

## **AGREEMENT**

to address

### **THE EFFECTS OF THE CALIFORNIA WATERFIX ON CENTRAL VALLEY PROJECT OPERATIONS**

by and between

**THE UNITED STATES BUREAU OF RECLAMATION**

and

**THE CALIFORNIA DEPARTMENT OF WATER RESOURCES**

This Agreement is entered into this 12<sup>th</sup> day of DECEMBER, 2018 by and between the UNITED STATES BUREAU OF RECLAMATION ("Reclamation") and the CALIFORNIA DEPARTMENT OF WATER RESOURCES ("DWR"), collectively the "Parties."

#### **EXPLANATORY RECITALS**

The Parties have entered into this Agreement in consideration of the following facts:

Reclamation is a federal agency within the United States Department of the Interior charged with constructing, operating, and maintaining the CVP.

DWR is a state agency within the California Natural Resources Agency responsible for constructing, operating, and maintaining the SWP.

DWR and Reclamation submitted the joint petition to add points of diversion for the State Water Project "SWP" and Central Valley Project "CVP" to the California State Water Resources Control Board ("State Water Board") for the California WaterFix ("CWF Change Petition").

Reclamation submitted a revised project description for the CWF Biological Assessment to U.S. Fish and Wildlife Service ("USFWS") and National Marine Fisheries Service ("NMFS") on May 24, 2017. On June 2, 2017, Reclamation provided correspondence to USFWS and NMFS identifying the May 24, 2017, package of changes to the project description as the final proposed action for consultation.

CWF is described in the final Environmental Impact Report/Environmental Impact Statement ("EIR/EIS"), and DWR approved its Final Environmental Impact Report ("FEIR"), State Clearinghouse No. 2008032062, as later amended by 'Developments After Publication of the Proposed FEIR July 2017,' and as may be amended and supplemented from time to time, as well as applicable permits and authorizations such as the 2017 CWF Biological Opinions, and the 2017 CWF California Endangered Species Act Incidental Take Permit ("CESA ITP").

Reclamation has not accepted the 2017 CWF Biological Opinions or issued a CWF Record of Decision (“ROD”) but will consider doing so once the State Water Resources Control Board issues an order on the CWF Change Petition.

Given the coordinated nature of CVP and SWP operations, the addition of the CWF project to the SWP may affect the CVP.

DWR and Reclamation desire to establish the terms and conditions under which Reclamation will agree to maintain the CWF Change Petition, pending before the State Water Resources Control Board, by memorializing the Parties’ agreement that DWR will avoid, mitigate or offset CWF impacts, if any, described herein under specified circumstances.

The Parties covenant and agree as follows:

## **1.0 AUTHORITIES**

### **1.1 Bureau of Reclamation**

Reclamation constructed, operates, and maintains the CVP as authorized by the Act of August 26, 1937 (50 Stat. 850), and all acts amendatory or supplemental thereto including but not limited to, the First Deficiency Appropriation Act, Fiscal Year 1936 (49 Stat. 1622); the Act of October 17, 1940 (54 Stat. 1198, 1199); the Act of December 22, 1944 (58 Stat. 887); the Act of October 14, 1949 (63 Stat. 852); the Act of September 26, 1950 (64 Stat. 1036); the Act of August 27, 1954 (68 Stat. 879); the Act of August 12, 1955 (69 Stat. 719); the Act of June 3, 1960 (74 Stat. 156); the Act of October 23, 1962 (76 Stat. 1173); the Act of September 2, 1965 (79 Stat. 615); the Act of August 19, 1967 (81 Stat. 167); the Act of August 27, 1967 (81 Stat. 173); the Act of October 23, 1970 (84 Stat. 1097); the Act of September 28, 1976 (90 Stat. 1324); the Act of December 22, 1980 (94 Stat. 3339); the Act of October 27, 1986 (100 Stat. 3050); the Central Valley Project Improvement Act (106 Stat. 4706); the Act of November 5, 1990 (104 Stat. 2074); the San Joaquin River Restoration Settlement Act (123 Stat. 1349, Title X); and the Water Infrastructure Improvements for the Nation Act (130 Stat. 1628, Title III, Subtitle J).

### **1.2 Department of Water Resources**

DWR is authorized under the State Central Valley Project Act (Water Code section 11100, et seq.), Burns-Porter Act (California Water Resources Development Bond Act), State Contract Act (Public Contract Code section 10100, et seq.), Davis-Dolwig Act (Water Code sections 11900-11925), and other acts of the State Legislature and applicable laws of the State of California to construct, operate, and maintain the SWP.

## **2.0 EFFECTIVE DATE**

This Agreement shall become effective upon signature of the Parties and shall remain in full force and effect until terminated pursuant to Article 4.0, below (**TERMINATION**).

## **3.0 TERMS AND CONDITIONS**

**3.1** Reclamation shall maintain the CWF Change Petition at least until either a draft order is issued or the State Water Resources Control Board has announced an intention to issue a final order without circulation of a draft order; provided, nothing herein shall affect Reclamation's discretion whether or how to prepare or adopt a CWF ROD.

**3.2** In the event the CWF facilities are not fully integrated with the annual and daily operations of the CVP by Reclamation for multiple CVP purposes, the State, through DWR, shall avoid, mitigate, or offset, through forms agreed to by Reclamation, any CVP water supply reduction resulting from CWF operations or restrictions imposed on the CVP through permits or other regulatory approvals issued for CWF operations for the mitigation or avoidance of biological impacts attributable directly to CWF operations.

The existence and extent of any CVP water supply reduction from CWF will be assessed at the time that any new regulatory requirement or permit issued for CWF affects operations of the CWF or CVP. CVP water supply reductions due to subsequent modifications to the Sacramento/San Joaquin Bay-Delta Estuary Water Quality Control Plan will not impose on the State an avoidance, mitigation, or offset obligation unless those subsequent modifications are for mitigation or avoidance of biological impacts directly attributable to CWF operations. Reclamation and DWR will assess any order approving a change in the point of diversion and re-diversion for the CWF, to determine if appropriate flow criteria imposed pursuant thereto were imposed to mitigate or avoid biological impacts attributable directly to CWF operations. The Parties agree to establish a process for conducting the assessments.

## **4.0 TERMINATION OF AGREEMENT**

This Agreement may be terminated: (1) upon mutual written consent of the Parties, or (2) automatically if (a) Reclamation ceases to pursue the CWF Change Petition prior to the Board's issuance of a final order regarding such petition, or (b) DWR does not accept the final order issued by the State Water Resources Control Board on the CWF Change Petition.

## **5.0 MISCELLANEOUS PROVISIONS**

**5.1** Relation to Agreement between the United States of America and the State of California for Coordinated Operation of the CVP and SWP

Nothing in this Agreement shall: (1) affect any review by the United States and the State of the Agreement between the United States of America and the State of California for Coordinated Operation of the CVP and SWP ("COA"), or (2) alter, modify, or amend any provision of COA, or relieve either Party to the COA of any obligations or rights it may have under COA.

**5.2 No Delegation of Authority**

Nothing in this Agreement shall cause, or shall be deemed to cause, any delegation of authority from any Party in this Agreement to any other Party.

**5.3 Severability**

In the event one or more provisions contained in this Agreement is rendered illegal or impossible, or implementation is otherwise barred in any way by judicial, executive or legislative branch action, the Parties will meet and confer to determine whether such portion will be deemed severed from this Agreement and the remaining parts of the Agreement will remain in full force and effect as though such illegal, impossible, or barred portion had never been part of this Agreement.

**5.4 Anti-Deficiency Act**

The Federal agency obligations described in this Agreement are contingent on appropriations. No liability shall accrue to the United States or Federal agencies in the event funds are not appropriated or allotted.

**5.5 Elected Officials Not to Benefit**

This Agreement shall not provide any benefit for any elected official.

**5.6 Integration and Amendment**


This Agreement represents the entire understanding and agreement of the Parties with respect to the subject matter hereof. This Agreement may only be amended in-writing with the prior mutual written consent of the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first written above.

**CALIFORNIA DEPARTMENT OF**

  
Karla Nemeth, Director

**UNITED STATES BUREAU OF  
RECLAMATION**

  
Brenda Burman, Commissioner