Agreement for Cost Sharing
Related To Ecosystem Restoration Under
Proposition 204 and the Bay-Delta Act

I) Principles of Agreement

A) Preamble

Pursuant to Title XI of Public Law 104-333, California Bay Delta Environmental Enhancement ("Bay-Delta Act") and the Safe, Clean, Reliable Water Supply Act ("Proposition 204") approved by the voters of California on November 5, 1996 this agreement ("Agreement") is made and entered into on this _____ day of _____ by the State of California ("State" or "California") represented by the Secretary for Resources and the United States Secretary of the Interior.

B) Purposes

1) Comply with Proposition 204. To comply with section 78537 of Proposition 204 which requires that the State secure, to the greatest extent possible, federal and nonfederal matching funds to accompany the expenditure of $60 million in State Category III funds and to comply with section 78684.10 of Proposition 204 which requires that a State-Federal cost sharing agreement be executed before the $390 million authorized for the Bay-Delta Ecosystem Restoration Account can be expended.

2) Comply with Bay-Delta Act. To comply with the provisions of the Bay-Delta Act which authorize expenditures of $ 143,300,000 for each of federal fiscal years 1998, 1999, and 2000 for the initial federal share of the Category III program and of developing and implementing a long-term Bay-Delta ecosystem restoration program, in accordance with the cost sharing agreement described in section I(B)(1).

3) Enable Expenditures of Federally Appropriated Funds. To provide a mechanism, under existing authorities and in coordination with existing and ongoing programs, to initiate early implementation of projects and programs common to all of the alternatives now under consideration by the CALFED Bay-Delta Program with the goal of providing early environmental and other benefits and providing valuable information for use in adaptively managing the Bay-Delta in future years as the CALFED Bay-Delta Program continues.

4) Coordinate Other Expenditures under Proposition 204 with Bay-Delta Program. To promote the goal that all funds authorized by Proposition 204 for expenditure on aspects of the Bay-Delta and related watersheds are coordinated with the goals, objectives, and Solution strategies of the CALFED Bay-Delta Program.

5) Coordinate Expenditures with Existing Programs. To provide a mechanism for coordinating expenditures of new funds authorized by the Bay-Delta Act and

Proposition 204 with expenditures under existing State, Federal, local and non-governmental programs with the goal of developing an integrated planning process for restoration planning, project selection, and implementation, thereby increasing the overall effectiveness of restoration efforts in the Bay-Delta ecosystem.

C) Definitions

The following terms have the following meanings:

1) "Action" means an ecosystem restoration project or program selected for funding pursuant to this Agreement and subject to cost sharing pursuant to this Agreement and for which costs will be itemized individually.

2) "Bay-Delta" means the San Francisco Bay, Sacramento-San Joaquin Delta Estuary.

3) "Bay/Delta Advisory Council" or "BDAC" means a citizen advisory committee chartered under the Federal Advisory Committee Act ("FACA"") to advise the agency participants in CALFED. It includes representatives of Stakeholder groups jointly selected by the Governor of California and the U.S. Secretary of the Interior.

4) "CALFED" means a consortium of State and Federal agencies with management and regulatory responsibilities in the Bay-Delta, established pursuant to the Framework Agreement.

5) "CALFED Bay-Delta Program" means the project team that began work in May 1995 toward developing the long-term Solution for the Bay-Delta. The Program was created pursuant to the Framework Agreement and subsequent implementing agreements including the CALFED Funding, Administration and Program Agreement.

6) "Category III" means non-flow-related measures for Bay-Delta ecosystem protection and restoration provided for in the Delta Accord and incorporated by the SWRCB in its Water Quality Control Plan for the Bay-Delta as part of the overall plan for Bay-Delta water quality.

7) "Delta Accord" means the Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government signed in December 1994 by representatives of the State and Federal governments and urban, agricultural, and environmental interests.

8) "Directed Programs" means programs or projects developed by the Program in conjunction with CALFED and delegated to specific State and/or Federal agencies for implementation as described in section II(C) of this Agreement.

9) "Ecosystem Roundtable" means a group of Stakeholders appointed to insure that Stakeholder input is included in the process of priority setting, project selection, and project implementation for Bay-Delta ecosystem restoration. The Ecosystem Roundtable is an Advisory Group to BDAC for FACA purposes.

10) "Fiscal Year" means the federal fiscal year beginning October 1 and ending September 30.

11) "Framework Agreement" means the Memorandum of Agreement between the Governor's Water Policy Council and the Federal Ecosystem Directorate executed in summer 1994.

12) "Notice of Intent" means a Notice of Intent to Expend Funds and Application for Credit under the Agreement as described in section II(D)(1)(b) of this Agreement.

13) "Party(ies)" means the United States Secretary of the Interior and the California Secretary for Resources.

14) "Program" means the CALFED Bay-Delta Program.

15) "Restoration Coordination Program" means the effort within the CALFED Bay-Delta Program to administer the Category III program and facilitate coordination with other similar programs pursuing ecosystem restoration related to the Bay-Delta system.

16) "Restoration Reserve Fund" means that portion of the funding identified for the Interim Ecosystem Restoration that is not allocated using the process described in section II(C) of this Agreement, but is instead reserved for other high priority or emergency projects that may arise and require funding.

17) "Solution" means the comprehensive long-term program of Actions developed by the CALFED Bay-Delta Program to address the problems of the Bay-Delta.

18) "Stakeholder(s)" means urban and agricultural water users, fishing interests, environmental organizations, businesses, tribes, and others which use or have an interest in the Bay-Delta Estuary and who contribute to Bay-Delta Program design and to the problem-solving/decision-making process.

19) "SWRCB" means the California State Water Resources Control Board.

D) Background and History

1) Importance of Resource. The Bay-Delta is the largest estuary on the West Coast of North America, providing habitat for 120 fish and wildlife species, some of which are listed as threatened or endangered. The Bay-Delta is also critical to California's economy because it provides drinking water for more than 22 million Californians, serves industry, and provides irrigation water for millions of acres growing more than 200 crops, including 45 percent of the nation's produce.

2) History of Conflict. The Bay-Delta has for decades been the focus of competing interests—economic and ecological, urban and agricultural, and it has suffered from this. Habitats are declining, and several native species are endangered. The Bay-Delta no longer serves as a reliable source of high-quality water, and levees face an unacceptably high risk of failure. Though many efforts have been made to address these problems, the issues are complex and interrelated, and many remain unresolved.

As Governor Pete Wilson noted in his Executive Order W-38-92, "...past water development has often taken place at the expense of fish and wildlife resources, and availability of water plays a key role in most efforts to mitigate for past harms and to restore and manage fish and wildlife populations and habitat." He further noted, "...continued population growth will create increased demands by urban and agricultural water users, and add to the challenge of restoring and maintaining healthy, viable fish and wildlife populations."

3) Creation of CALFED Bay-Delta Program. Pursuant to the Framework Agreement, signed by multiple State and Federal parties in the summer of 1994, and subsequent implementing agreements, the CALFED Bay-Delta Program was established in May 1995. The Program was charged with developing a comprehensive and long-term Solution to the problems associated with the Bay-Delta, including an equitable allocation of program costs among beneficiary groups, and of developing a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta. The Program is in the process of preparing a programmatic EIS/EIR for a long-term comprehensive Solution that will resolve problems related to water quality, water supply reliability, levee system integrity, and ecosystem quality.

4) Delta Accord. In December 1994, representatives of the State and Federal governments and Stakeholder representatives signed the Delta Accord. In addition to implementing the CALFED Bay-Delta Program, the signatories to the Delta Accord agreed to implementation of a Bay-Delta protection plan through the SWRCB including water quality standards and operational constraints for the State and Federal water export projects; provisions for implementation of the Federal Endangered Species Act; and Category III principles. Under the Category III principles, the State and Federal governments and the Stakeholders committed to develop, implement and finance non-flow measures for Bay-Delta ecosystem protection, including monitoring and the screening of unscreened diversions in the Bay-Delta watershed.

5) Recent State and Federal Legislation. Proposition 204 was passed by the voters of California on November 5, 1996. It authorizes $995 million in bond issuance to cover State cost sharing for activities to restore the Bay-Delta ecosystem and for other water resources activities in California.
In September 1996, the President signed the Bay-Delta Act that authorizes $143.3 million per year in additional Federal spending for Bay-Delta ecosystem restoration activities in Fiscal Years 1998, 1999, and 2000. The authorization became effective in November 1996 when California voters approved Proposition 204.
The budget of the Department of the Interior for Federal Fiscal Year 1998 includes a request for the full $143.3 million authorized in the Bay-Delta Act. All funds that Congress provides would be placed in a new account under the U.S. Bureau of Reclamation, and then later would be transferred as appropriate to the participating

Federal agencies based on programs recommended by CALFED and approved by the Secretary of the Interior. These funds would be used to match State cost sharing funds pursuant to this Agreement. The President's Fiscal Year 1998 Budget submission to Congress indicated that the Administration anticipates similar requests for federal Fiscal Years 1999 and 2000.

E) Solution

1) Four Resource Areas. CALFED is developing a long-term Solution to the problems of the Bay-Delta Estuary to address four major areas of concern:

   (a) Ecosystem Quality—To improve and increase aquatic and terrestrial habitats and improve ecological functions in the Bay-Delta to support sustainable populations of diverse and valuable plant and animal species;

   (b) Water Quality—To provide good water quality for all beneficial uses;

   (c) Water Supply Reliability—To reduce the mismatch between Bay-Delta water supplies and current and projected beneficial uses dependent on the Bay-Delta; and

   (d) System Integrity—To reduce the risk to land use and associated economic activities, water supply, infrastructure and the ecosystem from catastrophic failure of Delta levees.

2) Interdependence of Four Resource Areas and Resulting Benefits. In a complex system such as the Bay-Delta, problems and objectives are not independent and self-contained. Relationships or linkages exist between all areas. For example the amount and timing of fresh water flowing into the Bay-Delta affects water quality, and consequently the health of the ecosystem. The integrity of the Delta levees has major implications for water supply, water quality, and ecosystem health. In many cases activities designed to improve one of the four resource areas (ecosystem quality, water quality, levee system integrity, and water supply reliability) will produce multiple benefits across the four areas.

3) Solution Principles. The following principles are central to the CALFED process and represent the basic parameters of a successful long-term Solution for the Bay-Delta. It must:

   (a) Be Affordable—An affordable Solution will be one that can be implemented and maintained within the foreseeable resources of the CALFED Bay-Delta Program and Stakeholders.

   (b) Be Equitable—An equitable Solution will focus on resolving problems in all problem areas. Improvements for some problems will not be addressed without corresponding improvements for other problems.

   (c) Be Implementable—An implementable Solution will have broad public

acceptance and legal feasibility, and will be timely and relatively simple compared with other alternatives.

(d) Be Durable—A durable Solution will have political and economic staying power and will sustain the resources it was designed to protect and enhance.

(e) Reduce Conflicts in the System—A successful Solution will reduce major conflicts among beneficial users of water.

(f) Have No Significant Redirected Impacts—A Solution will not solve problems in the Bay-Delta by redirecting significant negative impacts to other parts of the Bay-Delta or other regions of California.

4) Interim Ecosystem Restoration.

(a) Significance of Interim Ecosystem Restoration Opportunities—The ecosystem restoration element of the CALFED Bay Delta Program is designed to serve as the foundation for the other program elements. Ecosystem restoration Actions represent the first step in realizing benefits for water supply, water quality and system integrity. Moving forward on ecosystem restoration Actions has two benefits. Some Actions will provide immediate benefits, and therefore should be implemented immediately. Other Actions, although they require a substantial lead-time before benefits are obtained, provide important research in the Bay-Delta to guide adaptive management. This second set of Actions should also begin immediately, both to gain the benefits of the increased knowledge, and to hasten the realization of the benefits.

(b) Criteria for Interim Ecosystem Restoration—Federal funds may be obligated prior to completion of CALFED final programmatic EIR/EIS only if (1) consistent with 40 C.F.R. 1506.1(C) and (2) used for purposes that the Secretary of the Interior finds are of sufficiently high priority to warrant such an expenditure. In addition, each selected project must:

(i) be justified independently of the Program by the lead agency(ies) for that project;

(ii) be accompanied by an adequate environmental document, the preparation of which included consultation with responsible and trustee agencies; and

(iii)not prejudice the ultimate direction of the Program.

F) Administration

1) Multiple Funding Sources; Multiple Projects. The Program will provide for coordination of funding from multiple sources directed to multiple projects on a dynamic basis to maximize flexibility in timing and implementation of Bay-Delta Actions. Funding for each Action may come from a combination of Federal, State, Stakeholder and other sources to reflect their responsibility to contribute and the

diversity of benefits created by the Action.

2) Coordination with Existing Programs and Funding Sources. It is highly desirable to coordinate expenditures of funds authorized by the Bay-Delta Act and Proposition 204 with expenditures of funds pursuant to ongoing programs in order to achieve maximum overall effectiveness of Bay-Delta Actions. For the long-term Solution, funding obligations for new Actions will recognize ongoing financial contributions to existing programs when appropriate, in order to achieve overall equity in the funding of the long-term Solution.
3) Actions taken under this Agreement will be fully coordinated with existing programs, activities, and agreements, and will comply with applicable provisions of State and Federal laws and regulations, including, but not limited to the National Environmental Policy Act, California Environmental Quality Act, Federal and State Endangered Species Acts, and the Fish and Wildlife Coordination Act.
4) Recognition of Terms of Existing Cost sharing Agreements. The Parties recognize that there are a number of existing cost sharing agreements with terms and cost sharing ratios specific to their subject matter and, in some cases, designed to comply with authorizing legislation. This Agreement does not alter the terms of those prior agreements nor does it limit the ability of Parties to agree to different cost sharing terms and ratios for other projects, in the absence of such existing agreements.
5) Coordination Among Implementing Entities. A high level of coordination among implementing entities is desirable to ensure that maximum benefits are obtained for dollars expended. The Parties commit to spending these funds in such a manner as to secure maximum results from each expenditure.
6) Long-term Implementation: State / Federal / Stakeholders. Implementation of the Solution developed by the CALFED Bay-Delta Program will be a multi-decade effort. Partnerships among agencies and with Stakeholders formed during this process must continue throughout this effort. All of those involved in the Bay Delta system should participate in developing the Solution. Those who benefit from the Solution, those whose actions have affected the Bay-Delta directly, as well as those whose actions have affected its tributaries should all participate in funding the Solution.
7) Accounting System and Reporting Cycle. There is a need for an accounting system and reporting cycle to maintain cumulative cost sharing ratios while enabling flexible contributions by year and project. The Parties share a common goal of maximizing the flexibility with which Actions may be carried out pursuant to this Agreement. The Parties intend to cooperate in funding the Actions based on appropriations available to them, and are structuring this Agreement so that one Party may fund all or any percentage of an Action, in order that an Action not be delayed due to the other Party's funding constraints. Details of the accounting and reporting actions referred to above are contained in sections III(C) and III(D).

Nothing in this Agreement is intended to prevent either Party from moving forward with implementation of an Action in the absence of the other Party's having obtained an appropriation or other funding for that Action, although cost sharing credit for such an Action may be acquired only as described in section II(D)(1) of this Agreement.

G) Agreement

1) Does Not Limit Other Ongoing Activities. The Parties to this Agreement are carrying out studies, programs, or actions related to the Bay-Delta. Nothing in this Agreement is intended to limit or prevent either Party from proceeding with these activities.
2) Does Not Affect Existing Legal Obligations. Nothing in this Agreement is intended to limit any Party's obligations under existing laws.

II) Interim Ecosystem Restoration

A) Supplemental Principles for Interim Ecosystem Restoration

1) Interim Process. Interim Ecosystem Restoration is intended to cover expenditures of State Federal and Stakeholder funds as described in section II(B) through the period covered by this Agreement.
2) Includes Funding Incremental to Existing Efforts Only. The Interim Ecosystem Restoration process is for funding that is incremental to existing efforts. Funding under this process is not intended to replace funding available from other sources and in connection with other programs.
3) Public/Stakeholder Input/Involvement in Process. The Parties are committed to insuring that the Bay-Delta Stakeholders and members of the general public are involved to the greatest extent possible in project selection and implementation.
4) Expedited Review and Approval of Projects. In order to begin implementation as soon as practical of ecosystem restoration Actions that are common to all of the alternatives, have broad support, are of environmental benefit and which will provide valuable information for adaptive management of the Bay Delta in later years of the program, the Parties are committed to the maximum extent feasible to facilitate expedited review and approval of projects pursuant to this Agreement.
5) Costs Eligible for Cost Sharing. Cost sharing for Interim Ecosystem Restoration pursuant to this Agreement may include capital and other costs as provided for in the Notice of Intent for individual restoration Actions. Costs incurred by the Parties in carrying out individual restoration Actions pursuant to this Agreement and for which cost sharing shall be calculated may include, but are not limited to: planning costs, including costs associated with preparation of environmental documentation and with obtaining permits and other regulatory approvals; design costs; construction and implementation costs, including contract administration; and costs of initial start-up and testing before a constructed facility is placed into service. The value of in-kind or in-lieu services shall not be credited toward a Party's cost sharing contribution. Operations and maintenance are not eligible costs unless specifically listed in an approved Notice of intent.
6) Cost Sharing Ratios. Spending decisions will be made so that neither the State, the

Federal government, nor Stakeholders will be disproportionately responsible for the cost of the Interim Ecosystem Restoration. It is intended that expenditures by the State and Federal governments for ecosystem restoration pursuant to this Agreement will be equal over the period covered by this Agreement.

By mutual agreement of the Parties, one Party may fund all, none, or any percentage of the cost of an individual restoration Action, as long as overall cost sharing ratios provided in this Agreement are maintained.

B) Sources of Funding

1) Category III

(a) Proposition 204. Proposition 204 authorizes $60 million for Category III activities.

(b) Bay-Delta Act. The Bay-Delta Act states that out of the $143.3 million per year authorized to be appropriated during Fiscal Years 1998, 1999, and 2000, is to come "the initial Federal share of the cost of developing and implementing that portion of an ecosystem protection plan for the Bay-Delta, referred to as 'the Category III program'" emanating out of the Delta Accord. Pursuant to this Agreement that Federal share is hereby defined to be a total of $60 million.

(c) Stakeholder Contributions

(i) Current. Pursuant to commitments in the Delta Accord, the Stakeholders have contributed a total in excess of $32 million.

(ii) Future. Although Stakeholders are not parties to this Agreement, the Parties to this Agreement expect that Stakeholders will contribute an equitable share of the funds necessary to implement the Category III program through Fiscal Year 2000.

2) Additional Ecosystem Restoration

(a) Proposition 204. Proposition 204 provides for an additional $390 million to be used for ecosystem purposes as defined in the Proposition, subject to specific conditions as defined in the Proposition.

(b) Bay-Delta Act. The remainder of the $143.3 million per year authorized under the Bay-Delta Act after deduction of the amount identified for Category III in section II(B)(1) is authorized to be used for ecosystem restoration purposes as defined in the Bay-Delta Act pursuant to this Agreement including the early implementation of projects and programs common to all of the alternatives now under consideration by the CALFED Program as outlined in section I(E)4. These projects and programs have the goal of providing early environmental and other benefits and of providing valuable information for use in adaptively managing the Bay-Delta system as the Program continues.

3) Funding Contingent. The Parties will use their best efforts to seek funding for restoration Actions from whatever sources may be available to them, but recognize that the federal funding is contingent upon appropriations by Congress, and that California's funding is subject in part to the sale of bonds pursuant to the terms of

Proposition 204 and to the availability of funds through California's normal budget process or to availability of funding from other sources.

C) Project Selection Process

The Parties agree that projects to receive funding from the sources listed in section II(B) will be developed and selected based on a planning and project selection process approved by CALFED. This process may be modified over the term of the Agreement as determined by CALFED. The initial process is described in Appendix B to this Agreement. The process will include the following components:

1) Public Participation

Public participation in the development and selection of projects will be an important part of the process. Recommendations for projects will be presented to the Ecosystem Roundtable, or its successor, for review and advice to CALFED and the Parties to this Agreement for their consideration while deciding which projects to implement.

2) CALFED Directed Programs

The Program, working with CALFED agencies, may develop proposals and projects for implementation by specific State and/or Federal agencies. These projects may undergo a streamlined selection process, but will still be subject to the need for prior public input and advice.

3) Cost Coordination

Recommendations for projects to be implemented will include a suggested funding mix for each project from the available funding sources, including those included in this Agreement as well as other funding sources.

D) Project Implementation

1) Credit Under the Agreement

In order to be credited pursuant to this agreement, expenditures of funds described in section II(B) or II(D)(1)(a), other than the Restoration Reserve Fund, must be used for Actions selected in accordance with section II(C) and must have an approved Notice of Intent as described in (b) below.

(a) Additional Expenditure Approval Process

Expenditures from sources other than those listed in section II(B) will not be credited for purposes of this Agreement unless such expenditures are approved for inclusion in this Agreement by the U.S. Secretary of the Interior and the California Resources Secretary or their designees.

(b) Notice of Intent to Expend Funds and Application for Credit under the Agreement

The Secretary of the Interior and the Secretary for Resources or their designees shall prepare a Notice of Intent to Expend Funds and Application for Credit for each restoration Action, or element thereof, selected for implementation ("Notice of Intent"). Notices of Intent are subject to compliance with applicable law. A Notice of Intent may include one or more Actions. Notices of Intent must be approved by the Executive Director of the CALFED Bay-Delta Program. The Notice of Intent shall contain the elements set forth below:

(i) Identification of the Action(s) included in the Notice of Intent.
(ii) Projected cost of the Action(s) by Fiscal Year.
(iii) Project funding mix for the Action(s) by Fiscal Year.
(iv) A statement confirming conformance with the policy described in section II(A)(2) for the Actions included in the Notice of Intent.
(v) Projected implementation schedule for the Action(s).
(vi) Identification of the entity responsible for contract administration and monitoring for the Action(s).
(vii) Identification, if available, of the entity(ies) that will perform the work.

2) Means of Implementation
Actions may be implemented through contracts, grants, or agreements between the Parties to this Agreement and State or Federal agencies, local agencies, non-profit entities (such as the National Fish and Wildlife Foundation), or private parties. Such contracts, grants, or agreements shall specify the terms under which implementation the Actions will be performed. Any individual restoration Action may be divided into elements to facilitate implementation of the Action.

III) Contracting Provisions

A) Term of Agreement. Once signed by the Parties, this Agreement shall become effective upon approval by the California Department of General Services. Unless terminated earlier pursuant to section III(H), this Agreement shall expire on the earliest of:
1) September 30, 2001, unless this date is extended by mutual agreement prior to that date, or
2) the date as of which all funds available for purposes of implementing this Agreement have been expended, or
3) the date on which this Agreement is superceded by a subsequent agreement.

B) Commencement Date for Costs. If mutually agreeable, each Party may include as allowable costs in a Notice of Intent those costs incurred after November 5, 1996, the effective date of Proposition 204 and the Bay-Delta Act.

C) Administration of Cost Sharing
1) Annual Accounting. The Parties shall make an annual accounting, on a Fiscal Year basis, for their costs incurred pursuant to this Agreement.
2) Adjustment of Balance. Costs incurred pursuant to this Agreement will vary from year to year based on the Actions being implemented and the contracts and grants which have been entered into and made. The Parties recognize that one Party may have incurred costs during a particular Fiscal Year in excess of its equal share of the overall contribution contemplated under this Agreement. The Parties will review the annual accounting and evaluate the balance between the Parties in terms of costs incurred and anticipated. Either Party may, in consideration of that balance and in consideration of the funding expected to be available, request that the implementation of projects and programs selected in section II be modified to adjust the balance between the Parties. Notwithstanding that balance, nothing in this Agreement is

intended to prevent either Party from proceeding with the implementation of an Action or execution of a contract or grant.

3) Transfers of Funds. If the balancing of incurred costs and obligations described above cannot be achieved by modification of the list of projects and programs, the Parties may agree to transfer funds between themselves in order to adjust the balance. Such transfers may be reflected in the Parties' annual accounting or in the final accounting.
4) Final Accounting. Upon expiration of this Agreement, or upon its termination, the Parties shall submit to each other a final accounting of all costs incurred pursuant to Notices of Intent, contracts and grants made and entered into pursuant to this Agreement.
5) Cost-Sharing of Operations and Maintenance. At the expiration of this Agreement, the Parties will evaluate the need for continued cost sharing in operation and maintenance costs of completed restoration Actions.

D) Budgeting and Funding

1) Maximum Payable. The maximum payable by California and the United States pursuant to this Agreement shall not exceed amounts identified in section II(B), respectively, except to include amounts approved pursuant to section II(D)(1).
2) Budget Process and Format. The Parties will establish a mutually acceptable process and format for budgeting for the restoration Actions to be performed; recognizing that each Party operates on a two-year advance budget cycle.
3) Annual Budget Update
   (a) Schedule for Update. Each November, the Parties shall complete an annual update of the estimated costs of pending restoration Actions, or elements thereof, and of the costs actually incurred pursuant to Notices of Intent. The Parties shall also review the balance between costs incurred and obligations under the Notices of Intent. Nothing in this article is intended to prevent the Parties from updating the estimated costs or budget more frequently, if desired.
   (b) Estimated Budget. Each November, the Parties shall complete an estimated budget that includes identification of the estimated timing of annual and capital costs, and shows estimated costs to be incurred over the next three Fiscal Years. This budget does not represent a commitment of funds by the Parties. Funds may be committed only pursuant to the normal budget processes of the State or Federal agency responsible for particular Actions, contracts or grants.

E) Coordination with Respect to Restoration Actions

The Parties shall cooperate and consult closely with each other and with other participants in the CALFED process in the development and implementation of the restoration Actions covered by this Agreement. The Parties shall provide each other with review copies of draft reports, proposals, designs, and other significant material, and shall coordinate with each other on regulatory agency agreements and environmental documentation which may be necessary to implement individual Actions. The Parties or their designees shall meet and confer as necessary to keep each other informed of the

status of development and implementation of individual restoration Actions.

F) Reports

The Parties shall submit to each other annually written documentation or reports describing the Party's activities pursuant to this Agreement.

G) Amendments

1) Not Valid Unless in Writing. Amendments to this Agreement shall not be valid unless made in writing, signed by the Parties, and approved by the California Department of General Services. No oral understanding or agreement not incorporated herein shall be binding on either of the Parties herein.

2) Impossibility of Performance. If either Party or agency within the control of either Party becomes unable for reasons outside of its control, including restraint by a court or public agency, to carry out a restoration Action specified in a Notice of Intent, the Party shall, by written notice, so inform the other Party. The Parties shall, within 30 days from the date of the notice, attempt to resolve the inability to carry out the Action. If resolution cannot be achieved within this time, any prospective cost-sharing obligations incurred pursuant to an approved Notice of Intent shall be suspended until such time as Parties achieve resolution.

H) Termination

1) This Agreement may be terminated, in whole or in part, when both Parties to this Agreement agree that the continuation of the Agreement would not produce beneficial results. If such agreement is reached, the Parties shall agree upon the termination conditions, including the effective date, and, in the case of partial terminations, the portion(s) to be terminated. Neither Party shall incur any new cost sharing obligations pursuant to the terminated portion(s) of the Agreement after the effective date of the termination and both Parties shall cancel as many outstanding cost shared obligations incurred pursuant to the terminated portion(s) of the Agreement as is reasonably possible as quickly as is reasonably possible; provided, that full credit shall be allowed for the non-cancelable obligations incurred under the terminated portion(s) of this Agreement prior to the effective date of the termination.

2) Upon partial or complete termination of this Agreement, the Parties shall submit to each other a final accounting of the respective costs that they incurred pursuant to the terminated portion(s) of the Agreement up to the date of the agreement to terminate. The Parties shall jointly prepare a final report describing:

(a) The allowable costs incurred by each Party up to the date of the termination;

(b) Each Party's responsibility for the payment of any outstanding non-cancelable obligations;

(c) The manner in which and the time frame during which any imbalance in the Parties' respective expenditures and obligations for items to be cost-shared under this Agreement shall be corrected.

I) Administration of Agreement

This Agreement shall be administered by the California Secretary for Resources and the

Secretary of the Interior or their designees in conjunction with the CALFED Executive Director and management and staff of the CALFED member agencies.

J) Notice

1) For the purposes of administering this Agreement, documents which California is required to submit to the U.S. shall be sent to the Secretary of the Interior and documents which the U.S. is required to submit to California shall be sent to the Secretary for Resources.

K) Dispute Resolution

In the event of a dispute, the Parties or their designees shall meet as soon as possible to resolve the dispute. If the Parties cannot reach agreement, then the Parties may choose to terminate the Agreement in accordance with section III(H).

L) Records and Audits

Subject to applicable laws and regulations, both Parties shall have full access to the books and records of the other Party as they pertain to this Agreement, with the right to make copies thereof. Except where a longer period is provided by federal laws, rules, or regulations, the books and records of the Parties relating to this Agreement shall be subject to the examination and audit of California and the United States for a period of three years after final payment under the Agreement.

M) Standard Clauses

The provisions of the attached Appendix A are hereby incorporated into this Agreement.

IV) **Signatures**

In witness whereof, the Parties hereto have executed this Agreement on this _____ day of _____, 1997.

THE STATE OF CALIFORNIA

By_____
Douglas P. Wheeler
Secretary for Resources

THE UNITED STATES OF AMERICA

By_____
Bruce Babbitt
Secretary of the Interior

DRAFT

September 11, 1997

Appendix A – Standard Clauses

1) The United States, and the agents and employees of the United States, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of the State of California. The State and agents and employees of the State, in the performance of this Agreement, shall also act in an independent capacity and not as officers, employees or agents of the United States.

2) Without the written consent of the other party, this Agreement is not assignable by either party either in whole or in part.

3) Time is of the essence in this Agreement.

4) The United States Secretary of the Interior affirms that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and to the extent required by federal law, the Secretary affirms that the United States will comply with such provisions before commencing the performance of the work under this Agreement. This provision shall apply to the extent provided by federal laws, rules, and regulations.

5) During the performance of this Agreement, the United States and the State and their subcontractors shall not deny the Agreement's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability; nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40), or sex. The United States and the State shall ensure that evaluation and treatment of employees and applicants for employment are free of such discrimination. The State, and the United States to the extent required by federal laws, rules or regulations, shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), the regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1 Division 3, Title 2 of the Government Code (Government code Sections 11135-11139.5), and the regulations or standards adopted to implement such article. The United States shall permit access by representatives of the Department of Fair Employment and Housing and the State upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. The United States and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The United States shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement. This provision shall apply only to the extent required by federal laws, rules, or regulations.

6) If applicable, travel and per diem expenses to be reimbursed under this Agreement shall not exceed the same rates provided for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations.

7) Nothing in this Agreement is intended to define, determine, limit, or affect the rights of third parties.

8) The waiver of a breach of any of the provisions of this Agreement shall not be deemed to be a waiver of any other provisions hereof, or of a subsequent breach of such provisions.

9) Officials Not to Benefit:

   a) No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. This restriction shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

   b) No representative of the state shall receive any benefit that may arise by reason of this Agreement other than that as a representative of the State and in the same manner as other representatives of the State.

10) Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of the parties, such terms are not intended to be and shall not be construed as permitting such opinion. Judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

11) This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

Appendix B – Initial Project Planning and Selection Process Description

CALFED will initially use the following planning and project selection process for identifying and funding Actions pursuant to this Agreement. Projects will be selected and funded as necessary to comply with the funding cycles of the respective Parties, but no less frequently than semi-annually.

I) Identify Near-Term Priorities

Program staff is preparing the ERPP that will detail near and long-term priorities to satisfy the implementation objectives and targets. The ERPP will include an overall implementation strategy, updated periodically, that will provide guidance on which species, habitat types, and ecosystem processes should be addressed and how they should be prioritized. Funding decisions pursuant to this Agreement will be consistent with the strategy detailed in the ERPP and will focus on those species and habitats protection of which is of greatest urgency and on the Actions providing the greatest early benefits considering available funding. Pending completion and final approval of the ERPP by CALFED, CALFED will rely on the draft ERPP and related Bay-Delta Program materials as guidance for selection of Actions under this Agreement.

II) Develop Action Proposals

The following subsections describe the initial process for selecting and funding Actions. This process may be revised in future funding cycles with the consent of CALFED, and is not intended to establish a permanent process. Until such time as the process is revised, proposals for Actions may be developed in two ways.

A) Public Project Solicitation Process

1) Identify Stressors and Actions to Address Them

The Program staff will prepare a work plan based upon the ERPP near-term priorities identified in Section II(C)(1). Semi-annual updates of the work plan will be prepared to respond to adaptive management considerations, additional priorities, changes in funding levels, and progress made in earlier years. The work plan will provide a summary of the:

(a) Strategy for the current funding cycle, including proposed priorities for funding;
(b) Stressors that need to be addressed to achieve those priorities; and
(c) Actions or types of Actions that need to be undertaken to further define and address the Stressors.

2) Prepare Package to Solicit Applications & Develop Evaluation Criteria

The Program staff, assisted by the Restoration technical teams, will prepare a solicitation for applications for funding of projects and programs consistent with the work plan.

Project and program proposals can come from a variety of sources including state and federal agencies, local governments, special districts, non-profit organizations, other organizations, and private individuals interested in ecosystem restoration. Criteria for selection of proposals will be prepared and applied to all applicants. The evaluation criteria will be used to guide selection of actions to address the priority species and habitats.

3) Recommend Actions

The Program staff, working with technical review panels, will review and rank the

proposals using the evaluation criteria. A draft list of recommended proposals will be forwarded to the Ecosystem Roundtable for its review and advice. The list of recommended proposals, along with the advice from the Ecosystem Roundtable will be forwarded through the CALFED Bay Delta Program staff to BDAC for its advice. BDAC will transmit its advice through the CALFED Bay Delta Program to the CALFED agencies.

B) CALFED Directed Programs Process

1) The CALFED Bay-Delta Program staff, working in conjunction with CALFED agencies, may determine that certain specific projects are needed to adequately address ERPP priorities. In this case, the CALFED Bay-Delta Program may develop project proposals and designate State and/or Federal agencies to implement the Action(s).

2) The list of proposed projects prepared by the CALFED Bay-Delta Program will then be forwarded to the Ecosystem Roundtable for its review and advice. The list of recommended proposals, along with the advice from the Ecosystem Roundtable will be forwarded through the CALFED Bay Delta Program staff to BDAC for its advice. BDAC will transmit its advice through the CALFED Bay Delta Program to the CALFED agencies.

III) Approve Action List

The CALFED agencies, meeting together, will review the list of recommended Actions, as well as the advice from BDAC and the Ecosystem Roundtable. The CALFED agencies will jointly approve a final list of recommended Actions and forward that list to the U.S. Secretary of the Interior and the California Resources Secretary for final approval. This list of Actions approved by the two Secretaries or their designees will be the Actions that will be implemented in addition to those selected through the public solicitation process, subject to compliance with applicable laws.