

- **Board of Directors**
Water Planning, Quality and Resources Committee

November 14, 2006 Board Meeting

8-4

Subject

Authorize execution of the Bay-Delta Conservation Plan Cooperative Cost-Share Agreement

Description

Background. In July 2006, The Metropolitan Water District of Southern California's Board authorized the General Manager to ratify a Memorandum of Agreement (MOA), negotiated by state, federal and stakeholder representatives, that refocuses and redirects the CALFED Environmental Restoration Program as it relates to operations of and improvements to the State Water Project and Central Valley Project (CVP). In particular, the MOA called for development of a Bay-Delta Conservation Plan (BDCP) and its associated Planning Agreement that can lead to state and federal Endangered Species Act coverage for SWP and CVP operations and improvements. The BDCP will assist in ensuring that Metropolitan's water supply from the SWP remains reliable and that a more stable regulatory environment exists to allow future water quality and supply projects to proceed and to preserve and enhance Delta fisheries.

The MOA and Planning Agreement call for the parties to work together to bring available funding to support development of the BDCP. This includes funding from the state and federal government, and from the potentially regulated entities (PREs) that are a part of the BDCP, including Metropolitan. The funding will contribute to fishery agency staffing and administrative costs and consulting resources. These costs are consistent with the July 2006 Memorandum of Agreement and the January 2006 Statement of Principles that were approved by the Metropolitan Board.

As part of this near-term funding effort, the PREs have developed a Cooperative Agreement Among Potentially Regulated Entities For Preparation of the Bay-Delta Conservation Plan (Cooperative Agreement) that identifies the budget and cost allocation to each entity (see [Attachment 1](#)). This Cooperative Agreement also establishes protocols for funding, management and decision-making among the PREs to support this effort, including any subsequent implementation agreements.

Parties to the Agreement. The parties of this Cooperative Agreement are the California Department of Water Resources (DWR), United States Bureau of Reclamation (Reclamation), Metropolitan, Kern County Water Agency (KCWA), Santa Clara Valley Water District (SCVWD), Alameda County Flood Control and Water Conservation District Zone 7 (Alameda Zone 7), San Luis & Delta-Mendota Water Authority (SLDMWA), Westlands Water District (WWD) and Mirant Delta (power generation company).

Key Elements in the Cost-Share Agreement. The following is a summary of the key elements in the Cooperative Agreement:

- **Protocol For Decision Making Among the PREs.** The PREs recognize that the development and implementation of a BDCP will require adequate funding and a cooperative effort will be made to arrive at all BDCP decisions by consensus. In particular, decisions regarding measures obligating or impacting both the SWP and CVP will be by consensus among Reclamation, DWR and the six PREs that are SWP or CVP contractors (Alameda Zone 7, KCWA, Metropolitan, SCVWD, SL&DMWA, WWD). In the event that the PREs cannot reach consensus impacting both the SWP and CVP, an affirmative action regarding the BDCP shall require approval by DWR, Reclamation, and four of the six contractor PREs.

- **Management and Administration.** A PRE Management Committee will be established comprised of a representative from each PRE and the Undersecretary for the California Resources Agency as a non-voting ex-officio member. The Management Committee will also designate a PRE Program Manager responsible for managing consultant contracts and to facilitate preparation of the BDCP.
- **Cost Shares and Financing.** DWR and Reclamation have pledged, under the MOA and Planning Agreement, to contribute an aggregate of \$6 million over the next two years to the United States Fish and Wildlife Service, National Marine Fisheries Service and California Department of Fish and Game (Fish Agencies) for their work related to development and review of the BDCP. The PREs also budgeted \$7.5 million over the next two years for consulting resources necessary to prepare the BDCP. This estimate is expected to change in the future as more is known about the covered activities, covered species, and conservation actions included in the BDCP. Additional state and federal funding is also being pursued to assist in developing the BDCP, including federal Endangered Species Act Section 6 grants, State bond funds, and State general funds. The total cost over the next two years is estimated at \$13.5 million, of which Metropolitan's share is \$2.8 million based on its proportionate share of the SWP Delta water charge. The following chart provides additional details of the cost-shares among the PREs over the next two years.

Cost Shares & Financing	Fish Agencies Budget	Consultant Budget		Total Cost
State Water Project Contractors	\$3 million	\$3.08 million	45%	\$6.08 million
Central Valley Project	\$3 million	\$3.08 million	45%	\$6.08 million
Mirant Delta (power generation company.)	\$0 million	\$1.35 million	10%	\$1.35 million
Sub-Total:	\$6 million	\$7.5 million		\$13.5 million
Metropolitan Share:				\$2.8 million

- **Term of Agreement.** The Agreement will take effect when fully executed by the PREs, and will remain in effect until the BDCP is developed, but will not be in effect for more than three years following its effective date, unless extended by written amendment.
- **Withdrawal From BDCP Effort.** Any PRE may withdraw from this Agreement upon notifying the other PREs. However, the withdrawing PRE is obligated to continue to provide funding pursuant to contract funding commitments existing at the time of withdrawal.

Policy

By Minute Item 46747, dated July 11, 2006, the Board adopted the CEQA determination and authorized the General Manager to execute the draft Memorandum of Agreement for supplemental funding to support near-term water supply, water quality, ecosystem, and levee actions in the Delta.

By Minute Item 45753, dated May 11, 2004, the Board adopted general principles related to the CALFED Bay-Delta Program.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

Execution and funding of the proposed Bay-Delta Conservation Plan Cooperative Cost-Sharing Agreement is not defined as a project under CEQA because it involves the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment (Section 15378 (b)(4) of the State CEQA Guidelines).

In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines). For future, and not yet known, proposed projects associated with the Bay-Delta Conservation Plan, the appropriate lead agencies will be responsible for complying with all applicable federal and state environmental laws and regulations.

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(4) and 15061(b)(3) of the State CEQA Guidelines).

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and authorize the General Manager to execute the Cooperative Agreement for the Bay-Delta Conservation Plan.

Fiscal Impact: The total costs identified in the Cooperative Agreement over the next two years are \$13.5 million, of which Metropolitan's share is \$2.8 million based on its proportionate share of its SWP Delta water charge.

Business Analysis: The BDCP will assist in ensuring that Metropolitan's water supply from the SWP remains reliable and that a more stable regulatory environment exists to allow future water quality and supply projects to proceed and to preserve and enhance Delta fisheries.

Option #2

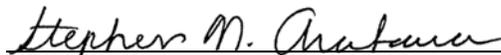
Do not authorize the General Manager to execute the Cooperative Agreement for the Bay-Delta Conservation Plan.

Fiscal Impact: None

Business Analysis: Will stop progress on the development of the BDCP

Staff Recommendation

Option #1

 10/23/2006
 Stephen N. Arakawa Date
 Manager, Water Resource Management

 10/25/2006
 Jeffrey Kightlinger Date
 General Manager

Attachment 1 – Cooperative Agreement Among Potentially Regulated Entities for Preparation of the Bay Delta Conservation Plan

BLA #4536

**Cooperation Agreement
Among
Potentially Regulated Entities
For
Preparation Of The Bay Delta Conservation Plan**

This “Cooperation Agreement Among Potentially Regulated Entities for Preparation of the Bay Delta Conservation Plan” (Agreement) is entered into on the ___ day of October 2006 by and among the California Department of Water Resources (DWR), United States Bureau of Reclamation (Reclamation), Metropolitan Water District of Southern California (MWD), Kern County Water Agency (KCWA), Santa Clara Valley Water District (SCVWD), Zone 7 of the Alameda County Flood Control and Water Conservation District (Zone 7), San Luis & Delta-Mendota Water Authority (SLDMWA), Westlands Water District (WWD), and Mirant Delta (Mirant), hereafter referred to individually as “PRE” or collectively as “PREs”.

1. DEFINITIONS

(a) BDCP means the Bay Delta Conservation Plan, which is being developed at this time to address water operations and/or facilities in the legal Delta and will be focused primarily on their affects on aquatic species, ecosystems, and natural communities. The BDCP is intended to assist the PREs in obtaining authorization for the take of covered species pursuant to State or Federal Endangered Species Acts. Development of the BDCP is described in the Planning Agreement.

(b) Interested Observers means the group of interested observers described in the Planning Agreement.

(c) Fishery Agencies means the California Department of Fish and Game, U.S. Fish and Wildlife Service, and National Marine Fisheries Service.

(d) MOA means the “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.”

(e) Planning Agreement means the “Planning Agreement Regarding the Bay Delta Conservation Plan.”

(f) Steering Committee means the steering committee created by and as defined in the Planning Agreement.

2. BACKGROUND AND PURPOSE

(a) Certain PREs have signed the MOA and Planning Agreement.

(b) The PREs recognize that the actions contemplated in the MOA and Planning Agreement, including the development of the BDCP, will require extensive cooperation among them.

(c) The purpose of this Agreement is to establish protocols for funding, management and decision making to support the BDCP effort.

3. EFFECTIVE DATE; TERM

This Agreement will take effect when fully executed by the PREs, and will remain in effect until the BDCP is developed but shall not be in effect for more than three years following its effective date, unless extended by written amendment.

4. PROTOCOL FOR DECISION MAKING AMONG PREs

(a) As is described in the Planning Agreement, in order to assist in the development of the BDCP, the Steering Committee is the principal forum within which key policy and strategy issues pertaining to the BDCP will be discussed and considered. The PREs remain committed to the meaningful exchange of ideas and viewpoints in the Steering Committee to help guide the development of the BDCP. Nothing in this Agreement is intended to constrain or limit the roles of the Steering Committee and Interested Observers as provided in the Planning Agreement.

(b) As is also described in the Planning Agreement, the PREs will make every reasonable effort to have matters considered by the Steering Committee approved by a consensus of the Steering Committee. If consensus about a given matter is not reached in the Steering Committee, the PREs, in consultation with the Fishery Agencies, will decide how to address the matter and maintain progress in the development of the BDCP.

(c) This section describes the protocol under which the PREs will make decisions regarding key policy and strategy issues pertaining to the BDCP when consensus is not reached by the Steering Committee. Unless otherwise noted, when a decision is needed from the PREs, the decision will be made pursuant to this section 4.

(1) **Consensus Approach.** In general, and except otherwise provided, decision making will be shared equally among the PREs and the PREs will make a good faith effort to arrive at all BDCP decisions by consensus. To assure consistent and

broadly supported decisions, the Undersecretary of the California Resources Agency will convene regular meetings of the PREs to review progress and further development of the BDCP.

(2) **No Effect on Existing Authorities.** Nothing in this Agreement or the decision-making process will be interpreted as constraining or limiting any existing authorities and responsibilities of DWR, Reclamation or any other PRE, including the ability to develop and implement mitigation measures as part of or independent from the BDCP.

(3) **PRE Decision Making.**

(a) Decisions regarding the BDCP that are specific to and only affect a PRE or group of PREs shall be made at the sole discretion of that PRE or group of PREs. A PRE or group of PREs requesting a decision that is specific to and only affects that PRE or group of PREs may request that all the PREs except Reclamation fund the BDCP costs relating to that decision as part of the budget process set forth in section 5 herein. If the Management Committee described in section 5(a) does not approve the budget for this decision, that PRE or group of PREs may elect to pay for the BDCP costs consistent with section 5(a)(2).

(b) Decisions regarding measures obligating or impacting both the SWP and CVP shall be by consensus among Reclamation and DWR and the six PREs that are SWP or CVP contractors (Zone 7, KCWA, MWD, SCVWD, SLDMWA, WWD). In the event that these PREs cannot reach consensus, an affirmative action regarding the BDCP shall require approval by DWR, Reclamation, and four of the six contractor PREs.

5. BUDGET FOR AND MANAGEMENT AND ADMINISTRATION OF CONSULTANT(S) AND RELATED ACTIVITIES

(a) Management Committee

(1) A Management Committee has been established to make decisions regarding the budget for and management and administration of consultant(s) who will assist with the development of the BDCP. The Management Committee is comprised of a representative from each PRE, except Reclamation, which will serve as a non-voting, ex officio member. The PRE representative or his or her designated alternate on the Steering Committee will be the representative on the Management Committee. The

Undersecretary of the California Resources Agency will serve as convener of the Management Committee to provide coordination with the Steering Committee. Unless otherwise noted, when a decision is needed from the Management Committee, the decision will be made pursuant to this section 5.

(2) In general, decision making by the Management Committee will be shared equally among the PREs represented on the Management Committee, and those PREs will make a good faith effort to arrive at all decisions by consensus. If consensus is not reached, decisions by the Management Committee will require approval by Mirant, SLDMWA, DWR for the SWP, and three of four PREs that are SWP contractors (Zone 7, KCWA, MWD, SCVWD). If a decision is not approved, any PRE or group of PREs may move forward with the decision under separate contract or with approval of other PRE representatives on the Management Committee by amendment of an existing contract, provided that in all cases the PRE or group of PREs that seeks to move forward must assume all obligations and mitigate all impacts to the other PREs resulting therefrom.

(3) The Management Committee has designated a PRE Program Manager, the general duties for whom are set forth below. The PREs may designate a new PRE Program Manager at their discretion, consistent with the decision making protocol in section 4. The PRE Program Manager shall work under the direction of the Undersecretary of the California Resources Agency in managing development of the BDCP.

(b) The PRE Program Manager is authorized by the Management Committee to take steps on behalf of the PREs to prepare the BDCP. The PRE Program Manager will:

(1) work in cooperation with the BDCP Environmental Program Manager to coordinate with the Steering Committee on the development of the BDCP;

(2) work with any consultants approved by the Management Committee and hired by the Contract Administrator to develop budgets and workplans;

(3) review and approve consultant invoices consistent with a budget approved by the Management Committee; and

(4) forward all approved invoices to the Contract Administrator for payment.

(c) Protocols For Requesting, Awarding, And Administrating Contracts

(1) The PRE Program Manager will be responsible for identifying professional service needs and developing service request and engagement documents to be recommended to and approved by the Management Committee. Consultants who are awarded contracts will be managed by the PRE Program Manager.

(2) Each contract with a consultant(s) will:

(a) be entered into only after approved by the Management Committee;

(b) allow for material modification or amendment, and modification or amendment due to change orders or cost over-runs, only if the modification or amendment is first approved by the Management Committee; and (c) require the consultant(s) to provide to the PRE Program Manager each month (1) the prior monthly expenditures for each task, (2) a comparison of actual to budgeted expenditures, and (3) a projection of the expenditures for each task expected for the next month.

(3) The PRE Program Manager will present to the Management Committee no less than once every quarter and when actual expenditures exceed eighty percent of the budgeted amount a summary of the expenditures for each task and a comparison of actual to budgeted expenditures.

(d) Total costs for the completion of the BDCP are currently estimated at about \$13 million, including approximately \$6 million to provide for the participation of Fishery Agencies' staff (see section 6(a)) and approximately \$7 million for consultant costs and other related costs to prepare the BDCP (see section 6(b)). This estimate is expected to change in the future as more is known about the covered activities, covered species, and conservation actions included in the BDCP.

(e) The PREs collectively have committed to an initial, six-month budget. A copy of the initial budget is attached hereto as Exhibit 1. Prior to March 31, 2007, the Management Committee will consider and approve a revised budget for work for the following 12 months, which will be informed by the consultant(s) engaged for the BDCP. Thereafter, budgets for the remainder of the development of the BDCP will annually be developed by December 31 and approved by the following March 1. The then-approved budget(s) shall be attached hereto as subsequent exhibits, without amending this

Agreement. Budgets approved by the Management Committee will not change (supplement, modify, amend, etc.) the costs or commitments for the participation of Fishery Agencies' staff. Costs associated with the PRE Program Manager position have been or will be incorporated into the BDCP budgets, and the costs therefore will be paid in accordance with section 6(b), below. A separate letter agreement will define billing arrangements for the PRE Program Manager's costs.

6. COST SHARES AND FINANCING

(a) Through the MOA, DWR for the SWP and Reclamation each committed \$1.5 million dollars to the Fishery Agencies in each of the first two years of the MOA (\$3.0 million annually, \$6.0 million in total) for their work related to development and review of the BDCP. Those contributions are addressed in separate agreements between (1) Reclamation, USFWS, and NOAA Fisheries, and (2) DWR and DFG.

(b) Except as provided in sections 4(c)(3)(a) and 5(a)(2) or unless amended pursuant to the provision immediately below, SLDMWA, Mirant, and DWR for the SWP will contribute funds, through other agreements, toward the consultant costs and other related costs to prepare the BDCP, which are approved pursuant to section 5(e), in the following proportions:

Mirant: 10 percent of the total costs referenced in section 6(a) and (b).

DWR for the SWP: 50 percent of the costs referenced in this section 6(b), after accounting for costs paid by Mirant.

SLDMWA: 50 percent of the costs referenced in this section 6(b), after accounting for costs paid by Mirant.

The PREs agree that cost allocations should reasonably reflect the benefits of the BDCP to each participant. SLDMWA, Mirant, and DWR for the SWP may request a reallocation of the proportionate contributions, if a decision by a PRE or group of PREs is expected to materially increase the cost for preparing the BDCP, or if SLDMWA, Mirant, or DWR for the SWP believe circumstances otherwise warrant a change in contributions. Such a request will be decided by the Management Committee.

(c) If other funds become available and are appropriated for the development and review of the BDCP (i.e., a Federal Endangered Species Act Section 6 grant, passage of a State bond, or participation of a new party to the BDCP process), the PREs will decide

how the additional money will affect the cost allocations and/or contributions required by this Agreement.

7. CONSULTANT CONTRACTS AND THE CONTRACT ADMINISTRATOR

(a) As of the effective date of this Agreement, the Contract Administrator is Zone 7. The Contract Administrator will enter into contracts on behalf of the PREs represented on the Management Committee for consultants selected by the PRE Management Committee for achieving the purposes of this Agreement. At any time, the Management Committee may appoint a new Contract Administrator and the consultant agreement(s) entered into by the then-existing Contract Administrator will be assigned to the new Contract Administrator, without amending this Agreement. Upon the appointment of a new Contract Administrator and the assignment of the consultant contract(s), the prior Contract Administrator will be relieved from any and all further responsibility, obligation and/or liabilities as the Contract Administrator under such contract(s) and will be entitled to payment from the PREs represented on the Management Committee for all costs and expenses incurred up to the point of contract assignment(s).

(b) The Contract Administrator will only enter into contracts that are consistent with this Agreement. The PRE Program Manager or her designee shall manage and direct the consultant(s) retained by the Contract Administrator. The Contract Administrator will not provide direction to the consultant(s) that is inconsistent with or in addition to the direction given by the PRE Program Manager.

(c) The Contract Administrator will assume all obligations, other than those retained by the Management Committee or delegated to the PRE Program Manager pursuant to sections 5 and 7(b) above, and will protect, defend and indemnify, to the extent of the Contract Administrator's proportionate fault, the PREs from any and all claims, liabilities and cause of action that result from or arise out of the Contract Administrator's negligent performance of its obligations set forth in the consultant contract(s). However, nothing in this section shall relieve the PREs from the obligations under this Agreement. In addition to that set forth in section 5(c)(2) above, each contract with a consultant retained pursuant to this Agreement will provide the following:

(1) PRE Program Manager will provide management and direction to the consultant as an authorized representative of the Contract Administrator.

(2) The consultant is not in privity of contract with any PRE other than the Contract Administrator and that no claim or cause of action shall lie against any PRE other than the Contract Administrator, if the Contract Administrator is a PRE, unless said claim or cause of action arises from matters outside the scope of the contract.

(3) The consultant will protect, defend, hold harmless and indemnify the Contract Administrator from any and all claims, liabilities and causes of action that result from or arise out of the negligent performance of work under the contract.

(4) The Contract Administrator will protect, defend, hold harmless and indemnify the consultant from any and all claims, liabilities and causes of action to the extent of its proportionate fault that result from the negligent actions by the employees, directors, officers and authorized representatives of the Contract Administrator.

(d) In the event the Contract Administrator must hire counsel to prosecute or defend any claim, liability or cause of action resulting from or arising out of the contract, the Contract Administrator shall suggest to the Management Committee the Contract Administrator's preference for counsel for and in such action. The Management Committee shall select and approve that counsel or other counsel suggested by another PRE represented on the Management Committee to act as counsel for such matter. Prior to or concurrent with the selection of counsel by the Management Committee, a Litigation Agreement among the PREs represented on the Management Committee shall be negotiated. The Litigation Agreement shall include but not be limited to terms establishing (1) the respective roles and rights of the Contract Administrator and the PREs represented on the Management Committee, (2) the process for decision making, (3) management of counsel, (4) the legal budget, (5) status of reporting, and (6) communication protocols.

(e) PREs represented on the Management Committee, except for Reclamation, jointly and severally, will indemnify and hold harmless the Contractor Administrator from and against any and all claims, liabilities, causes of action, damages, expense or costs (including reasonable attorneys fees and costs) that result from or arises out of (1) the negligent acts, omissions or willful misconduct of the Management Committee and/or

PRE Program Manager, or (2) the Contract Administrator's performance of any act authorized and/or directed by the Management Committee or PRE Program Manager. Notwithstanding the foregoing, the PREs on the Management Committee, except for Reclamation, shall each be responsible for their proportionate share of damages, expenses, and costs consistent with the proportions specified in section 6 of this Agreement.

(f) Upon approval by the PRE Program Manager, the Contract Administrator will pay all BDCP program consultant invoices for work approved by the Management Committee. The Contract Administrator will bill SLDMWA, Mirant, and DWR for costs, in accordance with section 6(b) and under arrangements to be described in separate agreements with each of those PREs.

8. WITHDRAWAL FROM BDCP EFFORT

Any PRE may withdraw from this Agreement upon 30 days' written notification to the other PREs, after which time the withdrawing PRE will no longer be a PRE and will no longer have any rights or obligations under this Agreement; except that the withdrawing PRE will remain obligated to provide funding (a) referenced in section 6(a), if applicable, and (b) obligated by any contract or agreement approved by the Management Committee related to the development of the BDCP and executed before the withdrawing PRE issued its written notification.

9. MISCELLANEOUS PROVISIONS

(a) Notices: All notices and other communications required under this Agreement will be in writing, and will be deemed to have been duly given upon the date of service, if: (1) served personally on the PRE to whom notice is to be given; (2) sent by electronic mail, and the PRE to whom notice is to be given confirms receipt; or (3) on the third day after mailing, if mailed to the PRE to whom notice is to be given by first-class mail, postage prepaid, and properly addressed to the designated representatives of the PRE set forth below. A PRE may notify the other PREs in writing of a change in its designated representatives, without requiring an amendment to this Agreement. The following are the designated persons to which such notice will be provided:

DWR: Director
 Department of Water Resources
 1416 Ninth Street, Room 1115-1

P.O. Box 942836
Sacramento, CA 94236-0001

- Reclamation: Regional Director
U.S. Department of the Interior
Bureau of Reclamation, MP-100
2800 Cottage Way
Sacramento, CA 95825
- MWD: Deputy General Manager, State Water Project Resources
Metropolitan Water District of Southern California
1121 L Street, Suite 900
Sacramento, CA 95814
- KCWA: General Manager
Kern County Water Agency
3200 Rio Mirada Drive
Bakersfield, CA 93302-0058
- SCVWD: Chief Operating Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118
- Zone 7: General Manager
Zone 7 Water Agency
100 North Canyons Parkway
Livermore, CA 94551
- SLDMWA: Executive Director
San Luis & Delta-Mendota Water Authority
P.O. Box 2157
Los Banos, CA 93635
- WWD: General Manager
Westlands Water District
P.O. Box 6056
Fresno, CA 93703
- Mirant: Jeffrey S. Russell
Mirant California, LLC
696 West 10th Street
P.O. Box 192
Pittsburg, California 94565

(b) Signatories' Authority: The signatories to this Agreement represent that they have authority to execute this Agreement and to bind the PRE on whose behalf they execute this Agreement.

(c) Counterparts of this Agreement: This Agreement may be signed in any number of counterparts by the PREs, each of which will be deemed to be an original, and all of which together will be deemed to one and the same instrument. This Agreement, if executed in counterparts, will be valid and binding on a party as if fully executed all in one copy.

(d) Binding on Successors/Assignment: This Agreement will bind and inure to the benefit of the respective successors and assigns of the PREs, except that, none of the obligations of the PREs set forth in this Agreement will be assigned without the prior, written approval of the other PREs.

(e) Amendments: Unless specifically noted, this Agreement may be amended or modified only by a subsequent written agreement approved and executed pursuant to section 4 of this Agreement.

(f) Opinions and Determinations: Where the terms of this Agreement provide for action to be based upon the opinion, determination, approval or review of any PRE, such terms are not intended to be, and will not be construed as permitting such actions to be arbitrary, capricious or unreasonable. Any opinion, determination, approval or review required of a PRE under this Agreement will be provided in a timely manner.

(g) Reasonable Cooperation: The PREs will reasonably cooperate with each other, including the execution of all necessary documents and providing assistance in obtaining approvals and permits from regulatory agencies required to perform the obligations under this Agreement and to carry out the purpose and intent of this Agreement.

(h) Construction and Interpretation: This Agreement is entered into freely and voluntarily. This Agreement has been arrived at through negotiation, and each PRE has been represented by counsel and has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting party will not apply in construing or interpreting this Agreement. Nothing in this Agreement precludes compliance with applicable laws, including but not limited to the National Environmental Policy Act, California

Environmental Quality Act, the Federal Endangered Species Act, and the California Endangered Species Act.

(i) Officials Not To Benefit: No member or delegate to Congress, Resident Commissioner, or Federal or State official will be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

(j) Contingent on Appropriation of Funds: The expenditure or advance of any money or the performance of any obligation of the State of California and the United States under this Agreement will be contingent upon appropriation or allotment of funds and pursuant to separate agreements.

Dated: October __, 2006

California Department of Water Resources

By: _____

Title: _____

Dated: October __, 2006

United States Bureau of Reclamation

By: _____

Title: _____

Dated: October __, 2006

Metropolitan Water District of Southern California

By: _____

Title: _____

Dated: October __, 2006

Kern County Water Agency

By: _____

Title: _____

Dated: October __, 2006

Santa Clara Valley Water District

By: _____

Title: _____

Dated: October __, 2006

Zone 7 of the Alameda County Flood
Control and Water Conservation District

By: _____

Title: _____

Dated: October __, 2006

San Luis & Delta-Mendota Water Authority

By: _____

Title: _____

Dated: October __, 2006

Westlands Water District

By: _____

Title: _____

Dated: October __, 2006

Mirant Delta

By: _____

Title: _____

EXHIBIT 1

BDCP BUDGET

Bay-Delta Conservation Plan -- Summary Six Month Budget, July - December 2006 (07.14.06)

Task Description	Agency Cost Estimates	Consultant Cost Estimates
	Six Month Agency Budget	Six Month Consultant Budget
1.0 Project Set-Up	\$211,619	\$54,250
2.0 Project Administration and Meetings	\$133,229	\$255,315
3.0 Interim Project Notification Process	\$38,855	\$24,230
4.0 Public Involvement and Outreach	\$312,958	??
5.0 Scientific Advisory Process	\$374,105	\$115,000
6.0 Project Delineation	\$164,447	\$170,000
7.0 Compile and Collect Data	\$257,218	\$60,000
8.0 Covered Activities, Covered Species, and Natural Communities	\$305,195	\$120,000
9.0 Conservation Strategy	\$335,636	\$175,725
10.0 Conservation Plan Components and Impact Analysis	\$120,000	
11.0 Economic Analysis	\$0	
12.0 Conservation Plan Preparation	\$196,084	
13.0 NEPA/CEQA Compliance		\$0
14.0 Implementing Agreement (IA)		
15.0 Final ESA Compliance (NMFS and USFWS)		
16.0 Final CA Fish & Game Code Compliance (DFG)		
17.0 Other Regulatory Processes		
Subtotal, tasks 1-6	\$1,235,212	\$618,795
TOTAL	\$2,449,345	\$974,520