COOPERATIVE DEVELOPMENT OF THE YOLO BYPASS SALMONID HABITAT
RESTORATION AND FISH PASSAGE ENVIRONMENTAL IMPACT
STATEMENT/ENVIRONMENTAL IMPACT REPORT

This Memorandum of Understanding (MOU) is entered into jointly by the following parties: the Bureau of Reclamation and North Delta Water Agency.

I. Purpose

The purpose of this MOU is to formalize the commitment among the parties to work collaboratively in preparation of the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Environmental Impact Statement/Environmental Impact Report (Yolo Bypass EIS/EIR) in compliance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). This MOU is intended to clarify and define the roles and responsibilities of the Bureau of Reclamation (NEPA Lead Agency) and North Delta Water Agency (Cooperating Agency) in preparation of the Yolo Bypass EIS/EIR.

II. Introduction

The Bureau of Reclamation is the lead agency in accordance with NEPA and the California Department of Water Resources (DWR) is the lead agency in accordance with CEQA in preparing the Yolo Bypass EIS/EIR. The National Marine Fisheries Service's 2009 Biological and Conference Opinion on the Long-term Operation of the Central Valley Project and State Water Project (NMFS BO) concluded that, as proposed, the operation of the Central Valley Project and State Water Project were likely to jeopardize the continued existence of four anadromous species listed under the federal Endangered Species Act (ESA): Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), California Central Valley steelhead (*Oncorhynchus mykiss*), and the Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*). The NMFS BO includes a Reasonable and Prudent Alternative (RPA) that identifies actions that would allow continued operation of the Central Valley Project and State Water Project to avoid jeopardizing the existence of these species and adverse modification of their habitat.

The two RPA actions being addressed in this EIS/EIR include:

- RPA Action I.6.1: Restore floodplain rearing habitat, through the increase of seasonal inundation within the lower Sacramento River basin; and
- RPA Action I.7: Reduce migratory delays and loss of salmon, steelhead, and sturgeon, through the modification of Fremont Weir and other structures of the Bypass.

On March 4, 2013, the NEPA Lead Agency issued a Notice of Intent to conduct public scoping and prepare the Yolo Bypass EIS/EIR. The lead agencies held 2 scoping meetings on March 14, 2013, in West Sacramento and Woodland. As of the date of this agreement, the lead agencies have received scoping comments and are moving forward with the process of developing the alternatives and environmental analysis to be included in the Yolo Bypass EIS/EIR.

III. Statutory and Regulatory Authority

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

IV. Responsibilities

The parties to this MOU herein commit as follows:

a. NEPA Lead Agency

As the NEPA lead agency, Reclamation, in coordination with DWR as the CEQA lead agency, is responsible for the preparation, quality, and content of the Draft and Final Yolo Bypass EIS/EIR. Other NEPA Lead Agency responsibilities in this process include:

1. Providing invitations and adequate notice for meetings;
2. Providing direction to and reviewing consultant work products in preparation of the Yolo Bypass EIS/EIR;
3. Clearly identifying and acknowledging the roles and responsibilities of all NEPA cooperating agencies in the Yolo Bypass EIS/EIR;
4. Informing the public and decision-makers of the potential direct, indirect, and cumulative impacts of the alternatives analyzed in the Yolo Bypass EIS/EIR;
5. Identifying opportunities to avoid, minimize, or compensate for significant adverse effects due to Federal actions;
6. Providing preliminary Yolo Bypass EIS/EIR deliverables, as appropriate, to the Cooperating Agency for review and comment;
7. Providing technical analyses and information to the Cooperating Agency, as appropriate, for review and comment, particularly with respect to key subject areas pertaining to issues within the Cooperating Agency's jurisdiction by law or special expertise;
8. Providing documents to be reviewed by the Cooperating Agency, as determined to be appropriate by the NEPA Lead Agency; including the Administrative Draft Yolo Bypass EIS/EIR to the Cooperating Agency when it is available following review by the lead agencies.
9. Ensuring compliance with all applicable laws and regulations pertaining to preparation of the Yolo Bypass EIS/EIR;
10. Considering input, and making all final decisions on the content of documents;
11. Informing the Cooperating Agency of schedule changes that could affect its input to the Yolo Bypass EIS/EIR or ability to provide timely review of the document; and

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

b. Cooperating Agency

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

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

V. Representation

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

In addition, the Cooperating Agency shall designate one representative and one alternate responsible for regular attendance at technical team and cooperating agency meetings. Changes to the identified representative and/or alternate shall be provided in writing and subject to approval by the NEPA Lead Agency.

VI. Confidentiality

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

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

VII. Additional Provisions

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

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

VIII. Conclusion

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

BUREAU OF RECLAMATION

By: _____ Date: _____

NORTH DELTA WATER AGENCY

By: _____ Date: _____