

MEMORANDUM OF UNDERSTANDING
FOR COMPLETION OF THE PHASE 2 OF THE
LOS VAQUEROS RESERVOIR EXPANSION INVESTIGATION
AND SHARING OF COSTS

By and Between

United States Department of the Interior,
Bureau of Reclamation, Mid-Pacific Region

And

Contra Costa Water District

This Memorandum of Understanding (MOU) is made and entered into by and between the United States Department of the Interior, Bureau of Reclamation, Mid-Pacific Region, and the Contra Costa Water District (CCWD) (Parties), as the owner and operator of the existing Los Vaqueros Reservoir (LVE) for the purpose of undertaking and completing ongoing feasibility studies and related environmental compliance activities for Phase 2 of the Los Vaqueros Reservoir Expansion Investigation (Phase 2 Investigation). The LVE is one of the CALFED Program Surface Storage Program Feasibility Studies (Feasibility Studies) identified in the CALFED Bay-Delta Program Programmatic Record of Decision (CALFED ROD) (August 2000) and study authorizations cited herein.

WHEREAS, CCWD was formed in 1936 and has contracted with Reclamation for water supply since 1940, and is currently one of the largest municipal and industrial customers of Reclamation's Central Valley Project; and

WHEREAS, CCWD, together with several local water agencies, the State of California, Department of Water Resources (DWR), and other Federal and State agencies, executed the MOU regarding the CALFED Bay-Delta Program Studies on the Expansion of Los Vaqueros Reservoir in 2001 (2001 LV MOU) in accordance with requirements in the CALFED ROD and have extended the 2001 LV MOU through December 31, 2016, and Reclamation signed the 2001 LV MOU on December 22, 2011; and

WHEREAS, CCWD and the local water agencies that participate in the 2001 LV MOU that have been identified as potential beneficiaries of LVE are currently developing an update to the 2001 LV MOU to incorporate new Principles of Agreement for local agency participation in studies supporting the Phase 2 Investigation (2015 LV MOU) through December 31, 2017; and

WHEREAS, Reclamation and CCWD jointly prepared a Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on March 12, 2010, that evaluated the expansion of Los Vaqueros Reservoir in two phases: The initial phase of expansion from 100,000 acre-feet to 160,000 acre-feet and a future phase of expansion from 160,000 acre-feet to 275,000 acre-feet; and

WHEREAS Reclamation is the lead agency under the National Environmental Policy Act (NEPA) and CCWD is the lead pursuant to the California Environmental Quality Act; and

WHEREAS, Reclamation, through Federal Fiscal Year 2014, has expended approximately \$16.5 million on the Investigation including preparation of the EIS/EIR and progress deliverables on the Federal Feasibility Study, agency and stakeholder coordination, public involvement activities, and \$91.8 million overall on four CALFED Bay-Delta Program Surface Storage Feasibility Studies; the State of California. DWR has expended more than \$18.2 million on LVE efforts and an estimated \$64 million for the CALFED Storage Program overall; and

WHEREAS, CCWD has expended approximately \$450 million to implement the original 100,000 acre-foot reservoir that was completed in 1997 and \$109 million to implement the initial phase of reservoir expansion to 160,000 acre-feet that was completed in July 2012, and intends to spend up to an additional \$3.5 million by December 31, 2017, for related studies and activities for the Phase 2 Investigation; and

WHEREAS, CCWD is hereby joining Reclamation in conducting and advancing the Phase 2 Investigation, and each entity recognizes the unique relationships and opportunities, mutual and exclusive needs and dependencies, Federal and non-Federal standards and procedures, potential outcomes and applications of the study results, and related decision-making and approval processes; and

WHEREAS, CCWD and the local water agencies participating in the 2015 LV MOU are qualified to be applicants under the California Water Commission's Water Storage Investment Program that will include a competitive grant process for State funding for implementation of storage projects; and

WHEREAS, CCWD intends to represent the interests of the local water agencies participating in the 2015 LV MOU and to coordinate with these agencies as needed to support the Phase 2 Investigation.

NOW, THEREFORE, in consideration of mutual and dependent covenants and conditions contained herein, which each Party acknowledges results in respective benefit, the Parties agree as follows:

1. Definitions The following terms shall have the following meanings when used in this MOU:
 - 1(a) Parties: Shall mean Reclamation and CCWD.

- 1(b) CALFED Bay-Delta Surface Storage Program Feasibility Studies: Shall mean Feasibility Studies which are identified and/or authorized in the CALFED Bay-Delta Authorization Act (Public Law (P.L.) 108-361) and include both phases of the LVE Investigation, North of the Delta Offstream Storage Investigation, Upper San Joaquin River Basin Storage Investigation, and Shasta Lake Water Resources Investigation.
- 1(c) Contributed Funds Agreement: Shall mean a legal financial agreement used by Reclamation to receive “all moneys ... from any State, municipality, corporation, association, firm, district, or individual for investigations, surveys, construction work, or any other development work incident thereto involving operations similar to those provided for by the Reclamation law, are covered into the Reclamation fund and shall be available for expenditure for the purposes for which contributed in like manner as if said sums had been specifically appropriated for said purposes,” 43 USC § 395. Any such Contributed Funds Agreement would be separate from this MOU.
- 1(d) Cost-Share: Shall mean the Parties’ contributions as in-kind services as further defined in Articles 1(e) and 5(a) of this MOU, and contributed funds, if a separate Contributed Funds Agreement referenced in Article 1(c) is completed.
- 1(e) In-Kind Services: Shall mean eligible donated time and effort, real and personal property, and goods and services, as defined by the Department of Interior. In-kind services may be used as a cost-share, but the value of the in-kind contributions must be evaluated and documented. Valuation of in-kind services shall be in accordance with 2 CFR Part 200.
- 1(f) Intellectual Property: Shall mean any invention that is legally protected through patents, copyrights, trademarks, and trade secrets, or otherwise protectable under Title 35 of the United States Code, under 7 USC § 2321, et seq., or under the patent laws of a foreign country.
- 1(g) Confidential Information: Shall mean any information that is privileged or protected from public release under the Freedom of Information Act (FOIA), 5 USC 552(b), or the California Public Records Act (CPRA), California Government Code § 6250 et. seq.
- 1(h) Confidential Business Information: Shall mean trade secrets or commercial or financial information that is privileged or confidential under the meaning of FOIA, 5 USC § 552(b)(4), or the CPRA.
- 1(i) Key Personnel: Shall mean team members involved in the administration, management, or performance of the studies as defined in this MOU.
- 1(j) Subject Invention: Shall mean any invention or other intellectual property conceived or first reduced to practice under this MOU which is patentable or otherwise protectable under Title 35 of the United States Code, under 7 USC § 2321, et seq., or under the patent laws of a foreign country.

- 1(k) Project Management Plan (PMP): Shall mean the document prepared by Reclamation, and routinely updated by Reclamation throughout the duration of the Phase 2 Investigation to reflect current project schedule and approach, that serves as a guideline describing how Reclamation will manage and conduct the Phase 2 Investigation.
- 1(l) Scope of the Phase 2 Investigation: Those activities, actions, and products set forth in the PMP that will be conducted during the Term of the MOU that are subject to the requirements of the MOU.
- 1(m) Term of MOU: That period set forth under Article 6 below.
2. Purpose of MOU The Parties herein agree that the purpose of this MOU is to clearly define and implement the activities, schedule, and responsibilities to complete the Phase 2 Investigation and specified documents consistent with the PMP, and to share costs as outlined in this MOU, consistent with the authorizations identified below and other pertinent Federal, State, and local laws and policy. If mutually agreed, the Parties may amend this MOU to cooperatively proceed with additional activities which would be identified in a revised Scope of the Phase 2 Investigation as incorporated into the PMP as described in Section 5(c) of the MOU.
3. Authority for MOU Reclamation authority to enter into this MOU:
- 3(a) Reclamation Act of June 17, 1902 (Ch. 1093, 32 Stat. 388; 43 USC § 372, et seq.), and acts amendatory thereof and supplementary thereto.
- 3(b) Feasibility Study Act, 1980 (P.L. 96-375).
- 3(c) Central Valley Project Improvement Act, 1992 (Title 34 of P.L. 102-575).
- 3(d) Consolidated Appropriations Resolution, 2003 (P.L. 108-7).
- 3(e) Water Supply, Reliability, and Environmental Improvement Act, 2004 (P.L. 108-361, Sec. 103(d)(1)(A)(i)(I).
- 3(f) Consolidated Appropriations Act, 2014 (P.L. 113-76, Sec. 208).
4. Roles and Responsibilities of Reclamation and CCWD
- 4(a) Executive Steering Committee: Each Party to this MOU will assign an executive-/leadership-level representative to participate on the Executive Steering Committee for the duration of the study. Members on the committee will provide both program and project leadership, address issues affecting study progress, and identify and strategize resolution of evolving issues or conditions. This committee will meet on an as needed basis.

- 4(b) A Project Management Team (PMT) shall be established. Each Party will identify a Project Manager and representatives to participate on the PMT, Project Development Team (PDT) and subgroups as specified in the attached PMP (Attachment A). Reclamation shall chair the PMT. Meetings will be held as needed and used to track status of the studies, coordinate reviews of documents, share both Parties' perspectives on various topics, prepare briefings for the Executive Steering Committee, and any other items the Parties wish to discuss related to the studies. It is anticipated that PMT meetings will be held monthly. Meetings are intended to be in-person but may use remote technology. The PMT shall, on a quarterly basis, share an accounting of the actual expenses incurred by each Party under this MOU in accordance with Article 5 of this MOU.
- 4(c) A PDT shall be established to provide day-to-day oversight and review of work products. The PDT is expected to meet bi-weekly to maintain the progress of the project.
- 4(d) Cooperative Partnership: The Parties will participate cooperatively as both cost-share and study partners to complete the PMP activities effectively and efficiently, with intent to manage and perform joint and/or separate activities; monitor and account for actions; produce documents for review, revision, and distribution to support decision making, approval, and related actions. The Parties commit to sharing all required documents (e.g., technical memoranda, draft and final reports, supporting materials, work products, and summaries of expenditures and expenses) within their respective authorities. Each Party is responsible for ensuring their respective policy, technical, and legal requirements are met.
- 4(e) Coordination with Local Water Agencies: CCWD will coordinate with the local water agencies participating the 2015 LV MOU with intent to perform joint and/or separate activities needed to contribute to the Phase 2 Investigation, including but not limited to development of local water supply demands and reservoir expansion facilities and operations.

5. Financial Obligations

- 5(a) Cost Sharing: Reclamation and CCWD will share the eligible costs of preparing the Draft and Final Feasibility Reports, the Draft and Final Supplemental EIS/EIR, and supporting documentation as required. Reclamation may expend up to \$3.5 million of in-kind services, subject to appropriation and availability of funds, toward preparing and reviewing administrative draft and final draft documents, as well as interim deliverables; CCWD may expend \$3.5 million or more of in-kind services, subject to availability of funds, toward producing the administrative draft and final draft documents as well as the additional feasibility documentation required for submittal of the State funding application to the California Water Commission in 2017. The CCWD expenditures must be on parity with Reclamation expenditures. The local water agencies participating in the 2015 LV MOU may spend up to \$0.25 million of

in-kind services, toward producing supporting information for inclusion in the administrative draft and final draft documents as well as the application to the California Water Commission.

5(a)(1) In accordance with Reclamation Directives and Standards, CCWD shall account for the actual expenses incurred by CCWD and the local water agencies participating in the 2015 LV MOU. These expenses shall be provided to Reclamation on a quarterly basis. Requirements of such accounting shall, at a minimum, include the following:

5(a)(1)(i) An explanation, in the form of a progress report, of the work performed for each activity completed during the reported quarter.

5(a)(1)(ii) Progress reports shall include a summary of all costs incurred by CCWD and the local water agencies participating in the 2015 LV MOU. Allowable costs include payroll costs, contract costs, overhead costs, expense vouchers, and other costs as provided in the applicable Office of Management and Budget regulations. Each activity should be supported by reports from CCWD's financial system as well as the local water agencies' financial systems providing a breakdown of actual costs incurred for the current submission and total costs to date for each activity.

5(a)(1)(iii) A cover letter or memorandum signed by an authorized representative of CCWD should accompany the submission. The cover letter shall reference this MOU and any enclosures (i.e. progress report, expenses/payroll summary).

5(b) Financial Obligations: This MOU is not a funding document and does not obligate or transfer funds between the Parties.

5(c) Scope of the Phase 2 Investigation: The PMP, included as Attachment A, details the initial scope of work and level of effort. When the Parties identify new tasks, specific scopes and requirements will be negotiated between the Parties. Attachment A to this MOU will be routinely updated by Reclamation as required and CCWD and any other non-Federal cost-share partners will be notified as appropriate.

5(d) In-Kind Services: Submission of documentation for in-kind services shall be submitted quarterly. Quarterly accounting must detail work done for agreed upon items. Only costs incurred against a cost-share agreement need to be documented and submitted for approval. Project numbers must be used to distinguish various tasks and work phases. Items required for proper verification of work done include certified payroll, applicable contract numbers (i.e., consultant contracts), quarterly reports that coincide with Federal reporting requirements and generally accepted accounting principles, identification of cost-share partners, and scopes of work. Services cannot

be included in any other Federal award in a current or prior period and their value must be based upon current market prices.

6. Term and Termination

- 6(a) Term: This MOU shall take effect upon the date of signature by both Parties and, unless terminated per Article 6(e), will expire 5 years from the date of Reclamation's signature to this MOU.
- 6(b) Amendment: If either Party desires a modification in this MOU, the Parties shall confer in good faith to determine the desirability of such modification. Any amendment must be mutually agreed upon in-writing by Reclamation and CCWD. Any such modification shall not be effective until a written amendment to this MOU is signed by Reclamation and CCWD.
- 6(c) Addition of non-Federal Cost-Share Partners by CCWD: CCWD retains sole discretion to add local water agencies as signatories to the 2015 LV MOU for the purpose of considering these agencies as potential partners in project implementation, including appropriate cost-share arrangements. Addition of local water agencies shall be consistent with the 2003 CCWD Board Principles adopted for both phases of the LVE Investigation. The CCWD will notify Reclamation of such negotiations, if they occur.
- 6(d) Addition of non-Federal Cost-Share Partners by Reclamation: Reclamation retains sole discretion to enter into additional MOUs for the purpose of undertaking and completing the Phase 2 Investigation and other studies related to the Phase 2 Investigation, including appropriate cost-share arrangements to reduce the Federal cost share of the Phase 2 Investigation. Reclamation will notify CCWD of such negotiations, if they occur.
- 6(e) Termination and Suspension: Prior to the expiration of this MOU, upon 60 calendar days written notice to the other Party, either Party may elect without penalty to terminate this MOU or to suspend future performance under this MOU. If either Party suspends its performance, the other Party is relieved of any obligation to perform under this MOU until the suspension is terminated. Any such suspension shall remain in effect until either Reclamation or CCWD terminates this MOU, or the suspending Party notifies the other Party of its intent to end the suspension and perform in accordance with this MOU. Financial Obligations and payment for in-kind services to the date of suspension or termination shall be satisfied.

7. Publications, Reports, and Confidentiality

- 7(a) Publications: The Parties understand and agree this MOU may be disclosed to the public in accordance with the FOIA or the California Public Records Act. Subject to the requirements of confidentiality and preservation of rights in Subject Inventions, described in Article 1(j) herein, either Party may publish the results of the Phase 2

Investigation described in this MOU. A formal Feasibility Report must be consistent with applicable Department of the Interior and Reclamation procedures, requirements, policy, and Attachment A, provided:

- 7(a)(1) The other Party is allowed to review the proposed publication(s) at least 60 days prior to submission for publication by submission to the authorized agent.
- 7(a)(2) The final decision as to the publication content rests with the Party that writes the publication(s).
- 7(b) Reports: The results of the science, engineering, operations, and technology data that are collected, compiled, and evaluated pursuant to this MOU, including interim administrative drafts and final draft reports and/or supporting documents, shall be shared and mutually interchanged by the Parties, consistent with Article 4 above and pertinent Reclamation directives, standards, and policy.
- 7(c) Confidentiality: Any confidential business information used in implementing this MOU shall be clearly marked "CONFIDENTIAL" or "PROPRIETARY" by the submitter, and shall not be disclosed by the recipient without permission of the owner in accordance with applicable law (i.e., E.O. 12600) and this MOU. To the extent either Party orally submits confidential business information to the other Party, the submitting Party will prepare a document marked "CONFIDENTIAL" or "PROPRIETARY" embodying or identifying in reasonable detail such orally submitted confidential information and provide the document to the other Party within 30 days of disclosure.

Any confidential information disclosed by one Party to the other Party shall remain confidential and protected from disclosure to the maximum extent allowed by applicable law. Neither Party shall be bound by confidentiality if the confidential information received from the other Party:

- 7(c)(1) Is already available to the public or the recipient.
- 7(c)(2) Becomes available to the public through no fault of the recipient.
- 7(c)(3) Is non-confidentially received from another Party legally entitled to it.

It shall not be a breach of this MOU if the recipient of confidential information is required to disclose confidential information by a valid order of a court or other government body, or as otherwise required by law, or as necessary to establish the rights of either Party under this MOU; provided that the recipient of confidential information shall provide prompt prior notice thereof to the other Party in order to seek a protective order or otherwise prevent such disclosure, and provided further that the confidential information otherwise shall continue to be confidential.

7(d) Intellectual Property: Unless otherwise agreed by the Parties, custody and administration of inventions made as a consequence of, or in direct relation to, the performance of activities under this MOU shall remain with the respective inventing Party. In the event that an invention is made jointly by employees of the Parties or an employee of an agency's contractor, the Parties shall consult and agree as to future actions toward establishment of patent protection for the invention.

8. General

8(a) Liability: It is understood and agreed that neither Party to this MOU shall be responsible for any damages or injuries arising out of the conduct of activities governed by this MOU, except to the extent that such damages or injuries were caused by the negligent or wrongful acts or omissions of its employees, agents, or officers. Reclamation's liability shall be limited by the Federal Tort Claims Act, 28 USC § 2671, *et seq.*, while CCWD's liability shall be limited by the California Government Claims Act, California Government Code § 810 *et seq.*

8(b) Limitations: This MOU sets out the Parties' intentions and objectives and does not apply to any person outside CCWD and Reclamation. This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by anyone against the United States, its agencies, its officers, or any person.

8(c) Notices: Notices between the signatories and copies of correspondence shall be sent to the Reclamation and CCWD points of contact below:

General Manager
Contra Costa Water District
P.O. Box H20
Concord, CA 94524

Regional Director
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Telephone: 925-688-8034

Telephone: 916-978-5012

8(d) Anti-Deficiency Act: All activities, responsibilities, and commitments made under or pursuant to this MOU are subject to the availability of funds and each Parties' budget priorities, as determined by each Party. No provision herein shall be interpreted to require obligation or payment of funds. Further, no provision shall be interpreted in violation of the Anti-Deficiency Act, 31 U.S.C. 1341, and no liability shall accrue to the United States in the event that funds are not appropriated or allotted. No liability of one party may be transferred to the other party.

8(e) Counterparts: This MOU shall be executed in duplicate and each original, once fully executed, shall be equally effective.

8(f) Subcontracting Approval: A Party hereto desiring to obtain and use the services of a third party via contract or otherwise shall give prior notice to the other Party, including

details of the contract or other arrangement. This requirement is to assure confidentiality is not breached and rights in subject inventions are not compromised.

- 8(g) Assignment: Neither Party has the right to assign this MOU or any of its responsibilities hereunder.
- 8(h) Endorsement: CCWD shall not in any way state or imply that this MOU, or the results of this MOU, is an endorsement by the Federal government, Department of the Interior, or Reclamation or its organizational units, employees, products, or services except to the extent permission is granted by an authorized representative of Reclamation.
- 8(i) Regulatory Compliance: Both Parties acknowledge and agree to comply with all applicable laws and regulations of the Federal, State, and local environmental, cultural, and paleontological resource protection laws and regulations as applicable to the activities or projects for this MOU. These regulatory compliance requirements may include but are not limited to, the NEPA including the Council on Environmental Quality and Department of the Interior regulations implementing NEPA, the Clean Water Act, the Endangered Species Act, consultation with potentially affected tribes, and consultation with the State Historic Preservation Office. Los Vaqueros Reservoir, as an existing facility, is subject to a number of Federal, State, and local permits. Both Parties acknowledge these existing permits and agree to consider these permits while conducting the Phase 2 Investigation.
- 8(j) Disputes: Any dispute arising under this MOU, which cannot be readily resolved, shall be submitted jointly to the key personnel officials, identified above. Each Party agrees to seek in good faith to resolve the issue through negotiation, or other forms of nonbinding dispute resolution processes, if mutually acceptable to the Parties. Pending the resolution of any dispute or claim, the Parties agree that performance of all obligations shall be pursued diligently.
9. Signatures and Authorities In Witness Whereof, the Parties execute this MOU on the date and year indicated below.

9(a) Bureau of Reclamation

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
MID-PACIFIC REGION

Dated: 12/16/15

By: 
Regional Director

9(b) Contra Costa Water District

CONTRA COSTA WATER DISTRICT

Dated: 11/17/15

By: 
General Manager