

- **Board of Directors**  
***Water Planning and Stewardship Committee***

December 9, 2008 Board Meeting

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**8-2**

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**Subject**

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Authorize execution of the Delta Habitat Conservation and Conveyance Program Memorandum of Agreement and three related funding and management agreements

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**Description**

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Aimed at resolving the environmental issues that constrain the delivery of water from the Sacramento-San Joaquin Delta, the Department of Water Resources (DWR) in cooperation with Metropolitan and numerous stakeholders are planning a Delta water conveyance system and companion ecosystem restoration effort called for in the existing Bay-Delta Conservation Plan. That plan, established in 2007 with the Board's support, lays out a comprehensive strategy for the Delta. Two of the plan's seven basic components address the work proposed in this letter. Following many months of negotiation, staff is now asking your approval of four agreements needed to implement the planning process for Delta Habitat Conservation and Conveyance Program (DHCCP).

**Summary**

The program would accomplish the necessary environmental studies and preliminary designs needed to support a decision to construct Delta conveyance facilities. The key provisions are:

- The Department of Water Resources will oversee the planning effort.
- The program provides DWR with funding to prepare the study. The funds would be provided equally by Central Valley and State Water Project contractors.
- DWR will work with the Bureau of Reclamation, State and Central Valley contractors in the overall program management and direction including approval of the work elements and providing technical advice and assistance.

Program funding will be paid over three years. If the program leads to construction, the program funding would be repaid from construction bond proceeds and all contractors would then pay their share of the bonds under existing State Water Project (SWP) contractual terms. If the program does not lead to construction, the program funding would not be repaid.

**Background**

The four proposed agreements will support and complement the planning activities called out by the Bay-Delta Conservation Plan. Parties involved include: DWR, other SWP contractors; Federal, Central Valley Project contractors; and the United States Bureau of Reclamation (Reclamation). The parties will collectively develop the necessary environmental documents, preliminary engineering designs, and other necessary information for Delta water conveyance options and related habitat conservation measures.

The environmental review and preliminary engineering design needed for project development and approval will be an immense undertaking, expected to take three years and cost in the range of \$140 million. This cost is to be shared equally between State and Federal water contractors. Accomplishment of the work would be managed by DWR. It is vital that Metropolitan and other water contractors, both state and federal, be closely involved. The participants are proposing four agreements: three that would establish a coordination structure and a fourth that would provide a funding mechanism. Metropolitan would have a prominent role under each agreement. The interrelations among the agreements are diagrammed in [Attachment 1](#).

### **Delta Habitat Conservation and Conveyance Program Memorandum of Agreement**

The Memorandum of Agreement, summarized in [Attachment 2](#), formalizes water contractor integration with DWR staff and its consultants as a cohesive study team.

The Memorandum of Agreement, which would be executed by Metropolitan, other state and federal contractors, DWR and Reclamation, describes how the contractors would be integrated into the process as well as the cost allocation. Oversight and management guidance will be provided by an executive committee where Metropolitan will be represented. If the parties fail to reach consensus on specific aspects of the DHCCP, the contractors would have the ability to refuse to fund those activities and withdraw from the process. State and Central Valley Project Water contractors would share DHCCP costs equally.

### **State and Federal Contractors Water Authority Agreement**

The State and Federal water contractors are proposing a State and Federal Contractors Water Authority (Authority) under a joint powers agreement, summarized in [Attachment 3](#). The purpose of the Authority is to create a public entity to pursue a successful DHCCP. The Authority would conduct collaborative studies, implement related conservation measures to protect Delta species, and protect Delta water supply. The agreement establishes a seven-member board of directors where Metropolitan would be represented. An executive director and staff would be retained. Specific projects may be carried out under separate cost-sharing agreements. Initial activities will focus on environmental, engineering and design work supporting the DHCCP planning effort. However, the Authority's powers would be broad enough to, and the parties anticipate that it eventually would, carry out other Delta related projects and studies. Administrative costs would be shared equally between state and federal contractors. Metropolitan's share of the initial budgeted costs of administering this agreement is anticipated to be \$100,000.

### **State Water Project Contractor Authority – Delta Specific Project Committee Agreement**

The Delta Specific Project Committee (Committee) would provide a mechanism for broad SWP contractor participation in the DHCCP. Since 2003, Metropolitan and 22 other state contractors have been members of the State Water Project Contractors Authority created through a joint powers agreement. This agreement provides a mechanism for its members to enter into specific project agreements when so desired to jointly pursue an activity. The Committee would be empowered to execute the Memorandum of Agreement and State and Federal Contractors Water Authority Agreement on behalf of the participating state contractors. The Committee serves as the most efficient way to ensure all interested state contractors participate in the entire DHCCP process.

Metropolitan and each of the participating SWP contractors would execute the agreement, summarized in [Attachment 4](#). Metropolitan will have a representative on the eight-member governance committee. Decisions will be taken by a simple majority vote, with a ratification process based on Table A proportions if any member requests. Initial contributions for administrative expenses including the state contractor share of the State and Federal Contractors Authority administrative expenses will be based on Table A amounts. Metropolitan's share of the initial budget for administrative expenses, [Attachment 5](#), is anticipated to be \$25,000, depending on the participation of the other contractors.

### **Delta Habitat Conservation and Conveyance Program Funding Agreement**

The Delta Habitat Conservation and Conveyance Program Funding agreement establishes uniform terms between participating state contractors and DWR to fund the state contractors' half of the DHCCP costs. The agreement summarized in [Attachment 5](#), provides for the program costs to be included in each participating state contractor's annual statement of charges. If the participants fail to reach consensus on specific aspects of the DHCCP, individual contractors have the ability to refuse to fund those activities and withdraw from the funding Agreement. The SWP contractors' share of program costs would be \$70 million (50 percent of total) and would be allocated among the participants based on their Table A amount. The budget for the program is set out in [Attachment 6](#). A similar funding agreement would address the federal contractors' half of the DHCCP cost. Metropolitan's share of State Water Contractor funding is anticipated to be \$35 million, depending on the participation of the other contractors.

## Policy

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Metropolitan's Delta Action Plan, adopted by the Board on June 12, 2007 (Minute Item 47135)  
 Metropolitan Water District Administrative Code Section 5112: State Water Contract Payments

### California Environmental Quality Act (CEQA)

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CEQA determination for Options #1 and #2:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) 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).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #3:

None required

## Board Options

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### Option #1

Adopt the CEQA determination and

- a. Authorize the General Manager to execute the Delta Habitat Conservation and Conveyance Program Memorandum of Agreement;
- b. Authorize the General Manager to execute the State and Federal Contractors Water Authority Agreement;
- c. Authorize the General Manager to execute the State Water Project Contractors Authority – Delta Specific Project Committee Agreement; and
- d. Authorize the General Manager to execute the Delta Habitat Conservation and Conveyance Program Funding Agreement.

**Fiscal Impact:** Execution of the agreements will result in direct fiscal impact upon Metropolitan of about \$35 million, to be paid over the next three years. If the DHCCP projects are approved for construction, these payments would be returned. Metropolitan's participation in the Delta Specific Project Committee and the State and Federal Contractors Water Authority would initially increase annual costs \$125,000.

**Business Analysis:** The proposed agreements provide the necessary framework to plan the long-sought Delta solution. The State and Federal Contractor Water Authority and the Delta Specific Project Committee would provide the contractors with an important tool to influence DWR and Reclamation, while providing needed oversight of the planning activities.

### Option #2

Adopt the CEQA determination and

- a. Authorize the General Manager to execute the Delta Habitat Conservation and Conveyance Program Memorandum of Agreement;
- b. Authorize the General Manager to execute the State and Federal Contractors Water Authority Agreement; and
- c. Do not authorize the General Manager to execute the State Water Project Contractors Authority Delta Specific Project Committee Agreement.

**Fiscal Impact:** The cost of funding the DHCCP would remain unchanged at about \$35 million as identified from Option #1. The cost of participating in the State and Federal Contractor Water Authority would be \$100,000 annually.

**Business Analysis:** Same as Option #1, except Metropolitan would not be collaborating with other state contractors and risk increasing Metropolitan's share of costs if other contractors withdraw from the program.

**Option #3**

Do not authorize the General Manager to execute any of the four agreements listed in Option #1.

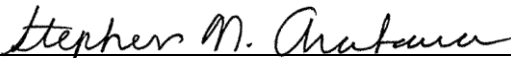
**Fiscal Impact:** No immediate direct fiscal impact upon Metropolitan. Metropolitan could experience future cost increases for the State Water Project if facilities are developed as a result of the DHCCP planning process.

**Business Analysis:** The Delta Habitat Conservation and Conveyance Program may go forward without Metropolitan participation. Metropolitan would lose an opportunity to have a voice in the critical DHCCP planning process.

**Staff Recommendation**

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Option #1

  
\_\_\_\_\_  
Stephen N. Arakawa  
Manager, Water Resource Management

11/21/2008

Date

  
\_\_\_\_\_  
Jeffrey Lightfinger  
General Manager

11/25/2008

Date

**Attachment 1 – Delta Habitat Conservation and Conveyance Funding Agreement Mechanism**

**Attachment 2 – Delta Habitat Conservation and Conveyance Program Memorandum of Agreement – Summary**

**Attachment 3 – State and Federal Contractors Water Authority Agreement – Summary**

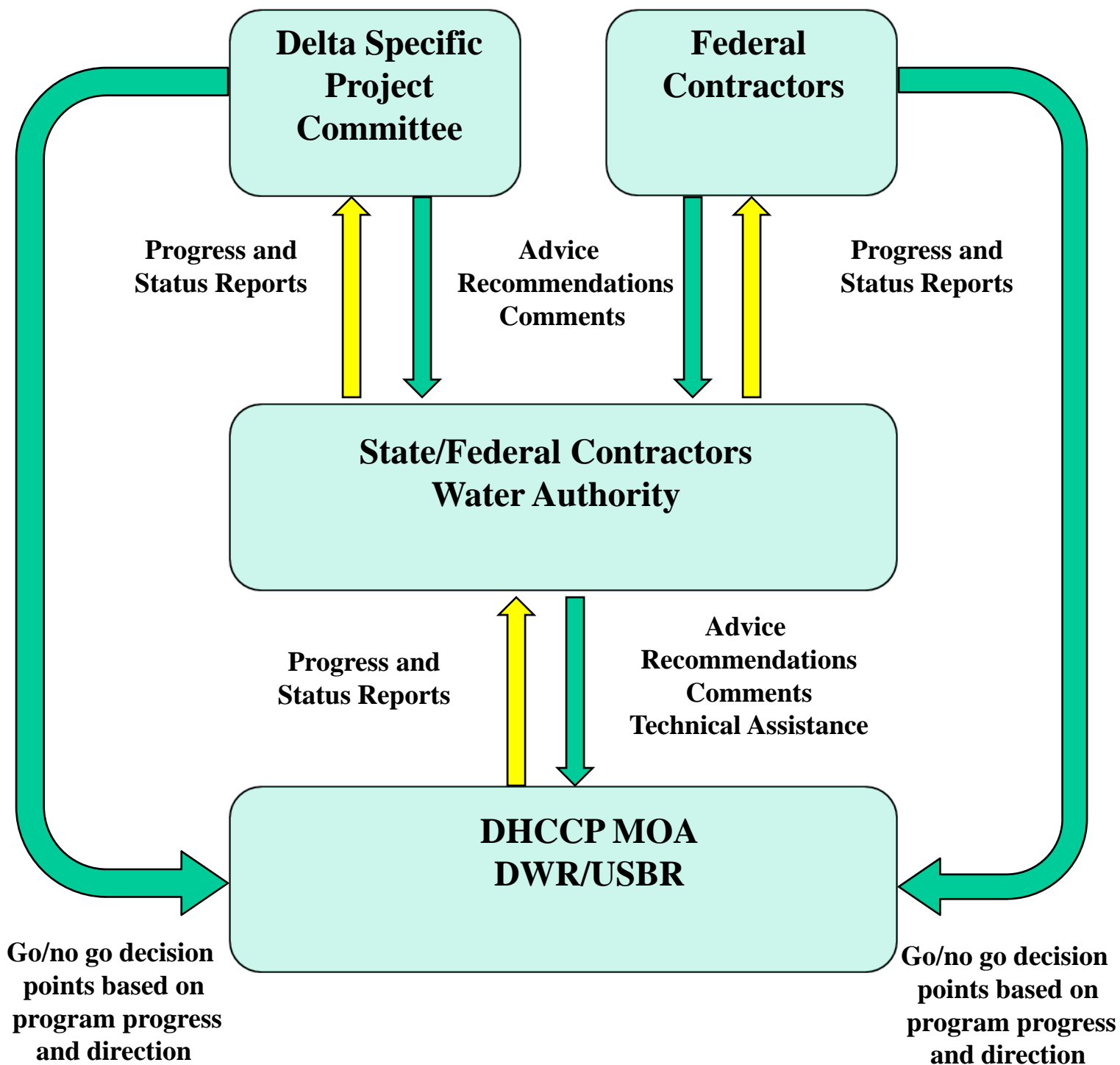
**Attachment 4 – State Water Project Contractors Authority–Delta Specific Project Committee Agreement – Summary**

**Attachment 5 – Delta Habitat Conservation and Conveyance Program Funding Agreement – Summary**

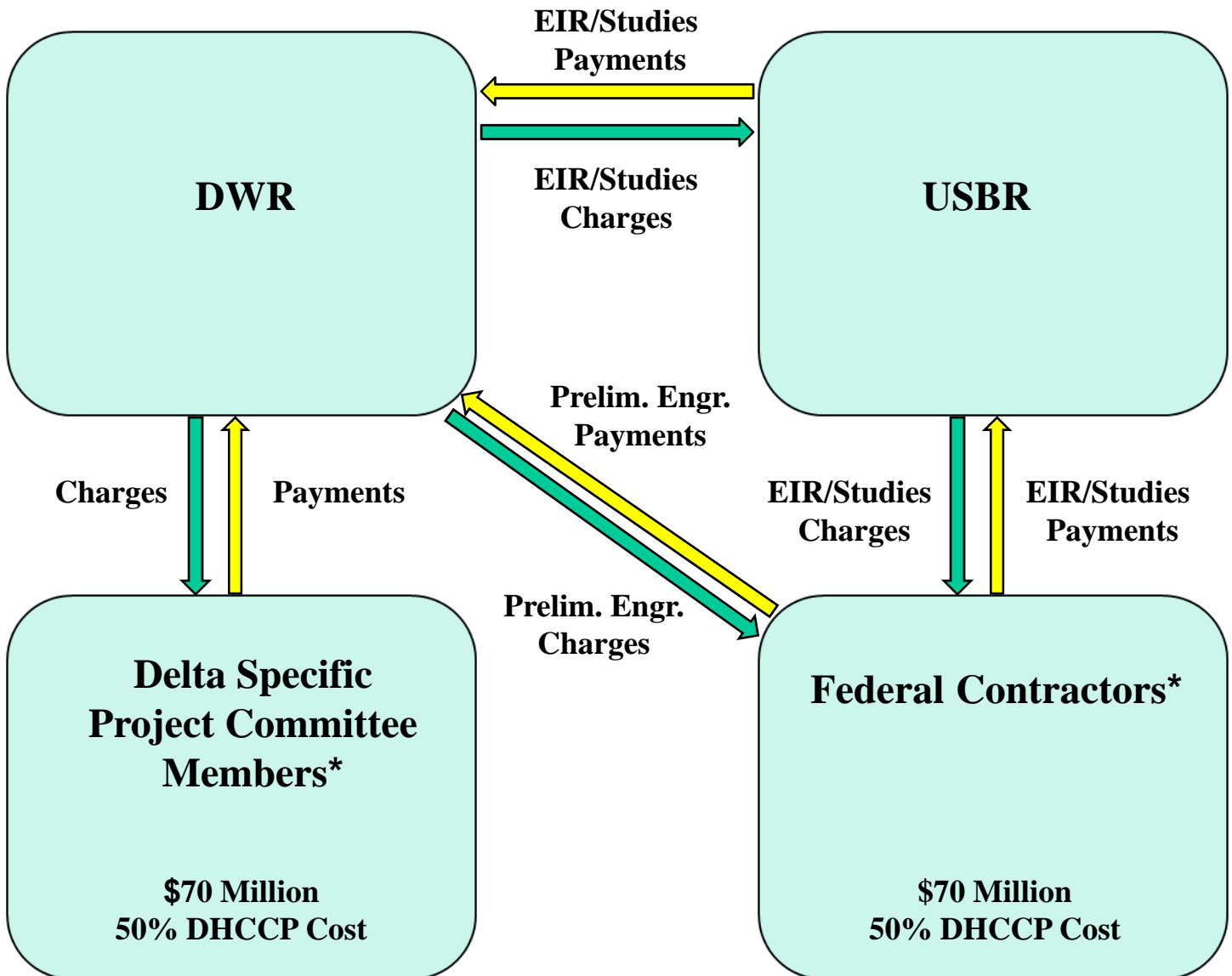
**Attachment 6 – Delta Habitat Conservation and Conveyance Program Budget**

BLA #6374

# Delta Habitat Conservation and Conveyance Program Memorandum of Understanding Oversight Structure



## Delta Habitat Conservation and Conveyance Funding Agreement Mechanism



**\*Individual contractors have opportunities to withdraw from the agreement and program when each \$10 million request for funding is made (go/no go).**

## **Delta Habitat Conservation and Conveyance Program Memorandum of Agreement Summary**

### **1. Agreement Name:**

Delta Habitat Conservation and Conveyance Program Memorandum of Agreement

### **2. Participating Agencies: (8)**

Department of Water Resources, Bureau of Reclamation, Santa Clara Valley Water District, San Luis Delta Mendota Water Authority, Westlands Water District, State Water Contractors Authority, Metropolitan Water District of Southern California, Kern County Water Agency

#### **a. Representation**

##### **i. Governance Organization – Executive Committee**

1. Members – (9) DWR Director, Reclamation Regional Director, General Managers of Santa Clara, San Luis Delta Mendota, Westlands, Metropolitan, Kern and two general managers selected by the State Water Project Contractors Authority

#### **b. Consultative organization – No voting**

#### **c. Meeting frequency – Quarterly (minimum)**

#### **d. Decision Making – Non-binding decisions**

#### **e. Dispute Resolution – Resolution by DWR Director and Reclamation Regional Director after consultation with Executive Committee members**

### **3. Purpose:**

#### **a. Authorized Activities**

- i. Facilitate assessment, planning and environmental analysis, preliminary design for likely conservation measures of the Bay-Delta Conservation Plan, particularly conveyance alternatives
- ii. Preparation of environmental documents required by CEQA and NEPA
- iii. Consider prudent funding for species conservation and improved Delta conveyance alternatives
- iv. Analyze potential response to conveyance systems vulnerability to climate change and seismic change

#### **b. Operations**

- i. Direction and coordination of DHCCP through a CORE Team
- ii. Executive Committee member each appoint a representative to the CORE Team
- iii. DWR and the Reclamation CORE Team representatives will be Program Managers for the DHCCP
- iv. DWR and Reclamation Directors appoint Program Managers for DHCCP. CORE Team members will provide technical assistance and expertise on the DHCCP
- v. CORE Team will coordinate and meet with interested stakeholders

- c. Budget
  - i. Estimated total budget \$140 million for 2008-2010
  - ii. Cost shared equally between CVP and SWP contractors

**4. Withdrawal or Termination:**

- a. Withdrawal – Any party with 30 days written notification
  - i. DWR withdrawal – Automatic agreement termination
  - ii. Reclamation or water agency withdrawal – Remaining agencies shall notify DWR within 7 days of intent to continue



## **State and Federal Contractors Water Authority Agreement Summary**

1. **Agreement Name:** State and Federal Contractors Water Authority – Joint Powers Agreement
2. **Participating Agencies:** (8)  
Santa Clara Valley Water District, San Luis Delta Mendota Water Authority, Westlands Water District, Delta Specific Project Committee, Metropolitan Water District of Southern California, Kern County Water Agency
  - a. Representation
    - i. Governance Organization – Board of Directors (8)
      1. Representatives from Santa Clara, San Luis Delta Mendota, Westlands, Metropolitan, Kern and two selected by the Delta Specific Project Committee
  - b. Quorum – Majority of the Directors
  - c. Meeting frequency – Minimum twice a year
  - d. Decision Making – Each Director one vote
  - e. Dispute Resolution – Majority vote of the directors
3. **Purpose:**
  - a. Authorized Activities
    - i. Represent water agencies in DHCCP MOA activities
    - ii. Perform environmental review, engineering, or design, and permitting, constructing or developing Conservation Measures
    - iii. Contract for services
  - b. Operations
    - i. Board will hire an Executive Director as chief administrative officer
    - ii. Specific conservation project carried out through specific project agreement by interested members
  - c. Budget Administrative costs shared 50 percent San Luis Delta Mendota Water Authority, 50 percent Delta Specific Project Committee
4. **Withdrawal or Termination:**
  - a. Withdrawal – Any party with 60 days written notification
  - b. Termination – Good cause and two thirds vote of the directors

## **State Water Project Contractors Authority–Delta Specific Project Committee Agreement Summary**

**1. Agreement Name:** State Water Project Contractors Authority – Delta Specific Project Committee Specific Project Agreement (DSPA agreement)

**2. Participating Agencies:** (8)

Santa Clara Valley Water District, Metropolitan Water District of Southern California, Kern County Water Agency, other interested State Water Contractors

- a. Representation
  - i. Board Meeting – each member shall be represented through four classes of membership:  
Class A – Kern, Class B – Santa Clara, Class C- Metropolitan, Class D – All other members
  - ii. Directors – five-member board, one for each of Class A, B, and C and two for Class D.
- b. Members – State Water Contractor agencies that sign the Delta Habitat Conveyance and Habitat Program Funding Agreement
- c. Quorum – Majority of the Board of Directors
- d. Meeting frequency – As necessary
- e. Decision Making – Majority of the Board of Directors
- f. Dispute Resolution – Decision review by membership as a whole with voting based on Water Contract Table A

**3. Purpose:**

- a. Authorized Activities
  - i. Assumption of the rights and responsibilities of the water contractors as set forth in the Delta Habitat Conservation and Conveyance Program Memorandum of Agreement (DHCCP MOA)
  - ii. Party to and participate in the State and Federal Contractors Water Agency (SFCWA)
  - iii. Fund administrative and consultative costs of participating in the DHCCP MOA and SFCWA
- b. Operations
  - i. Participate in the DHCCP MOA Executive Committee
  - ii. Participate in the State Federal Contractors Water Authority
  - iii. Fund administrative costs of the State Water Contractors share of the State Federal Contractors Water Authority
  - iv. Administrative costs of Delta Specific Project Agreements to be allocated base on Table A share
- c. Budget
  - i. State Federal Contractors Water Authority – DSPC share \$250,000 (est.)
  - ii. DSPC - \$50,000 (est.)

**4. Withdrawal or Termination:**

- a. Withdrawal – Any party with 30 days written notification

## **Delta Habitat Conservation and Conveyance Program Funding Agreement Summary**

### **1. Agreement Name:**

Agreement for Funding between the Department of Water Resources and Metropolitan (and other individual State Contractors) for the Costs of Environmental Analysis, Planning, and Design of Delta Conservation Measures, including Delta Conveyance Options (DHCCP Funding Agreement)

### **2. Participating Agencies:**

Expected participants include Metropolitan, Santa Clara Valley Water District, Kern County Water Agency and other State contractors with a total water contract Table A amount of at least 90 percent.

### **3. Purpose:**

- a. Provide funding for activities set out in the Delta Habitat Conservation and Conveyance Program Memorandum of Agreement
- b. Operations
  - i. Monthly payments made by participating contractors through the Transportation Minimum portion of the water contract Statement of Charges
  - ii. To facilitate payment of the 2008 charge DWR will provide an equal offsetting credit at time of billing. The credit will come from excess Debt Service Reserve Funds.
  - iii. Participating water contractors provide 50 percent of the required funds. The remaining 50 percent of funds will be provided by Federal contractors directly through agreement with DWR or indirectly through Reclamation funding agreement with DWR
- c. Budget – Program budget of \$140 million spread over three years
  - i. State contractor share \$70 million (50 percent)
  - ii. Metropolitan share dependent on contractor participation - estimated to be \$35 million

### **4. Withdrawal or Termination:**

- a. Withdrawal – contractor withdrawal with 30 days written notification
- b. Termination – If Metropolitan withdraws from the MOA or the MOA terminates, this agreement also terminates

**Delta Habitat Conservation and Conveyance Program Budget**  
**(\$ Million)**

Program Element	2008		2009		2010	
	Jan-Jun	Jul-Dec	Jan-Jun	Jul-Dec	Jan-Jun	Jul-Dec
Management, Planning, & Administration	\$ 0	\$ 3,134	\$ 2,885	\$ 2,915	\$ 2,995	\$ 2,995
Right of Way	\$ 611	\$ 3,155	\$ 2,818	\$ 3,568	\$ 3,817	\$ 3,817
Preliminary Engineering	\$ 476	\$ 7,840	\$11,115	\$11,523	\$15,903	\$15,903
Environmental Services	\$ 178	\$ 5,645	\$ 6,554	\$ 11,390	\$ 7,141	\$ 6,895
Legal Services	\$ 0	\$ 455	\$ 767	\$ 767	\$ 518	\$ 518
General Operating Expenses	\$ 5	\$ 1,540	\$ 438	\$ 502	\$ 389	\$ 477
Six-Month Total	\$ 1,270	\$21,769	\$24,577	\$30,665	\$30,763	\$30,605
Calendar Year Total	\$23,039		\$55,242		\$61,368	
State Water Contractors 50% Share	\$11,519		\$27,621		\$30,684	
Metropolitan's estimated share	\$5,760		\$13,630		\$15,342	