

**MEMORANDUM OF AGREEMENT
AMONG
CALIFORNIA DEPARTMENT OF WATER RESOURCES
AND THE
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT**

THIS AGREEMENT is entered into as of this 16 day of Nov, 2010, among the State of California, represented by the Department of Water Resources (hereinafter "DWR") and the United States Army Corps of Engineers' Los Angeles District (hereinafter the "Corps"), collectively referred to as "the Parties."

RECITALS

WHEREAS, the Corps has jurisdiction over certain activities occurring in waters of the United States, including wetlands and

WHEREAS, section 214 of the Federal Water Resources Development Act of 2000, Public Law 106-541 ("WRDA 2000") as amended by Public Law 111-120, provides as follows:

(a) IN GENERAL. - The Secretary [of the Army], after public notice, may accept and expend funds contributed by non-Federal public entities to expedite the evaluation of permits under the jurisdiction of the Department of the Army.

(b) EFFECT ON PERMITTING. - In carrying out this section, the Secretary shall ensure that the use of funds accepted under subsection (a) will not impact impartial decision-making with respect to permits, either substantively or procedurally.

WHEREAS, the authority provided under section 214 of the WRDA 2000 is presently in effect until December 31, 2010; and

WHEREAS, the Secretary of the Army has delegated the responsibility of carrying out section 214 of the WRDA 2000 to the Chief of Engineers and his delegated representatives; and

WHEREAS, the Chief of Engineers, by memorandum dated March 29, 2004, as modified October 1, 2008, has authorized the District and Division Engineers of the Corps to accept and expend funds contributed by non-Federal entities subject to certain limitations; and

WHEREAS, the Corps has indicated it is not able, without additional resources, to expedite the evaluation of DWR projects; and

WHEREAS, the DWR believes it is in the best interests of the taxpayers of the State of California to provide funds to the Corps pursuant to this MOA to streamline and expedite Corps environmental review under section 404 of the Clean Water Act of 1972, as amended ("CWA") and/or section 10 of the Rivers and Harbors Act of 1899 ("RHA") for DWR-designated priority projects as more fully described in Article II.D. of this MOA; and

WHEREAS, this MOA is intended to: (1) enable the Parties to fully consider, address, and protect environmental resources early in the development of proposed actions; (2) avoid

conflicts late in project development through close coordination during early planning and development stages; (3) provide sufficient information to the Corps for timely analysis of project effects and to assist DWR in developing appropriate mitigation measures; (4) maximize the effective use of limited Corps Regulatory Division personnel by focusing attention on projects that would most affect aquatic resources; (5) provide a mechanism for expediting project coordination when necessary; and (6) provide procedures for resolving disputes in this resource partnering effort.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

Article I. - PURPOSE AND AUTHORITIES

A. This MOA is entered into by the Parties for the purpose of establishing a mutual framework governing the respective responsibilities of the Parties for the acceptance and expenditure of funds contributed by DWR to provide expedited permit evaluation-related services for DWR-designated priority projects under the jurisdiction of the Corps. This MOA is not intended as the exclusive means of obtaining review of projects proposed by the DWR. This MOA is a vehicle by which DWR will obtain expedited permit evaluation-related services, outside of the ordinary Corps review process.

B. DWR enters into this MOA pursuant to its authority under California Government Code 6500 et seq. and other relevant California law. The Corps enters into this MOA pursuant to its authority under section 214 of the WRDA 2000, as amended.

Article II. - SCOPE

A. The work to be performed under this MOA shall be in accordance with the Cost Proposal dated August 1, 2010, a copy of which is attached hereto and hereby incorporated by reference as **Appendix A**. If there is any conflict between the Cost Proposal and this MOA, this MOA shall take precedence.

B. The DWR will provide funds to the Corps to expedite permit evaluation related services for DWR-designated priority projects under the jurisdiction of the Corps. The Corps' Regulatory Program is funded as a Congressionally appropriated line item in the annual Federal budget. Funds received from the DWR will be added to the Corps' Regulatory Program budget, in accordance with the provisions of section 214 of WRDA 2000.

C. The Corps will provide staffing resources exclusively dedicated to expediting permit evaluation related services, as described in Article II.D., below, for DWR-designated priority projects and/or other programmatic efforts to support efficient decisionmaking related to the DWR's CWA section 404 and/or RHA section 10 permitting needs.

D. Specific services to be provided pursuant to this MOA include, but are not necessarily limited to: (1) participation in DWR project development activities, including planning, scoping, Project Development Team ("PDT") meetings, and field reviews; (2) review

of DWR proposed species conservation habitat ("SCH") project; (3) processing permit applications; and (4) review of environmental documents and technical studies.

E. The Corps will establish a separate internal financial account to track receipt and expenditure of the funds associated with its review of permit applications submitted by the DWR. Corps Regulatory personnel will charge their time and expenses against the account when they perform work to either expedite permit evaluation-related requests designated by the DWR as a priority or undertake other programmatic efforts to support efficient decisionmaking related to the DWR's permitting needs. Corps Regulatory personnel will focus on the work as prioritized by the DWR, and if no or few projects are designated by the DWR as a priority, Corps personnel will then work on other programmatic efforts for the DWR.

F. Funds contributed by the DWR hereunder will be expended by the Corps to defray the costs of regulatory staff (including salary, associated benefits, overhead and travel expenses) and other costs in order to expedite the evaluation of priority permit applications designated by the DWR. The Corps may expend DWR funds to hire contractors to perform select duties, including but not limited to site visits; preparing and providing technical materials, including environmental documentation; GIS-related services; and meeting coordination for the purpose of augmenting the resources available to the Corps for expediting priority projects and activities designated by the DWR. If such expenditures, when combined with the costs of the regulatory staff require funding in excess of the amount available under this MOA, then the Corps shall not hire said contractors until and unless additional funds are provided by the DWR and the Parties execute a written amendment to this MOA.

G. The Corps will *not* expend DWR funds for costs associated with the review of Regulatory Project Managers' work by supervisors or other persons or elements of the Corps in the decision-making chain of command. However, if a supervisor is performing staff work and not supervisory oversight, funds may be used. The Corps will *not* expend funds contributed by DWR to defray the costs of activities related to the Corps' enforcement functions, but *may* use DWR funds to defray costs of activities related to compliance functions.

H. If the funds provided by the DWR are expended and not replenished, any remaining priority permit applications will be handled like those of any permit applicant, in a manner decided by the assigned Regulatory Project Manager and his or her supervisor.

Article III. - INTERAGENCY COMMUNICATIONS

To provide for consistent and effective communication between the Parties, each party will appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives may also be appointed to serve as points of contact on specific actions or issues. Each party will issue a letter to the other designating the Principal Representative for each party within fifteen (15) days of MOA execution. The Principal Representative for each party may be changed upon written notification to the other party.

Article IV. - RESPONSIBILITIES OF THE PARTIES

A. The DWR will provide adequate resources to fund additional Corps Regulatory personnel for the purpose of timely review of designated priority projects and other identified activities. To facilitate the Corps' review and activities, the DWR will:

Provide adequate information regarding projects, scheduling requirements, and other specific activities to initiate permit evaluation. Information required for the Corps to deem a permit application complete thereby allowing initiation of the permit review process can be found in Corps regulations at 33 C.F.R. §§ 325.1(d), 325.3(a), and in General Condition 27 of the Nationwide Permit Program as published in the Federal Register (72, Fed. Reg. 11194, dated March 12, 2007). Upon request, the DWR shall provide supplemental information necessary to complete the permit application. Additional information [33 CFR Part 325.1(e)] required to complete the permit evaluation process may exceed what is needed to initiate the process. On a case-by-case basis, if requested by the Corps, the DWR shall provide such additional information so as to ensure the Corps can effectively accomplish the required review.

In consultation with the Corps, establish realistic schedules for the Corps' involvement in designated priority projects. The project(s) designated as a priority by the DWR is/are listed in **Appendix B** to this MOA. The list may be changed by the DWR's Principal Representative without requiring an amendment to this MOA. Such changes shall be submitted to the Corps' Principal Representative in writing and will be effective upon receipt thereof.

Make a reasonable effort to provide the Corps with information on other projects with DWR involvement to enable the Corps to most efficiently apply available staff resources and plan for workload cycles.

To the best of its ability, ensure the participation of all essential personnel during the permit evaluation process.

Work closely with the Corps to adjust priorities and schedules in order to make optimal use of available staff resources. While the DWR will make every effort to not overlap project schedules, occasional overlaps may occur and the DWR will work with the Corps to prioritize such overlaps.

Work closely with the Corps to adjust priorities and schedules in order to optimize available Regulatory Program staff resources. If overlaps or conflicts occur among priority projects, then the DWR will work with the Corps to identify procedures to handle such overlaps or resolve the conflicts.

B. The Corps shall supplement or reassign its existing Regulatory Program personnel, which currently reviews DWR projects on a routine basis, with qualified personnel within projected funding levels provided by the DWR. The Corps shall use the funds provided to defray the costs of salaries and associated benefits and to reimburse travel expenses in order to:

Expedite review of the DWR's priority projects in accordance with the purpose, terms, and conditions of this MOA or any amendments thereto. The Corps shall not redirect

resources from, or otherwise postpone, other projects submitted by the DWR through the standard Corps review process.

Upon submittal of new permit applications and following any meetings and discussions to clarify the scope of anticipated permit application review processes, Corps staff will provide the DWR with an estimated schedule to complete the permit evaluation process for each application submitted. The DWR shall be able to comment on these schedules and adjust priorities per Appendix B, or provide additional resources per Article V, below.

Consult on a monthly basis with the DWR regarding an adjustment of priorities or establishment of relative priorities if the current and/or projected workload of priority projects and activities exceeds Corps' ability to provide the services specified in this MOA and the Cost Proposal at Appendix A.

Provide the DWR a brief quarterly summary report of progress made under this MOA, or in accordance with an alternative schedule as agreed to the Parties to this MOA. Progress will be itemized for each permit application review completed during the quarter and for each permit application pending at the end of the quarter. This report will describe achievements, including any improvements the Corps has documented in coordinating and improving the efficiency of environmental reviews, and will summarize expenditures to date. The report also will identify any recommendations for improving consultation and coordination among the Parties to this MOA. The fourth quarter report shall include a summary of the annual progress made under this MOA. All reports shall not exceed five (5) pages.

Designate and identify to the DWR a Regulatory Project Manager(s) and his/her specific responsibilities for each priority project.

1. Meet with DWR as needed to discuss progress under this MOA.
2. Prior to expiration of the MOA, hold a final meeting with DWR's Principal Representative to review a summary of permit streamlining and other activities under this MOA, as well as provide recommendations for future coordination between the Parties.

Article V. - FUNDING

DWR shall pay all costs to fund additional Corps staffing at the level specified in **Appendix A** to this MOA. Funding required under this MOA may be adjusted by the Corps annually to account for variations in workload and the Federal Government's General Schedule increases and locality adjustments. The Corps will carry over any unobligated funds from year to year, or will refund such unobligated funds if this MOA is terminated or expires.

B. DWR shall pay the anticipated costs expected to be incurred through June 30, 2011, within 30 days of execution of this MOA. No later than June 1st of each subsequent year that this agreement remains in effect, the Corps will provide the DWR with an anticipated cost invoice ("Invoice") that provides an updated Cost Proposal for the next state fiscal year, including any proposed changes in the level of staffing. Revisions agreed to by the Parties will be incorporated into a revised Cost Proposal. Invoices shall be submitted by the Corps to:

Cliff Feldheim
Department of Water Resources
1416 Ninth, room 1148
Sacramento, CA 95814

C. DWR will make an annual lump sum payment to the Corps. Upon receipt of the Corps' Invoice(s) and in accordance with normal DWR payment procedures, the DWR will make an annual lump sum payment, in advance, of the total amount specified in the Invoice(s).

D. If the Corps' actual costs for providing the agreed upon level of service will exceed the amount of funds available as a result of the Federal Government's General Schedule increases and locality adjustments provided for in paragraph A of this Article then the Corps will promptly notify the DWR of the incremental amount of funds needed to defray the costs. The DWR will either initiate an amendment to Appendix A of this MOA to increase the funding amount, or agree to a reduced level of service.

E. The DWR may elect to extend the services of the Corps beyond California's fiscal year 2011, subject to 1) paragraph G of this Article, 2) additional funding is provided by the DWR, and 3) written amendment to this MOA.

F. Expediting of permit evaluation related activities as specified in this MOA will be undertaken by the Corps only after funds have been transferred to the Corps. Payments by the DWR are to be made to:

U.S. Army Corps of Engineers, Los Angeles District
Finance and Accounting Officer
P.O. Box 532711
Los Angeles, CA 90053-2325
Attn: Carlos M. Tebares

G. The Corps will neither accept nor expend funds under this MOA after December 31, 2010, unless Federal law extends or makes permanent the Corps' authority under Section 214 of the WRDA 2000 to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits.

Article VI. - APPLICABLE LAWS

The applicable statutes, regulations, policies, directives, and procedures of the United States will govern this MOA and all documents and actions pursuant to it. Unless otherwise required by law, all expediting of permit applications undertaken by the Corps will be governed by Corps regulations, policies and procedures.

Article VII. - DISPUTE RESOLUTION

In the event of a dispute, the Parties agree to use their best efforts to resolve the dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties. The Parties agree that, in the

event such measures fail to resolve the dispute, they shall refer the dispute for resolution to an appropriate forum in accordance with Federal law.

PUBLIC INFORMATION

Justification and explanation of DWR programs or projects before other agencies, departments and offices will not be the responsibility of the Corps. The Corps may provide, upon request from the DWR, any assistance necessary to support justification or explanations of activities conducted under this MOA. In general, the Corps is responsible only for public information regarding Corps regulatory activities. The DWR will the Corps advance notice before making formal, official statements regarding activities funded under this MOA.

Article VIII. - AMENDMENT, MODIFICATION AND TERMINATION

A. This MOA may be modified or amended only by written, mutual agreement of the Parties.

B. Either party reserves the right to terminate this MOA without cause upon thirty (30) days written notice to the other party, or sooner by mutual written agreement, or immediately in the event of a material breach. In the event of termination, DWR will continue to be responsible for all costs incurred by the Corps in performing expedited environmental permit review services up to the time of notice and for the costs of closing out or transferring any ongoing contracts in support of the provision of services by the Corps under this MOA.

C. Within ninety (90) calendar days of termination of the MOA, or the expiration of the MOA, the Corps shall provide the DWR with a final statement of expenditures. Within sixty (60) calendar days after submittal of the Corps' final statement of expenditures, the Corps shall directly remit to the DWR the unexpended balance of the advance payment, if any. Funds may be provided to the DWR either by check or electronic funds transfer.

Article IX. - MISCELLANEOUS

A. This MOA will not affect any pre-existing or independent relationships or obligations between Parties.

B. The Corps' participation in this MOA does not imply endorsement of DWR projects nor does it diminish, modify, or otherwise affect Corps statutory or regulatory authorities.

C. This MOA is not assignable by the Corps, either in whole or in part, unless written consent is given by the DWR and such non-assignment prohibition does not violate Federal law or regulation.

D. Time is of the essence in this MOA.

E. Under the provisions of section 214 of the WRDA 2000 as extended, no funds may be accepted or expended by the Corps pursuant to this MOA after December 31, 2010. However, if prior to this date, this statutory authority is extended, then provisions of this MOA

shall remain in force until the earlier of the sunseting of section 214 of WRDA 2000, as further extended, or until the expiration date as provided in this MOA.

F. If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions will remain in force and unaffected to the fullest extent permitted by law and regulation.

G. To the extent not inconsistent with Federal law, rules and regulations, the Corps agrees that the California Department of General Services, the California Bureau of State Audits, or their designated representative, shall have the right to review and copy records and supporting documentation pertaining to the performance of this MOA. The Corps agrees to allow access to such records during normal business hours and to allow interviews, upon request to the Corps, which such request will not be unreasonably denied, of employees who might have information related to such records. The Corps also agrees to maintain records for possible auditing for a minimum of three years after final payment, unless a longer period of records retention is stipulated.

H. It is mutually agreed that if the California Budget Act of the current year and/or any subsequent years covered under this MOA does not appropriate sufficient funds for the MOA, the DWR shall have the option to either terminate this MOA with no liability occurring to the DWR, or offer an MOA amendment to reflect the reduced amount.

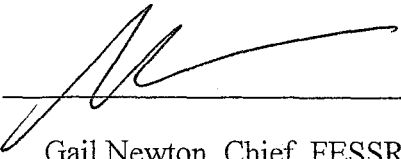
I. This MOA, including any documents incorporated by reference or attachments thereto, constitute the entire agreement between the Parties. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

Article X. - EFFECTIVE DATE AND DURATION

This MOA will be effective November 16, 2010 or upon approval by the California Department of General Services (DGS), whichever is later. This MOA shall remain in force until whichever of these events occurs first: 1) December 31, 2010, unless the sunset clause of section 214 of WRDA 2000 is extended or section 214 is made permanent, in which case the MOA will remain in effect for the duration of the statutory extension or until June 30, 2012, whichever date is earlier; or 2) the MOA is terminated pursuant to Article IX.B.

IN WITNESS WHEREOF, this MOA is executed as of the date stated in the introductory clause by the DWR, acting by and through its authorized officer and by the U.S. Army Corps of Engineers' Los Angeles District, through its authorized officer.

DEPARTMENT OF WATER RESOURCES

By: 
Gail Newton, Chief, FESSRO

Date: 9/7/2010

ATTEST:

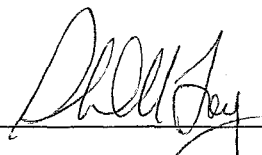
By: _____
Secretary

APPROVED AS TO FORM:

By: _____
Counsel, Department of General Services

Date: _____

U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT

By: 
R. Mark Toy, P.E.
Colonel, US Army
Commander and District Engineer

Date: 16 Nov 2016

Appendix B: DWR Priority Projects

(Dated: July 1, 2010)

The list of DWR Priority Projects under this Agreement includes the following:

1. Species Conservation Habitat

**Department of Water Resources - U.S. Army Corps of Engineers, Regulatory Division Technical Assistance
and Environmental Coordination Agreement for Section 214 of WRDA 2000 Activities**

August 1, 2010

Los Angeles District									
Tasks		Personnel Costs							
		State Fiscal Year 2010			State Fiscal Year 2011				
		(Sept 1, 2010 - June 30, 2011)			(July 1, 2011 - June 30, 2012)				
		Staff Days	Rate	Cost	Staff Days	Rate	Cost		
Personnel Costs									
Project Scoping, Planning and Development			15	\$739	\$11,085		10	\$768	\$7,680
Federal, State, and Regional Agency Coordination			30	\$739	\$22,170		35	\$768	\$26,880
NEPA/404 Integration Technical Assistance			20	\$739	\$14,780		10	\$768	\$7,680
Jurisdictional Determinations			15	\$739	\$11,085		10	\$768	\$7,680
EIS Reviews			200	\$739	\$147,800		200	\$768	\$153,600
In-house Technical Services (Counsel, Archeo., H&H)			10	\$739	\$7,390		10	\$768	\$7,680
Administrative Reporting			10	\$739	\$7,390		10	\$768	\$7,680
Support work of GS-12 for misc. activities and permitting			50	\$986	\$49,300		50	\$1,026	\$51,300
Subtotal Personnel Costs			350		\$271,000		335		\$270,180
Direct Costs:									
Travel and Transportation trips @ \$200/trip					\$2,400				\$1,600
Subtotal Direct Costs					\$2,400				\$1,600
Total:			350		\$273,400		335		\$271,780
Rate Calculations		Federal Fiscal Year 2010				Federal Fiscal Year 2011			
(all costs above for GS 11/12 unless otherwise noted)		Based on 2010 Locality Pay Tables				Includes estimated 4% COLA			
		GS-7/9	GS-11/12	GS-12/13	GS-13/14	GS-7/9	GS-11/12	GS-12/13	GS-13/14
Basic Hourly Rate		\$23.01	\$34.65	\$46.28	\$55.02	\$23.93	\$36.04	\$48.13	\$57.22
Daily Rate (hourly rate x 8 hours)		\$184.08	\$277.20	\$370.24	\$440.16	\$191.44	\$288.29	\$385.05	\$457.77
Effective Daily Rate (w/ benefits @ 54%)		\$283.48	\$426.89	\$570.17	\$677.85	\$294.82	\$443.96	\$592.98	\$704.96

Overhead (Department 34% + District 39% = 73% total)	\$206.94	\$311.63	\$416.22	\$494.83	\$215.22	\$324.09	\$432.87	\$514.62
Total Daily Rate (Effective Daily Rate + OH)	\$490.42	\$738.52	\$986.39	\$1,172.67	\$510.04	\$768.06	\$1,025.85	\$1,219.58