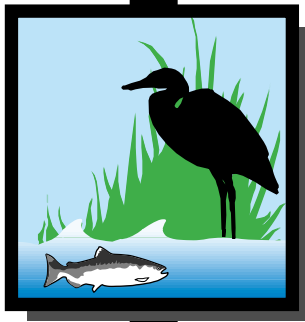
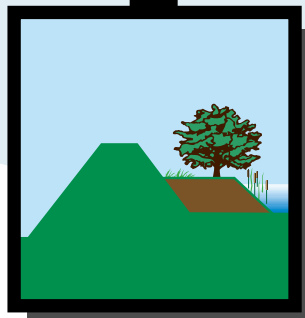
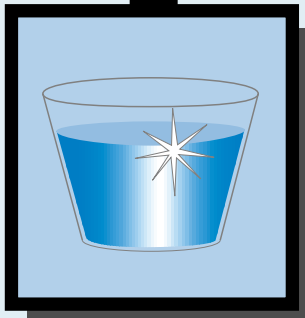




CALFED
BAY-DELTA
PROGRAM



Attachment 8

Clean Water Act Section 401

Memorandum of Understanding

August 28, 2000

**MEMORANDUM OF UNDERSTANDING
ON CLEAN WATER ACT SECTION 401
FOR THE CALFED BAY-DELTA PROGRAM**

RECITALS

These recitals provide background and context for the Memorandum of Understanding (401 MOU) that follows.

A. In 1994, the Governor's Water Policy Council of the State of California and the Federal Ecosystem Directorate entered into a Framework Agreement to establish a comprehensive program for coordination and communication with respect to environmental protection and water supply dependability in the Bay-Delta Estuary. This Framework Agreement served as the basis for the CALFED Bay-Delta Program.

B. The mission of the CALFED Bay-Delta Program is to develop a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the Bay-Delta system. The CALFED Bay-Delta Program is also guided by solution principles adopted by CALFED agencies. According to the solution principles, a successful Bay-Delta solution must reduce conflicts in the system, be equitable, be affordable, be durable, be implementable, and have no significant redirected impacts.

C. To achieve its purposes, the CALFED Bay-Delta Program has developed eight broad programs as elements of the CALFED Preferred Program Alternative. These program elements are:

1. Ecosystem Restoration Program
2. Levee System Integrity Program
3. Storage
4. Conveyance
5. Water Use Efficiency Program
6. Water Quality Program
7. Water Transfer Program
8. Watershed Program

D. The CALFED Bay-Delta Program seeks to initiate implementation of its Preferred Program Alternative after execution of a Record of Decision and Certification pursuant to NEPA and CEQA. The 30-year implementation period following the Record of Decision and Certification is referred to as Phase III of the Program. The CALFED Bay-Delta Program has defined the first seven years after execution of a Record of Decision and Certification as Stage 1 of Phase III.

E. The CALFED Program includes activities that may result in a discharge into waters of the United States.

F. The Clean Water Act (Act) establishes a goal of restoring and maintaining the chemical, physical, and biological integrity of the Nation's waters. Under Section 401 of the Act, applicants for Federal licenses or permits for activities that may result in a discharge into waters of the United States must first obtain a certification from the state in which the discharge would originate. The certification must verify that the discharge will comply with the applicable effluent limitations, State water quality standards and other appropriate requirements. A certification for the construction of a facility must also cover the operation of the facility. The State Water Resources Control Board (SWRCB) and the Regional Water Quality Control Boards (RWQCBs) issue water quality certifications pursuant to Section 401 of the Act, pursuant to Water Code section 13160, and pursuant to California Code of Regulations, title 23, sections 3830-3869. Applications for 401 certifications are filed in the manner set forth in California Code of Regulations, title 23, section 3855¹.

G. Section 401 certification is not required for the selection of the Preferred Program Alternative, but may be required prior to implementing individual components of the Preferred Program Alternative. An applicant must provide the materials specified in California Code of Regulations, title 23, section 3856 to the Executive Officer of a RWQCB or to the Executive Director of the SWRCB.

H. The SWRCB or the RWQCB, as provided in California Code of Regulations, title 23, sections 3855-3861, may issue certification or deny certification.

I. DEFINITIONS

Signatories are CALFED agencies that have executed this Understanding. Signatories include the U.S. Bureau of Reclamation, the State Water Resources Control Board, the Regional Water Quality Control Boards for the Central Valley Region and the San Francisco Bay Region, the California Department of Water Resources and the California Department of Fish and Game.

Stage 1 Actions are those CALFED Actions that have been designated by the CALFED Policy Group, or its successor, to begin implementation during the seven-year period immediately following execution of the Record of Decision and Certification of the Final Programmatic Environmental Impact Statement and Environmental Impact Report (EIS/EIR) for the CALFED Bay-Delta Program.

Phase II is the period of time during which the CALFED agencies developed a Preferred Program Alternative, conducted comprehensive environmental review, and developed a plan for implementing the Preferred Program Alternative. Phase II concludes with the filing of a Record of Decision and Certification of the Final Programmatic EIS/EIR.

¹ For example, applications for 401 certification are typically filed with the RWQCB executive officer in whose region a discharge may occur, except that 401 applications are filed with the executive director of the SWRCB for projects that involve (1) multiple RWQCBs (2) application for water rights or other diversions of water for beneficial use or (3) requests to the Federal Energy Regulatory Commission for licenses or amendments to licenses.

Phase III refers to the period of time following the Record of Decision and Certification through the 30-year planning horizon used in developing the CALFED plan. Phase III will include site-specific environmental review and permitting.

II. UNDERSTANDING

- A. The Signatories acknowledge that individual CALFED Program activities in Phase III must be consistent with Clean Water Act section 401.
- B. The Signatories recognize the integrated nature of the CALFED Program and will evaluate individual activities in the context of the overall program.
- C. The Signatories recognize that this Understanding makes no conclusions about the nature of, or extent of, control measures that may be required for individual activities that need Clean Water Act Section 401 certification.
- D. The Signatories recognize that the CALFED agencies have completed and certified a Final Programmatic Environmental Impact Statement and Report (EIS/EIR) for the CALFED Bay-Delta Program.
- E. The SWRCB and RWQCBs agree that 401 certifications for actions consistent with the Final Programmatic EIS/EIR will be based on whether the proposed discharge complies with applicable effluent limitations, State water quality standards and other appropriate water quality requirements.
- F. The Signatories agree to consider a generalized permit certification process during Stage 1 of implementation, pursuant to California Code of Regulations, title 23, section 3861.

III. ADDITIONAL PROVISIONS

- A. Applicability of this Understanding.** This Understanding was developed in response to a unique circumstance, namely the CALFED Bay-Delta Program, and does not have broader applicability beyond the CALFED Program.
- B. Limitations on this Understanding.** This Understanding does not provide a determination of compliance for individual CALFED activities that may result in a discharge of a pollutant into waters of the United States.
- C. Reservation of Authorities.** This Understanding does not modify existing agency authorities by reducing, expanding or transferring any of the statutory or regulatory authorities and responsibilities of any of the Signatories.

D. Reservation of Agency Position. No Signatory to this Understanding waives any administrative claims, positions, or interpretations it may have with respect to the applicability or enforceability of any law or regulation.

E. Obligation of Funds, Commitment of Resources. Nothing in this Understanding shall be construed as obligating any of the Signatories to the expenditure of funds in excess of appropriations authorized by law or otherwise commit any of the Signatories to actions for which it lacks statutory authority.

F. Nature of Understanding. This Understanding is not intended to, and does not, create any other right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, the State of California, any agencies thereof, any officers or employees thereof, or any other person.

Having considered the contents of this document, its attachments and the documents supporting this decision, we hereby adopt this Clean Water Act, Section 401 Memorandum of Understanding. By signing this document together, we exercise our respective authorities over only those portions relevant to our authority.

Signed and dated:

United States of America



Lester A. Snow, Director, Mid-Pacific Region
U.S. Bureau of Reclamation

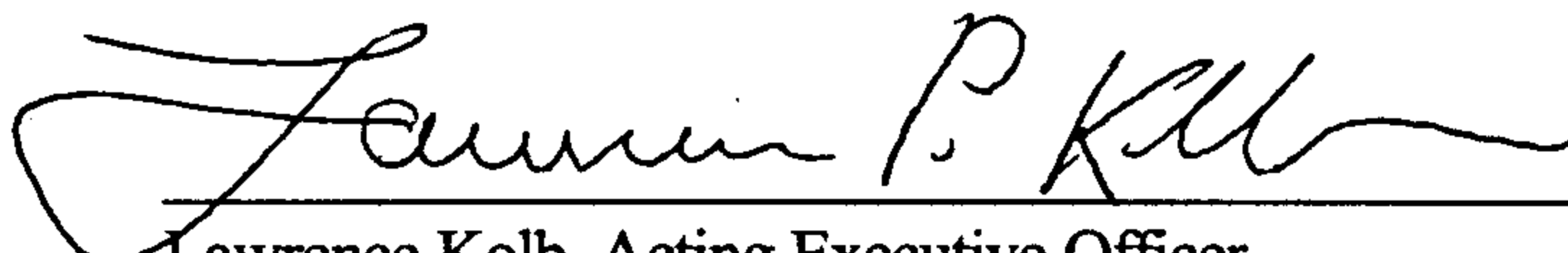
8/28/00
Date

State of California



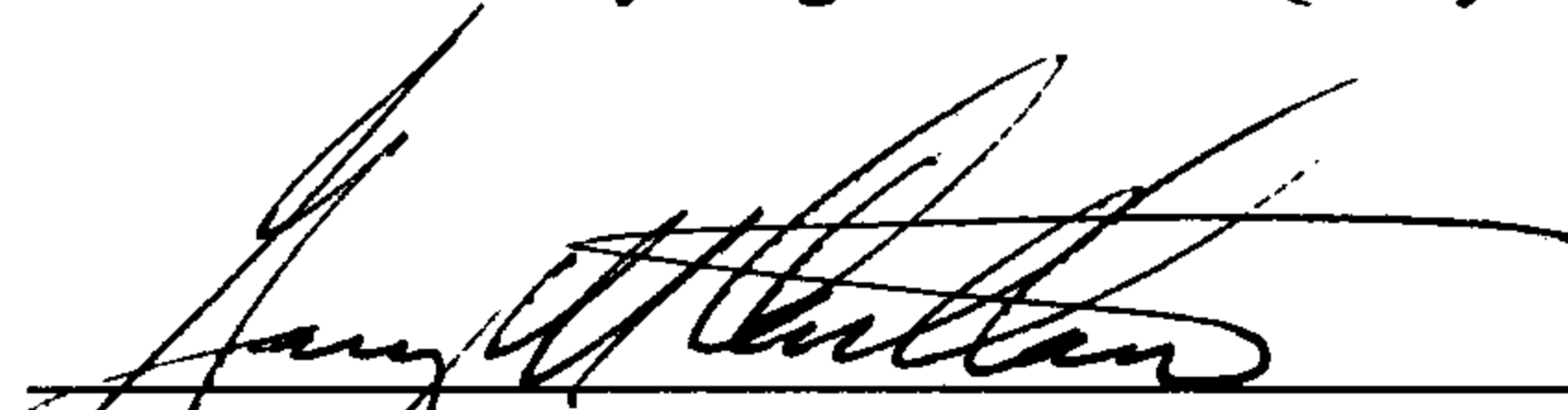
Ed Anton, Acting Executive Director
State Water Resources Control Board

8/28/00
Date



Lawrence Kolb, Acting Executive Officer
San Francisco Bay Regional Water Quality Control Board

8/23/2000
Date



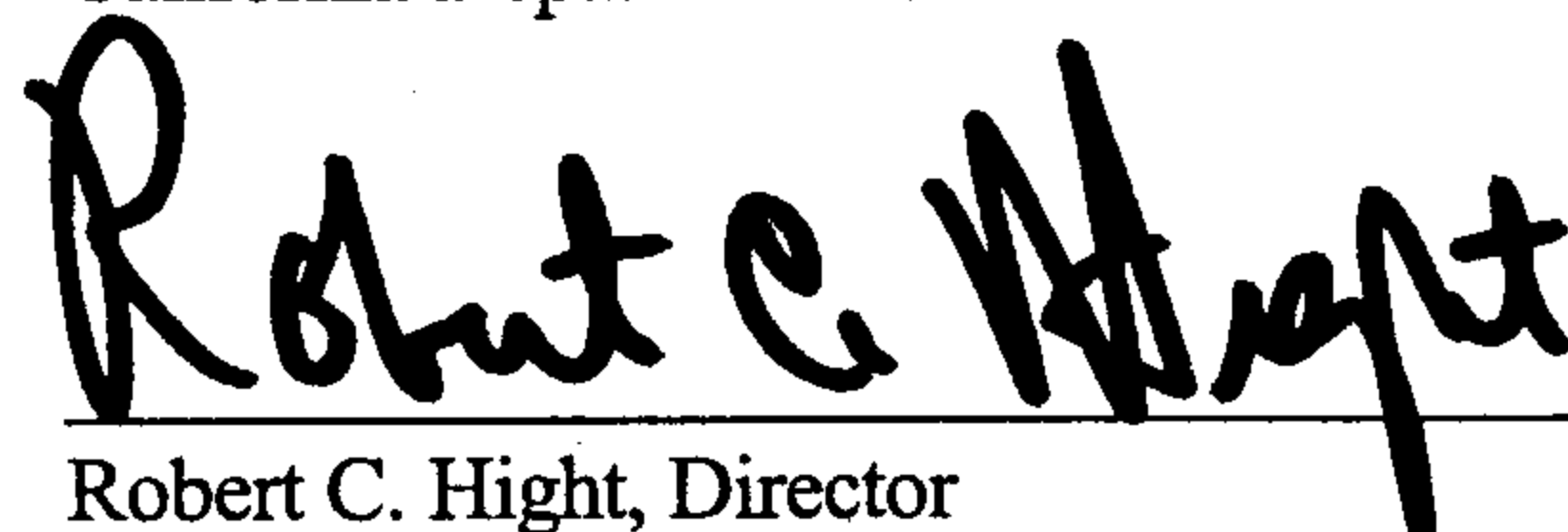
Gary Carlton, Executive Officer
Central Valley Regional Water Quality Control Board

24 Aug 2000
Date



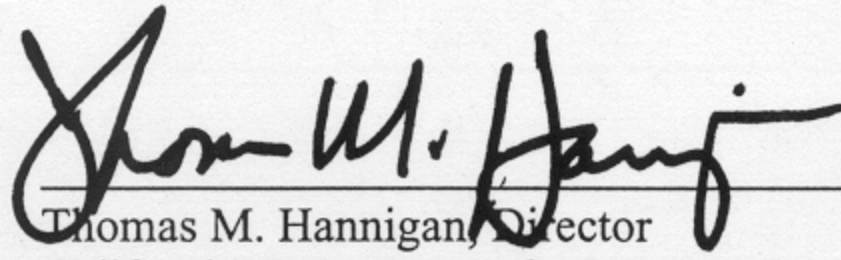
Thomas M. Hannigan, Director
California Department of Water Resources

8/28/2000
Date

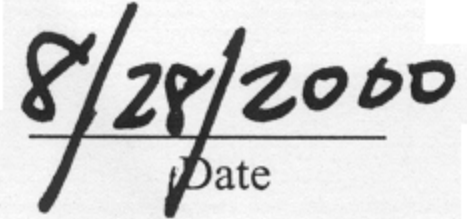


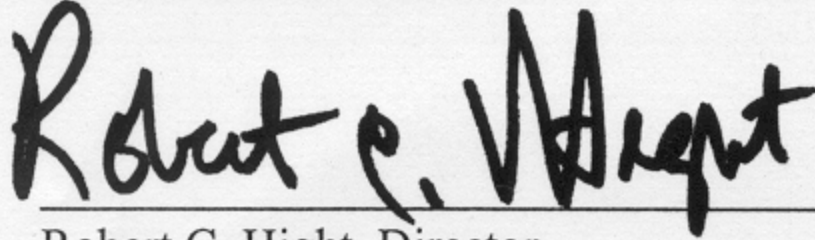
Robert C. Hight, Director
California Department of Fish and Game

8/28/00
Date

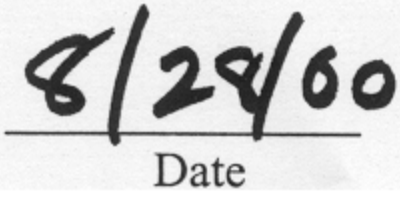


Thomas M. Hannigan, Director
California Department of Water Resources


Date



Robert C. Hight, Director
California Department of Fish and Game


Date