

**Memorandum of Agreement  
For Supplemental Funding for Certain Ecosystem Actions and Support for  
Implementation of Near-Term Water Supply, Water Quality, Ecosystem, and Levee  
Actions**

**I. Purpose**

Changes in available CALFED funding and the need to enable water supply, water quality, ecosystem, and levee projects to progress within a stable regulatory framework require a new structure that provides regulatory and funding assurances for the actions described herein. The foundation for this framework was established in a Statement of Principles agreed to by the California Department of Water Resources, California Department of Fish and Game, U.S. Fish and Wildlife Service, NOAA's National Marine Fisheries Service, U.S. Bureau of Reclamation, and others. This Memorandum of Agreement (MOA) is intended to further:

1. The development of a conservation plan for the Delta and its upstream basins, hereinafter referred to as the Bay Delta Conservation Plan (BDCP) and to obtain the permits necessary to comply with the California Endangered Species Act and the Federal Endangered Species Act; and
2. The implementation of key interim water supply, water quality, ecosystem, and levee projects, subject to compliance with applicable environmental review under CEQA and NEPA.

**II. Interim Projects**

The Agencies (DWR, DFG, FWS, NOAA Fisheries, and USBR), subject to completion of any required environmental review document and permitting, support implementation of the interim projects described in Attachments B (water supply projects), C (water quality projects), D (ecosystem projects), E (levees and other work in the waterways), and F (project schedules) during development of the BDCP. The current schedules for these interim projects are included in Attachment F and are displayed for information purposes only. The Agencies are committed to following legal process and to consider all points of view, including those of conservation groups or other water agencies that have expressed concerns with the implementation of these interim projects. The development of the BDCP shall not delay the implementation of those interim projects.

1. In the event for reasons beyond the control of the Agencies any interim project is delayed beyond completion of the BDCP, it is anticipated that the BDCP will advance progress of the interim projects. Execution of the

MOA shall not constitute a waiver by any signatory of any right or remedy they may have.

2. Inclusion of interim projects on Attachments B, C, D, E, or F. does not commit state or federal funding beyond that already approved for those interim projects, nor does it constitute agency pre-approval of any project or preferred project alternative or waive or otherwise abridge agency Responsible or Trustee duties required, or discretion authorized, under state and federal law.
3. The interim project lists set forth in Attachments B, C, D, E, and F may be augmented to add additional covered activities if such projects meet agreed upon criteria, including:
  - i. They will not result in stranded investments;
  - ii. They will not impede development and implementation of the BDCP (generally consistent with the BDCP goals);
  - iii. Their implementation and operation shall be based on best available science; and
  - iv. They are consistent with BDCP objectives as they are developed.

### **III. Near-Term Funding**

Subject to Section V, this MOA proposes to provide, over the next two years, \$60 million in contributions for the BDCP, Species Recovery Capital Fund, Ecosystem Restoration Program, POD Studies, and the 100-Year Vision for the Future of the Delta. This \$60 million does not include the value of the commitments made pursuant to Section III.E for the Environmental Water Account.

In order to provide sufficient supplemental funds, which when combined with state, federal and other funding that will enable implementation of priority ecosystem restoration projects for Delta pelagic and anadromous fish through the end of Stage 1 (December 31, 2007), the following near-term funding is proposed:

#### **A. BDCP**

1. For calendar years 2006 and 2007, the USBR and DWR on behalf of the State Water Project (hereinafter referred to as The Projects) shall contribute an aggregate of \$3 million annually for the collective use of DFG, USFWS, and NOAA Fisheries for staff and administrative costs related to the development of the BDCP. The budget in Attachment A details how these funds are anticipated to be spent.
2. The Projects and/or other applicants who have activities that will be covered by the BDCP will develop a cost-share agreement as part of the application process for the BDCP, which may provide for reimbursement

of the The Projects and/or other applicants if new parties are able to utilize work for which The Projects and/or other applicants paid.

3. DFG, USFWS, and NOAA Fisheries will expend contributions made under this section consistent Attachment A.
4. DFG, USFWS, and NOAA Fisheries shall seek additional contributions for agency costs from other BDCP participants.
5. DFG, USFWS, and NOAA Fisheries will apply for additional funding through a Federal Endangered Species Act (FESA) Section 6 application.
6. If new bond funds become available and are appropriated for this purpose, the contributions by The Projects for agency staff and administrative costs shall be reduced accordingly.

#### B. Species Recovery Capital Fund

1. DWR on behalf of the SWP shall contribute a total of \$12 million to a Species Recovery Capital Fund through the end of Stage 1 (December 31, 2007) for restoration projects.
2. Money in this fund contributed by DWR on behalf of the SWP shall only be used to fill funding gaps for identified restoration projects and only if all bond money available for and appropriated for these purposes has been committed.
3. DWR and their contractors will be actively engaged in the selection and management of restoration projects funded by the Species Recovery Capital Fund.
4. The \$12 million contributions on behalf of the SWP shall be credited towards future Delta pelagic and anadromous fish restoration obligations identified under the BDCP.
5. If the BDCP is not completed, or permits are not issued, the SWP contributions shall be credited towards environmental obligations of the SWP.

#### C. Ecosystem Restoration Program

1. The state and federal agencies agree to continue annual contributions of \$15 million from the CVPIA restoration fund, and Four Pumps Fish Mitigation Agreement towards the Ecosystem Restoration Program.
2. The signatories to this MOA anticipate that current contributions under the CVPIA, combined with the Four Pumps Mitigation Agreement, Species Recovery Capital Fund and available bond funds will meet the requirements of the CALFED Conservation Agreement Regarding Multi-Species Conservation Strategy for financing the Ecosystem Restoration Program through the end of Stage 1.

#### D. POD Studies

1. For the calendar years 2006 and 2007, The Projects shall continue to contribute up to an aggregate of \$4 million annually or additional amounts as necessary upon mutual agreement, to research into the causes of the Delta Pelagic Organism Decline.
2. These contributions do not offset other obligations of the SWP or the federal government.

#### E. Environmental Water Account

1. DWR and DFG agree to pursue full public funding from the Legislature as provided in the CALFED ROD and the 2004 MOU that extended Environmental Water Account (EWA) through 2007.
2. Until full public funding is made available for the 2005-2006 state fiscal year, and after exhausting all other Tier II assets and in an attempt to avoid the use of Tier III assets, the SWP will loan EWA up to 80 TAF of water to make up for the current funding shortfall. This loan will be repaid with variable EWA assets or financial assets.
3. Sufficient public resources are identified in the 10-Year Action Plan and, if appropriated, will fully fund the EWA through the 2006-2007 state fiscal year.
4. If public funds are not made available to meet the terms of the 2004 MOU and DFG or DWR require the SWP to provide a non-reimbursable fiscal or water contribution to provide adequate resources for the EWA until December 31, 2007, then DWR on behalf of the SWP may terminate this MOA in its entirety.
5. The EWA Agencies agree to conduct a comprehensive review of the EWA by July 1, 2007, to determine if the program should be continued and, if continued, how it will be sized, managed, and funded for the 2007-2008 state fiscal year and beyond.

#### F. 100-Year Vision for the Future of the Delta

1. The Projects and other water and hydropower project operators will contribute 50% of the cost of the process to develop a long-term vision for the future of the Delta up to a maximum of \$2 million annually not to exceed \$4 million in total.
2. DWR and DFG will obtain at least an equivalent amount of funding from other private or public sources.
3. If bond funding is available for this purpose, the obligations under Section III.F.1 and Section III.F.2 will be reduced proportionally.

#### **IV. Contingent on Appropriation of Funds and Future Actions**

The expenditure or advance of any money, or the performance of any obligation of the United States or the State of California under this MOA, will be contingent upon appropriation or allotment of funds, and, for the United States, is in accordance with 31 United States Code section 1341 (Anti-Deficiency Act). No liability will accrue to the United States or the State of California for failure to perform any obligation under this MOA in the event that funds are not appropriated or allotted.

#### **V. Preserves Rights and Authorities**

All provisions of this MOA are intended and will be interpreted to be consistent with all applicable provisions of state and federal law. The undersigned recognize that public agency signatories to this MOA have specific statutory and regulatory authority and responsibilities, and that actions of these public agencies must be consistent with applicable procedural and substantive requirements. Nothing in this MOA is intended to, nor will have the effect of, constraining or limiting any public entity in carrying out its statutory responsibilities. Nothing in this MOA constitutes an admission by any party as to the proper interpretation of any provision of law, nor is anything in this MOA intended to, nor will it have the effect of, waiving or limiting any public entity's rights and remedies under any applicable law.

This MOA does not delegate from or to any person or entity any existing ability to:

1. make a final decision on a project;
2. modify or halt a project; or
3. pursue a project according to individual legal authority.

Execution of this MOA does not constitute a waiver by any signatory of any right or remedy it may have nor does execution constitute pre-approval of any project or preferred project alternative or waive or otherwise abridge responsible or trustee duties required, or discretion authorized, under state and federal law.

#### **VI. Non-Discriminatory**

The program or activities contemplated under this MOA when and if conducted or funded by any federal agency will be in compliance with the nondiscrimination provisions contained in Titles VI and VII of the Civil Rights Act of 1964, as amended; the Civil Rights Restoration Act of 1987 (Public Law 100-259); and other nondiscrimination statutes: namely, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and American's With Disabilities Act of 1990. They will also be in accordance with applicable federal regulations, which provide that no person in the United States will on the grounds of race, color, national origin, gender,

religion, age, disability, political beliefs, sexual orientation, and marital or family status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

## **VII. Termination**

1. This MOA will terminate if the State of California imposes fees or an involuntary financial obligation on any water agency or utility signatory to the MOA for implementation of any CALFED Programs, including, but not limited to the Ecosystem Restoration Program, the Environmental Water Account, or other activities funded under this MOA.
2. The signatories to this MOA recognize that the state is exploring the adoption of a water resources investment fund through an amendment of the California Constitution, and they commit to work cooperatively to develop a water resources investment fund, the implementation of which their principals/boards of directors could support and which would not affect any rights or obligations under this MOA.
3. The termination provision provided under section VII(1) does not apply to a water resources investment fund developed consistent with VII(2) the state may adopt through an amendment of the California Constitution.

## **VIII. Term of the MOA**

Upon DWR, DFG, USBR, USFWS, NOAA Fisheries, and four of the SWP contractors and one of the CVP entities that initialed the Statement of Principles signing this MOA, it will become effective. Unless terminated, this MOA will remain in effect until December 31, 2007.

## **IX. Signature in Counterparts**

This MOA may be executed in counterparts.

## Attachment A – BDCP Budget

Attachment A: BDCP Budget for DFG, NOAA Fisheries, and USFWS (Fish Agencies) as of July 14, 2006

	Task Lead	Work Task%		Fish Agency Cost Estimates			Schedule			
		Permittees or Wildlife Agencies	Permittees/ Consultants/ Fish Agencies	2006 Budget (calendar year)	2007 Budget (calendar year)	2008 and beyond Budget	On Going	2006	2007	2008/2009
<b>1.0 Project Set-Up</b>	Varies by task	Varies by task	Varies by task	\$211,619	\$40,000	??				
<b>2.0 Project Administration and Meetings</b>	Varies by task	Varies by task	Varies by task	\$133,229	\$266,458	??				
<b>3.0 Interim Project Notification Process</b>	Varies by task	Varies by task	Varies by task	\$38,855	\$38,855	??				
<b>4.0 Public Involvement and Outreach</b>	Varies by task	Varies by task	Varies by task	\$312,958	\$312,958	??				
<b>5.0 Scientific Advisory Process</b>	Joint Effort with CALFED Science Program	Varies by task	Varies by task	\$374,105	\$374,105	??				
<b>6.0 Project Delineation</b>	Permittees	Varies by task	Varies by task	\$164,447	\$164,447	??				
<b>7.0 Compile and Collect Data</b>	Joint Lead	Varies by task	Varies by task	\$257,218	\$357,218	??				
<b>8.0 Covered Activities, Covered Species, and Natural Communities</b>	Varies by task	Varies by task	Varies by task	\$305,195	\$593,900	??				
<b>9.0 Conservation Strategy</b>	Varies by task	Varies by task	Varies by task	\$335,636	\$634,783	??				
<b>10.0 Conservation Plan Components and Impact Analysis</b>	Permittees	Varies by task	Varies by task	\$120,000	\$542,000	??				
<b>11.0 Economic Analysis</b>	Permittees	Varies by task	Varies by task	\$0	\$50,000	??				
<b>12.0 Conservation Plan Preparation</b>	Permittees	Varies by task	Varies by task	\$196,084	\$365,361	??				
<b>13.0 NEPA/CEQA Compliance</b>	Agencies	Varies by task	Varies by task	\$0	\$150,000	??				
<b>14.0 Implementing Agreement (IA)</b>	Joint Effort	Varies by task	Varies by task	\$0	\$150,000	??				
<b>15.0 Final ESA Compliance (NMFS and USFWS)</b>	Agencies	Varies by task	Varies by task	\$0	\$0	??				
<b>16.0 Final CA Fish &amp; Game Code Compliance (DFG)</b>	Agencies	Varies by task	Varies by task	\$0	\$0	??				
<b>SUBTOTAL (Task #1 – #6)</b>				<b>\$1,235,212</b>	<b>\$1,196,822</b>	<b>\$0</b>				
<b>SUBTOTAL (Task #7 – #13)</b>				<b>\$1,214,133</b>	<b>\$2,693,262</b>	<b>\$0</b>				
<b>SUBTOTAL (Task #14 – #17)</b>				<b>\$0</b>	<b>\$150,000</b>	<b>\$0</b>				
<b>TOTAL</b>				<b>\$2,449,345</b>	<b>\$4,040,084</b>	<b>\$0</b>				
			<b>GRAND</b>			<b>\$6,489,430</b>				

## Attachment B - Water Supply Projects<sup>1</sup>

- SDIP with Integrated Operations, Banks 8500 cfs, Dredging
- CVP-SWP Intertie
- San Luis Low Point Improvement Project

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<sup>1</sup> “Core” Delta Projects previously identified by principals



## Attachment C - Water Quality Projects<sup>2</sup>

- CCWD Alternative Intake Project
- Contra Costa Canal Encasement Project
- Franks Tract Pilot Project
- San Joaquin River Salinity Management<sup>3</sup>
- Old River and Rock Slough Water Quality Improvement Projects (completed 11/05)
- Operable Gates<sup>4</sup>

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<sup>2</sup> “Core” Delta Projects previously identified by principals

<sup>3</sup> Includes salinity reduction in Westside/Grasslands area, recirculation, water purchases, and real time management. Developing and implementing a plan to meet existing Vernalis water quality standards and objectives is a separate action under the Program plan.

<sup>4</sup> This project is intended to protect water quality for South Delta irrigators and migratory salmon, but could adversely affect water quality for other water users

## **Attachment D – Ecosystem Projects**

- ERP MYPP projects funded by existing ERP funding sources
- Environmental Water Account
- Restoration projects funded by the Species Recovery Capital Fund

## Attachment E - Levee Projects<sup>5</sup>

- Levee Subventions
- Special Projects
- Delta Risk Management Strategy
- Levee Subsidence Control
- Emergency Management and Response Plan

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<sup>5</sup> These are the elements in the current Program Plan for the Levee Program

## Attachment F - Interim Project Schedules

Water Supply Actions	Program Plan (Lead Agency)	ROD Target Date	DIP 8/04 Target Date	Expected Date	Comments
SWP/CVP Integration Plan ➤ Complete SWP/CVP Operations Criteria and Plan and BO and early consultation ➤ Complete Response Plans required by D-1641 for Joint Point of Diversion ➤ Complete NEPA/CEQA ESA and public review of interim SWP/CVP operations ➤ Implement interim SWP/CVP operation actions	Conveyance (USBR/DWR)		Summer 2004  Aug 2004  Early 2005  2005	Completed Fall 2004  Completed Aug 2004  Schedule under development  Schedule under development	JPOD approvals needed each year for those that are not long term approvals

<b>Water Supply Actions (Cont)</b>	<b>Program Plan (Lead Agency)</b>	<b>ROD Target Date</b>	<b>DIP 8/04 Target Date</b>	<b>Expected Date</b>	<b>Comments</b>
<p>Delta Mendota Canal / California Aqueduct Intertie</p> <ul style="list-style-type: none"> <li>➤ Complete envir. Studies</li>   <li>➤ Secure construction funding</li>   <li>➤ Re-bid construction contracts, initiate construction</li> <li>➤ Complete construction, begin operations</li> </ul> <p>Expanded Intertie</p> <ul style="list-style-type: none"> <li>➤ Conduct federal feasibility study</li>   <li>➤ Obtain authorization and funding for expanded intertie</li> </ul>	<p>Conveyance (USBR)</p>	<p>July 2004</p>   <p>Dec 2004</p>	<p>Summer 2004</p>  <p>Late 2005</p>	<p>Apr 2007</p>  <p>Completed 2005</p> <p>Feb 2008</p>  <p>Mar. 2009</p>  <p>Schedule under development</p> <p>Schedule under development</p>	<p>USBR withdrew its FONSI in May 2006 to further consider implications of the project. An EIS is being prepared. CEQA is complete.</p> <p>USBR terminated its construction contract.</p> <p>Federal feasibility authorization received in CALFED Bay-Delta Act.</p>
<p>San Luis Reservoir <u>Low</u> Point Improvement Project</p> <ul style="list-style-type: none"> <li>➤ Complete Appraisal Study</li> <li>➤ Complete Feasibility / EIS/EIR</li> <li>➤ Obtain funding for implementation</li> </ul>	<p>Storage (USBR)</p>	<p>Late 2009</p>	<p>Sept 2004</p> <p>May 2005</p> <p>June 2006</p>	<p>May 2006</p> <p>Spring 2009</p> <p>Schedule under development</p>	<p>Sequence is as follows: 1. Complete an Initial Alternatives Report 2. Complete a Plan Formulation Report 3. Complete Feasibility Studies and Designs 4. Complete the Environmental Impact Statement 5. Complete the ROD.</p>



Water Quality Actions (Cont)	Program Plan (Lead Agency)	ROD Target Date	DIP 8/04 Target Date	Expected Date	Comments
<p>San Joaquin River Salinity Management Plan</p> <ul style="list-style-type: none"> <li>➤ Coordinated Drainage Strategy</li> <li>➤ Salt Load Management and Reduction <ul style="list-style-type: none"> <li>- SJRIP</li> <li>- EIS for San Luis Drainage Feature</li> <li>- Drainage management of Managed Wetlands</li> </ul> </li> <li>➤ Recirculation <ul style="list-style-type: none"> <li>- Draft Feasibility Study and EIS/R</li> <li>- Final Feasibility Study and EIS/R</li> </ul> </li> <li>➤ Voluntary Water Exchanges and Transfers</li> <li>➤ Real Time Monitoring</li> <li>➤ Coordination of East Side Tributary Operations</li> <li>➤ Westside Groundwater Management</li> </ul>	Water Quality (DWR)	Start source control measures by 2003	<p>Begin study by summer 2004</p> <p>Initiate studies by fall 2004</p> <p>Initial draft by Oct 2004</p> <p>Initial draft by March 2004</p>	<p>Ongoing</p> <p>2010</p> <p>June 2006</p> <p>Schedule under development</p> <p>Dec 2007</p> <p>Nov 2008</p> <p>Ongoing</p> <p>Ongoing</p> <p>Ongoing</p> <p>2010</p>	<p>SJRIP is being incorporated into the larger Westside Regional Drainage Plan.</p> <p>Part of the Westside Regional Drainage Plan. Proponents propose to pump to lower regional groundwater levels, therefore reducing subsurface drainage discharges into SJR. Excess water will be transferred to CVP.</p>

<b>Water Quality Actions (Cont)</b>	<b>Program Plan (Lead Agency)</b>	<b>ROD Target Date</b>	<b>DIP 8/04 Target Date</b>	<b>Expected Date</b>	<b>Comments</b>
<p>Old River and Rock Slough Water Quality Improvement Projects</p> <ul style="list-style-type: none"> <li>➤ Complete construction of Veale and Byron tracts drainage improvements</li> <li>➤ Complete construction of first phase Canal lining project</li> </ul>	Water Quality (DWR)	Before permanent operable gates		<p>Completed Jan 2006</p> <p>Jun 2009</p>	
<p>Franks Tract</p> <ul style="list-style-type: none"> <li>➤ Complete feasibility and EIR/EIS Study (pilot project)</li> <li>➤ Implement pilot project construction and monitoring</li> </ul>	Water Quality (DWR)			<p>April 2010</p> <p>June 2011</p>	Currently CEQA/NEPA process is being initiated. If it is determined ( by June 2007) that a Mitigated Negative Declaration is sufficient for the pilot project, then the pilot project implementation will be done by June 2008.
<p>Relocation of M&amp; I Intake</p> <ul style="list-style-type: none"> <li>➤ Complete evaluation of water quality improvements</li> </ul>	Water Quality (CCWD)			Date to be determined	CCWD is proceeding with scoping and environmental documentation



Delta Levees Actions	Program Plan	ROD Target Date	DIP 8/04 Target Date	Expected Date	Comments
<p>Delta Levees</p> <p>Implement the Levee System Integrity Multi-Year Program Plan (including Base Level Protection, Special Improvements Projects, Delta Risk Management Strategy, Subsidence Best Management Practices, and Levee Emergency Management and Response).</p>	<p>Levee System Integrity (DWR)</p>			<p>Years 5-8</p>	<p>State and local funding has addressed maintenance and slow incremental levee improvements. The absence of federal funding and reduced local cost share envisioned in the ROD has severely limited the ability of the program to obtain base level protection. Unless legislation is passed to extend the sunset date the ability of the program to achieve results will be further reduced on July 1, 2006. A Delta Risk Management Strategy study is now underway.</p>

<b>Environmental Protection Actions</b>	<b>Program Plan</b>	<b>ROD Target Date</b>	<b>DIP 8/04 Target Date</b>	<b>Expected Date</b>	<b>Comments</b>
Environmental Water Account ➤ Decision on continuing short-term EWA ➤ Draft EIS/EIR on long-term EWA ➤ Final EIS/EIR on long-term EWA ➤ Comprehensive Review of EWA	Environmental Water Account (DWR)		Sept 2004  Jun 2005  Dec 2005	Completed Sept. 2004  Dec 2006  Dec 2007  Dec 2007	DWR, USBR, USFWS, NOAA Fisheries and CDFG completed Long-Term EWA EIS/EIR public scoping meetings in March 2005    Conducted prior to implementation of Long-Term EWA to inform decisions regarding purpose and need

## Attachment G – Signatures

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P. Joseph Grindstaff, Director  
California Bay-Delta Authority

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Lester Snow, Director  
California Department of Water Resources

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Ryan Brodrick, Director  
California Department of Fish and Game

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Kirk C. Rodgers, Regional Director  
U.S. Bureau of Reclamation

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Steve Thompson, California/Nevada  
Operations Manager  
U. S. Fish and Wildlife Service

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Rodney R. McInnis, Administrator Southwest  
Region  
NOAA Fisheries

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James M. Beck, General Manager  
Kern County Water Agency

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Jeffrey Kightlinger, General Manager  
Metropolitan Water District of  
Southern California

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Dale Myers, General Manger  
Zone 7 Water Agency

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Walter L. Wadlow, Chief Operating Officer  
Santa Clara Valley Water District

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Daniel G. Nelson, Executive Director  
San Luis and Delta-Mendota Water Authority

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Thomas W. Birmingham, General  
Manager/General Counsel  
Westlands Water District

