

MEMORANDUM OF AGREEMENT  
between  
CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
and  
THE MONTEREY COUNTY WATER RESOURCES AGENCY

regarding the

NACIMIENTO RESERVOIR INTERLAKE TUNNEL PROJECT AND SAN ANTONIO  
SPILLWAY MODIFICATION PROJECT

RECITALS

- A. The California Department of Fish and Wildlife (“CDFW”) is a Department of the California Natural Resources Agency, functioning as a trustee agency of the State of California that manages California's diverse fish, wildlife and plant resources, and the habitats upon which they depend; and
- B. The Monterey County Water Resources Agency (“Agency”) is a flood control and water agency established in 1990 by special act of the state legislature codified at Water Code Appendix Chapter 52, and is the successor to the Monterey County Flood Control and Water Conservation District established in 1947, also by special act of the state legislature; and

The Agency and CDFW recognize the unique potential to partner with each other, the County of Monterey, landowners, and other partners to develop improved water management, storage, and conservation that can benefit local water needs and use, the agricultural community, improve watershed health and resiliency, and the conservation of native fishes, including steelhead. This MOA represents the initiation of a partnership to pursue these benefits; and

- C. The Agency proposes to construct a tunnel connecting the Nacimiento and San Antonio Reservoirs in San Luis Obispo and Monterey Counties, respectively, (“Tunnel Project”). The purpose of the tunnel is to fully utilize the existing storage capacity in San Antonio Reservoir, thus providing for increased aquifer recharge capability to enhance Basin sustainability, and, concomitantly providing additional flood management capability through a reduction in flood event volumes and a reduction in flood spills from the Nacimiento Reservoir; and
- D. The Agency also proposes to raise the spillway at the San Antonio Reservoir (“Spillway Modification Project”) in Monterey County in conjunction with the Tunnel Project in order to further increase the storage capacity of San Antonio Reservoir, which additional storage capacity increases the benefits obtained from construction of the tunnel alone and increases the Agency’s aquifer recharge capability. (collectively, the Tunnel Project and Spillway Modification Project are referred to as the “Projects”)The Spillway Modification Project, by itself, would not affect the transfer of white bass between the Nacimiento and

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San Antonio Reservoirs, and this Memorandum of Agreement is focused on the Tunnel Project and White Bass management; and

- E. The Agency intends to design the Tunnel Project to approximately 60% design completion utilizing conventional design, conduct a Proposition 218 vote to obtain funding and then issue a design-build contract for the remaining design and construction; and
- F. The Agency intends to construct the Spillway Modification Project utilizing the design-bid-build method of procurement; and
- G. White Bass (*Morone chrysops*), native to St. Lawrence-Great lakes, Hudson Bay and Red River Basin, and Mississippi River basins from Quebec to Manitoba and south to Louisiana, are present in the Nacimiento Reservoir and have periodically been physically observed in the Nacimiento River, a tributary of the Salinas River. White Bass were introduced to Nacimiento Reservoir in 1965, but concerns about the spread of the fish during the 1970s resulted in management actions to eradicate the species in all but Nacimiento and subsequent regulatory and state code changes to preclude White Bass from any waters of California other than Nacimiento Reservoir; and
- H. Thus far, White Bass have not been detected in the San Antonio Reservoir. White Bass are a non-native species listed by state regulation as Detrimental as they may alter/affect existing sport fisheries resulting in a shift from more preferred gamefish to a fishery dominated by White Bass. Additionally, they pose a threat to native fish species, including vulnerable steelhead. Steelhead trout inhabiting the Salinas River Basin are part of the South-Central California Coast Evolutionary Significant Unit (SCCC-ESU) as defined by the National Marine Fisheries Service (NMFS). The NMFS listed steelhead trout in the SCCC-ESU as a federally threatened species under the Federal Endangered Species Act and CDFW is a co-manager for the SCCC-ESU; and
- I. California Fish and Game Code (F&G) Section 6400 makes it unlawful to place, plant or cause to be planted in any waters of the State any live white bass without first submitting it for inspection and securing written permission from CDFW. F&G Section 6400.5 makes it unlawful to transport or possess any live white bass unless it is first submitted for inspection to, and written permission is obtained from CDFW; and
- J. The CDFW and the Agency have been conferring in relation to the Agency's request for written permission from CDFW under F&G Sections 6400 and 6400.5, in the event of incidental passage of White Bass from the Nacimiento Reservoir to the San Antonio Reservoir; and
- K. CDFW and the Agency have identified physical structures and parameters to the structures, including a contemporary functional fish exclusion screen ("fish screen"), a tunnel intake, and physical components of the tunnel outlet, and operating conditions that can be reasonably and feasibly incorporated into the Project design to prevent or inhibit the opportunity for the movement or survival of White Bass through the Tunnel while maintaining the tunnel diversion flow; and

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- L. CDFW acknowledges that it has received from the Agency information and technical studies regarding the Tunnel Project's environmental benefits over the current conditions; and
- M. By entering into this MOA, CDFW and the Agency intend that CDFW, as a California Environmental Quality Act (CEQA) responsible and trustee agency, will cooperate with and provide guidance to the Agency in the completion of Agency's Interlake Tunnel and Spillway Modification Projects Environmental Impact Report (EIR) that analyzes the potentially significant effects arising from implementation of both Projects, including an analysis of the possible incidental passage of White Bass through the Tunnel; and
- N. CDFW has provided a path to coverage under the California Fish and Game Code for the Agency in the event that White Bass move through the tunnel, despite based on the Agency's incorporation of certain measures, in consultation with CDFW, to avoid or minimize White Bass passage or survival through the Tunnel; and
- O. The Agency and CDFW have established, a centralized and coordinated method for the internal communication within the CDFW, and between CDFW as a whole and the Agency, in the Agency's application for the necessary permits from the CDFW for the Project; and
- P. CDFW desires to cooperate with and assist the Agency in the Tunnel Project with respect to implementing, maintaining and monitoring measures to prevent or inhibit the passage and survival of White Bass out of the Nacimiento and San Antonio Reservoirs; and
- Q. The Agency is willing to incorporate reasonably feasible measures into the Tunnel Project with the assistance of CDFW which prevent or inhibit White Bass to viably pass into San Antonio Reservoir and spawn, and which also contributes to protection for the Steelhead Trout in the Salinas River and its tributaries.
- R. Through this Agreement, CDFW and the Agency wish to identify those features of the Tunnel Project that would facilitate CDFW's granting of permission under sections 6400 and 6400.5 of the Fish and Game Code.

NOW THEREFORE, CDFW and Agency agree as follows:

1. Effective Date and Term.

This Memorandum of Agreement (MOA) will be effective as of the date last signed by either of the parties and shall remain in effect for 25 years after construction of the Tunnel Spillway Modification have been certified by the Agency as complete. This MOA may be amended annually by mutual written agreement of the parties.

2. Agency Project Principles.

- A. The Project provides flood control, water recharge, and conservation stream flows that will generally be beneficial. It is anticipated that the mitigation measures incorporated as a result of the EIR and agency consultations will result in a Project that is beneficial to

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stakeholders and the region.

- B. Feasibility of the Project includes technological, engineering, environmental, and economic factors. The Project must be developed incorporating feasible design and operational features. Feasibility includes what is technologically feasible, environmentally desirable and economically viable.
- C. In order to design and environmentally assess the Project and prepare a Proposition 218 engineer's report that comprehensively captures the true and full costs of the Project, there must be relative certainty concerning the design features, construction, operational and maintenance costs, and readily available sources of funding.
- D. Agency and CDFW will identify a coordinated and timely path for the processing of those analyses, applications, and associated reviews necessary to prepare the Project for final CDFW regulatory permit review and decision.

### 3. Commitments of the Parties.

#### A. Design of the Tunnel Project

##### I. Agency.

- a. Incorporate into the design-build contract the incremental cost to design and construct an intake structure in Lake Nacimiento sufficient to accommodate the installation of a functional fish screen and associated intake and outlet characteristics to provide a low probability of White Bass entering the tunnel while also maintaining the tunnel diversion flow. The intake structure will include the incremental improvements over a conventional basic intake structure to provide an entrance and approach channel suitable to accommodate the installation of the fish screen. The Agency and CDFW have agreed to design parameters and acceptable ranges for a fish screen and associated intake structure. Those parameters are attached as Exhibit A.
  - i. For each design submittal to CDFW, CDFW shall provide its comments on said design specifications and drawings to the Agency within a reasonable time frame after the Agency provides those design specifications and drawings to CDFW. The Agency shall incorporate those CDFW changes that are in accordance with the design parameters and acceptable ranges for each parameter as mentioned above into the final design specifications and drawings at Agency's cost and expense.
  - ii. If prior to or after completion of the Tunnel Project, either (a) CDFW determines that White Bass are established in Lake San Antonio or (b) Fish and Game Code Section 6400 or Section 6400.5 is changed to allow White Bass in Lake San Antonio, the

Parties will meet and confer as provided in sections 3.C.II.i and 3.D below.

B. CEQA Process

- I. The Parties agree that the Agency shall serve as the Lead Agency for the purposes of the California Environmental Quality Act (CEQA) because the Agency is the public agency that must provide the initial approval of the proposed project.
- II. CDFW shall serve as responsible agency under CEQA because it will be responsible for issuing certain permits for the project, including (without limitation) authorization under section 6400 and 6400.5 of the Fish and Game Code.
- III. The Agency shall prepare the Interlake Tunnel and Spillway Modification Project EIR that will:
  - a. Analyze the potentially significant environmental effects related to the potential movement of White Bass from Nacimiento Reservoir to San Antonio Reservoir.
  - b. Use the foregoing facility descriptions in the “project description” for the EIR.
  - c. Thoroughly analyze and discuss potential intake locations, designs and impacts of the proposed projects on State and federally listed and special status species.
  - d. Mitigate, to the extent feasible, any significant adverse effect on the environment from the proposed project that may result from the movement of White Bass from Nacimiento Reservoir to San Antonio Reservoir or other locations in the Salinas Valley.
  - e. Use an integrated groundwater and surface water flow model developed through Monterey County’s Salinas River Groundwater Basin Investigation to evaluate reservoir releases that will avoid and minimize the impacts of the project on downstream habitat. The modeling assumptions and constraints in the analysis shall be clearly outlined in the EIR and discussed as part of the scoping process with CDFW and National Marine Fisheries Service (NMFS). Notwithstanding the prior sentence, the Agency shall make the final determination on all modeling assumptions and constraints.
- IV. CDFW shall serve as a Responsible Agency under CEQA and shall:

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- a. Provide timely comments on drafts of the EIR and any other documents/models circulated to CDFW by the Agency for review and comment.
- b. CDFW shall commence its process to review and issue the permits needed for the construction and operation of the project in a timely manner, provided that the project to be implemented conforms to the design specifications and drawings requested by CDFW and the Agency has certified its EIR for the Project.

C. Subsequent Fisheries Monitoring

- I. If financial and staff resources are available, two (2) years after the completion of the Tunnel Project, CDFW will commence monitoring for White Bass in both reservoirs, the Salinas River, and relevant tributaries to the Salinas River. CDFW will endeavor to make fisheries monitoring a multiple party activity, including NMFS and other interested and able fisheries and water organizations. The Agency will endeavor to participate in monitoring if financial and staff resources are available.
- II. If monitoring in San Antonio Reservoir or the Salinas River detects the presence of any life stage of White Bass, CDFW will evaluate available and reasonable actions to 1) contain and 2) eradicate White Bass. CDFW shall immediately inform the Agency and confer with the Agency and other appropriate fisheries and water management organizations. Depending on the life stage(s) detected, the extent of distribution, and the time of year at detection, CDFW will commence response actions as soon as possible subject to available funding.
  - i. CDFW and the Agency shall meet and confer to re-evaluate reservoir and tunnel management to determine if different management actions or additional physical attributes to the Project is feasible and would better control White Bass immigration to the San Antonio Reservoir, San Antonio River, or Salinas River. The Agency shall cooperate in CDFW's discussions and planning.
- D. If different management actions or additional physical attributes to the projects are identified as feasible and would better control White Bass immigration, the Parties shall meet and confer to determine the most appropriate method for moving forward with implementing such management actions or additional physical attributes, while preserving the Project Objectives as presented in the EIR. At a minimum, the Parties agree to assist each other to identify potential funding sources and the process for acquiring that Funding.

The Agency and CDFW agree that:

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- I. The Agency is responsible for costs associated with constructing and implementing the projects as described in the final (certified) EIR and applicable designs approved by the Agency.
- II. Construction of the projects is dependent upon availability of local assessments, supplemented by some state financial assistance. Implementation of design, operational and other project features is dependent upon timely availability of supplemental funding.
- III. Contingent on available funds and staffing, CDFW will lead for fisheries monitoring associated with the reservoirs, the Salinas River, and associated tributaries in the watershed after completion of the Project. CDFW will be responsible for coordinating with, the Agency, NMFS, United States Fish and Wildlife Service, and other organization that may be part of such monitoring.
- IV. Within the limitations of its mandates and its resources, and in pursuing the activities undertaken in this MOA, if CDFW becomes aware of funding sources or opportunities that might be available for elements of the Project, CDFW will bring those opportunities to the attention of the Agency.
- V. In the event the result of the Proposition 218 election identified in Recital E is not affirmative in securing funding for the remaining design and construction of the projects, then this MOA shall be null and void.

E. Construction

The Agency shall incorporate all the measures proposed by CDFW, reflected in Exhibit A\_\_, to protect against the adverse impacts of expanding White Bass through the tunnel into San Antonio Reservoir or the Salinas River.

- F. The Department anticipates that, based on the information it currently has, it will be able to authorize the incidental transfer of white bass between the Nacimientos and San Antonio Reservoirs under California Fish and Game Code sections 6400 and 6400.5 if the Agency constructs the tunnel incorporating those measures specified in this MOA and in accordance with the mitigation measures appearing in the Tunnel Project's certified EIR to avoid or minimize White Bass passage or survival through the Tunnel Project.

4. General Provisions.

A. No Assignment.

Neither party shall assign or transfer this MOA, or any part thereof, without the written consent of the other Party at least 30 days prior to the assignment or transfer.

B. Independent Contractor.

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Nothing in this MOA shall be construed or interpreted to make the Agency or any Agency employee anything but independent contractors and in all the Agency's activities and operations pursuant to this MOA, neither the Agency nor Agency employee shall for any purposes be considered employees or agents of the CDFW.

C. Authority to Bind the CDFW.

It is understood that the Agency, in the performance of any and all duties under this MOA, has no authority to bind the CDFW to any agreements or undertakings with respect to any and all persons or entities with whom the Agency deals in the course of business.

D. Authority to Bind the Agency.

It is understood that the CDFW, in the performance of any and all duties under this MOA, has no authority to bind the Agency to any agreements or undertakings with respect to any and all persons or entities with whom the CDFW deals in the course of business. This section does not affect CDFW's administration and enforcement of the Fish and Game Code including but not limited to issuing permits and approvals under that code.

E. Notices.

- I. Notices permitted or required to be given to the respective parties under this MOA shall be deemed given (1) when personally delivered to the Agency or CDFW; (2) when personally delivered to the party's principal place of business during normal business hours (i.e., to the CDFW offices in Sacramento, California, or to the Agency's office in Salinas, California), by leaving the notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) twenty-four (24) hours after the notice is transmitted by fax machine to the other party, to the fax number indicated below; or (4) three (3) days after the notice is deposited in the U.S. mail (by first class, certified, registered, or express mail), with postage fully prepaid, addressed to the party as indicated below. All notices shall be in writing.

II. Notices mailed to the parties shall be addressed as follows:

To CDFW:

Charlton H. Bonham  
Director  
California Department of Fish and Wildlife  
1416 Ninth Street  
Sacramento, CA 95814  
Phone: 916-653-7667  
Fax: 916-653-7387

To the Agency:

David E. Chardavoyne  
General Manager  
Monterey County Water Resources Agency  
1441 Schilling Place / PO Box 930  
Salinas, CA 93901  
Phone: 831-755-4860  
Fax: 831-424-7935

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The mailing addresses, addressees, and fax numbers specified in this paragraph may be changed by either party, by giving notice to the other in the manner provided herein.

F. Modifications.

This MOA may be modified or amended only by prior-to 3-day written agreement of the parties. No waiver or modification of this MOA or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the parties hereto.

G. No Waiver.

- I. No covenant or condition of this MOA can be waived except by the written consent of the CDFW. Forbearance or indulgence by the CDFW in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the Agency. The CDFW shall be entitled to invoke any remedy available to the CDFW under this MOA or by law or in equity despite said forbearance or indulgence.
- II. No covenant or condition of this MOA can be waived except by the written consent of the Agency. Forbearance or indulgence by the Agency in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the CDFW. The Agency shall be entitled to invoke any remedy available to the Agency under this MOA or by law or in equity despite said forbearance or indulgence.

H. Sole Agreement.

This MOA contains the entire agreement of the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this MOA shall be of no force or effect excepting a subsequent modification in writing, signed by the parties hereto.

I. Venue.

If any party herein initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that venue thereof shall be the County of Monterey, State of California.

J. Construed Pursuant to California Law.

The parties hereto agree that the provisions of this MOA will be construed pursuant to the laws of the State of California.

IN WITNESS WHEREOF, CDFW and AGENCY have caused this Memorandum of Agreement to be executed:

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Dated: \_\_\_\_\_

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\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_

MONTEREY COUNTY WATER RESOURCES AGENCY

By: \_\_\_\_\_

Luis Alejo, Chair, Board of Supervisors

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MOA MCWRA CDFW 5-29-18 mcwra ver7