



California Natural Resources Agency
 DEPARTMENT OF FISH AND GAME
 Bay Delta Region
 Post Office Box 47
 Yountville, California 94599
 (707) 944-5500
<http://www.dfg.ca.gov>

ARNOLD SCHWARZENEGGER, Governor
 DONALD KOCH, Director



ORIGINAL DOCUMENT
 SONOMA COUNTY WATER AGENCY
 POOLE, GEARY, BADER
 TO MANAGING, SHOPE, VAIL

OCT - 5 2009

October 1, 2009

CF/45-0-21 California Department of Fish and Game
 (Memorandum of Agreement [MOU] Regarding
 Implementation of Financial Assurances)

Randy Poole
 General Manager/Chief Engineer
 Sonoma County Water Agency
 404 Aviation Boulevard
 Santa Rosa, California 95403-9019

Attention: David Manning, Principal Environmental Specialist

Dear Mr. Poole:

Subject: Memorandum of Agreement Between Sonoma County Water Agency and California Department of Fish and Game Regarding Implementation of Financial Assurances for a Consistency Determination

Enclosed are two original copies of the subject Memorandum of Agreement (MOA). Please sign both copies and return one fully executed original as soon as possible to the address listed below. The Department of Fish and Game needs the fully executed agreement either before the Sonoma County Water Agency submits the request for a Consistency Determination or concurrent with its submission.

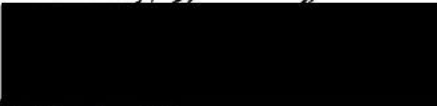
Please return to:

Department of Fish and Game
 Attention: Kathy Geary
 Post Office Box 47
 Yountville, California 94599

Please note that on page 2, section 1.1 of the MOA, an error in the written dollar amount was corrected to match the numerical amount (\$7,770,280) which was verified as the correct amount.

If you have any questions, please contact Dan Wilson, Environmental Scientist, at (707) 944-5534; or Richard Fitzgerald, Senior Environmental Scientist, at (707) 944-5568.

Sincerely,


 Charles Armor
 Regional Manager
 Bay Delta Region

Enclosures

**MEMORANDUM OF AGREEMENT BETWEEN SONOMA COUNTY WATER
AGENCY AND CALIFORNIA DEPARTMENT OF FISH AND GAME REGARDING
IMPLEMENTATION OF FINANCIAL ASSURANCES FOR A
CONSISTENCY DETERMINATION**

This Memorandum of Agreement (“MOA”) between Sonoma County Water Agency (“SCWA”) and the State of California, acting by and through the California Department of Fish and Game, (“CDFG”) is entered into and effective on the date of the last signature below.

Purpose

A. On September 24, 2008, the National Marine Fisheries Service (“NMFS”) issued its biological opinion and incidental take statement (“ITS”) regarding SCWA’s operation and maintenance activities in the Russian River Watershed (the “Russian River Project”) in accordance with the authority of NMFS under the federal Endangered Species Act, 16 U.S.C. § 1531, et seq. (“ESA”). The ITS covers three species of fish listed under ESA, Central California Coast steelhead (*Oncorhynchus mykiss*), Central California Coast coho salmon (*O. kisutch*), and California Coastal Chinook salmon (*O. tshawytscha*). The ITS serves as the basis for the Consistency Determination by CDFG with respect to coho salmon (*O. kisutch*), which is listed under the California Endangered Species Act, Fish and Game Code § 2050, et seq. (“CESA”).

B. An applicant for a Consistency Determination must ensure adequate funding to carry out the terms of the ITS. This MOA is intended to provide a mechanism to ensure such adequate funding. Pursuant to this MOA, CDFG shall be the beneficiary of a letter of credit (“Letter of Credit”) pursuant to a Consistency Determination based upon the ITS and its associated requirements and supporting documentation.

C. This purpose of this MOA is to ensure adequate funding, and this MOA shall not be construed to alter or amend the ITS or any of its associated requirements.

NOW THEREFORE, IT IS MUTUALLY AGREED THAT:

1. Financial Security Under the BO. The BO provides as follows:

SCWA shall provide security (Security), in a form and an amount to be approved by DFG, to cover all costs of monitoring and management of the Russian River estuary, and for monitoring, management and construction of habitat enhancement projects in Dry Creek, and the tributaries to Dry Creek, as specified in Sections [X 2.1.1], [X 2.2-2.4], [X 3.1.1 and 3.1.2] and Section [X 4.3] (coho broodstock smolt program) of this Biological Opinion.

SCWA shall provide Security in three stages: (1) Stage 1 shall cover years 1-6 (2009-2013) and shall be provided to DFG prior to receiving take authorization for coho

salmon from DFG (i.e., prior to issuance of a consistency determination); (2) Stage 2 shall cover years 7-9 (2014-2016) and shall be provided to DFG no later than January 1, 2013; and (3) Stage 3 shall cover years 10-15 (2017-2022) and shall be provided to DFG no later than January 1, 2016. Table 34 sets forth the monitoring, management, and construction activities included in each of the three Security/funding stages.

To meet the obligation of SCWA to provide financial security with respect to Stage One activities, within fifteen (15) calendar days of the date on which SCWA sends its request for a Consistency Determination for the Russian River Project, SCWA shall provide CDFG with a Letter of Credit substantially in the form of Exhibit A, to be utilized by CDFG in accordance with the terms of and subject to the limitations set forth in this MOA. The parties intend that SCWA will provide financial security with respect to Stage Two and Stage Three activities through MOAs and Letters of Credit that are substantially similar in form to this MOA and the Letter of Credit attached hereto as Exhibit A, and in amounts to be mutually agreed upon (with the current estimates of such amounts being \$8,606,560 for Stage Two and \$12,765,840 for Stage Three).

1.1 Form and Amount of the Credit. The Principal Sum of the Letter of Credit shall be in the amount of Seven Million Seven Hundred and Seventy Thousand Two Hundred Eighty Dollars (\$7,770,280). Said Principal Sum may be reduced from time to time in accordance with the provisions of Section 4. The Letter of Credit must be issued by a financial institution chartered by the United States or State of California, or by an insurance firm authorized to operate in the State of California and subject to the jurisdiction of the State of California in the conduct of its business.

1.2 Term of Letter of Credit. Notwithstanding the approved 15-year term of the ITS, SCWA shall maintain the Letter of Credit on an annual basis, and if the Consistency Determination is withdrawn, SCWA shall maintain the Letter of Credit for 365 days following the effective date of the withdrawal of the Consistency Determination.

1.3 Replacement of the Letter of Credit. If the issuer of the Letter of Credit becomes insolvent, files for bankruptcy, begins dissolution proceedings under State law, or otherwise becomes unable to provide reasonable assurances of its ability to honor the Letter of Credit, SCWA shall: (a) within ten (10) days from the date SCWA becomes aware such circumstances exist, provide notice to CDFG of this occurrence; and (b) within sixty (60) days from the date SCWA becomes aware such circumstances exist, secure a replacement Letter of Credit. SCWA shall notify CDFG when a replacement Letter of Credit is in place. Upon receipt of such notice, CDFG shall execute and submit a Certificate of Cancellation for the prior Letter of Credit within five (5) business days.

1.4 Cancellation of Letter of Credit. To cancel the Letter of Credit, CDFG shall execute a Certificate of Cancellation that shall be substantially in the form in Exhibit B hereto. Within 365 days following the withdrawal of the Consistency Determination, CDFG shall complete any determination with respect to a Determination of Inconsistency, if any, and cancel the Letter of Credit if it is still in effect. CDFG shall cancel the Letter of Credit on or before the termination or expiration of this MOA.

2. CDFG Participation in Letter of Credit. If, pursuant to California Fish and Game Code section 2080.1, CDFG issues and maintains a Consistency Determination based upon NMFS's ITS and its associated requirements and supporting documentation, CDFG shall be the beneficiary of a Letter of Credit subject to the conditions and limitations contained in this MOA.

2.1 Designation as Beneficiary. In accordance with the terms of this Section 2, CDFG may, subject to the limits of CDFG authority, draw upon the Letter of Credit, for all or any portion of the amount of the Letter of Credit, if CDFG determines that implementation of the ITS is no longer consistent with those provisions of California Fish and Game Code section 2050, et seq. authorizing incidental take of coho salmon due to a material failure on the part of SCWA to carry out the terms of Sections 2.1.1, 2.2-2.4, 3.1.1, 3.1.2, or 4.3 of the ITS ("draft Determination of Inconsistency"). In this event, CDFG may draw on the Letter of Credit, subject to the terms of and in the manner provided below, and using the form in Exhibit A hereto.

2.2 Notice of Inconsistency. Prior to making a demand on the Letter of Credit, CDFG shall provide SCWA and NMFS written notice of and justification for the draft Determination of Inconsistency and shall allow SCWA a sixty (60) day opportunity to consult with CDFG on the merits of the determination and/or negotiate a cure acceptable to CDFG. For purposes of this MOA, a draft Determination of Inconsistency by CDFG shall not constitute a Determination of Inconsistency by CDFG unless expressly provided in writing by CDFG to SCWA and NMFS in accordance with the notice provisions of this MOA.

2.2.1 Contents of Written Notice. The written notice of and justification for a draft Determination of Inconsistency must contain (a) an identification of the specific term or terms of the ITS that CDFG claims that SCWA has failed to carry out, (b) an explanation of the basis for CDFG's determination that implementation of the ITS by SCWA is no longer consistent with those provisions of California Fish and Game Code section 2080, et seq. authorizing incidental take of coho salmon (*O. kisutch*), and (c) an identification of the specific actions required by SCWA to cure the claimed deficiency.

2.2.2 Consultation. CDFG shall meet with SCWA regarding any Notice of Inconsistency within ten (10) days of any SCWA request for a meeting. Subject to Sections 2.2.3 and 2.4, CDFG and SCWA shall reasonably cooperate to negotiate, develop, and agree upon a plan to cure the claimed failure of SCWA to carry out the specified terms of the ITS.

2.2.3 Cure Plan. If CDFG and SCWA agree on a cure plan within sixty (60) days of SCWA's receipt of CDFG's written notice of inconsistency, then CDFG shall withdraw the written notice. The cure plan shall not require SCWA to perform any activities other than those necessary to cure a then-existing failure of SCWA to carry out the specified terms of the ITS as identified in the written notice of and justification for the draft Determination of Inconsistency.

2.3 Emergency Procedures. In the event of an "Emergency," as defined in herein, CDFG may include within the written notice and justification of the draft Determination of Inconsistency a declaration of an Emergency and explanation of the basis for such a declaration

of an Emergency. Under a Declaration of an Emergency, SCWA shall be provided with notice as provided in Section 2.2 and 2.2.1 and a ten (10) day opportunity to consult with CDFG on the merits of the draft Determination of Inconsistency and/or negotiate a cure acceptable to CDFG. "Emergency" means a sudden, unexpected occurrence, which poses a clear and imminent danger of a take of coho salmon that is not contemplated by the ITS.

2.4 Consultation with NMFS on a Determination of Inconsistency. If CDFG and SCWA have not agreed upon a cure plan with respect to the circumstances giving rise to a draft Determination of Inconsistency within forty-five (45) days of SCWA's receipt of written notice from CDFG (or within five (5) days of initiation by written notice of an Emergency), CDFG shall notify NMFS of the circumstances resulting in the draft Determination of Inconsistency and the manner, means, and appropriate draw amount necessary to cure the claimed failure of SCWA to carry out the specified terms of the ITS. The draw amount shall not exceed the amount necessary to fund activities necessary to cure the then-existing failure of SCWA to carry out the specified terms of the ITS, as identified in the written notice of and justification for the draft Determination of Inconsistency. In the event there is a disagreement between CDFG and NMFS regarding any proposed draw on the Letter of Credit by CDFG, CDFG shall give notice to SCWA of such a disagreement, and CDFG shall make good-faith efforts to meet and confer with appropriate staff at NMFS to resolve such disagreement through informal consultation within thirty (30) days of such notice. If NMFS and CDFG are unable to resolve the disagreement, CDFG may draw on the Letter of Credit after providing notice to the NMFS and SCWA that the consultation is concluded. The decision by CDFG to draw on the letter of credit must be approved by the Regional Manager of CDFG's Bay Delta Region or a higher CDFG official.

2.5 Beneficiary's Use of Sums Drawn on the Letter of Credit. If CDFG draws on the Letter of Credit, all sums derived from the Letter of Credit shall be used by CDFG solely for purposes relating to the activities set forth in Sections 2.1.1, 2.2-2.4, 3.1.1, 3.1.2, or 4.3 of the ITS and, in particular, to cure the then-existing failure of SCWA to carry out the specified terms of the ITS as identified in the written notice of and justification for the draft Determination of Inconsistency. If CDFG's draw on the Letter of Credit and subsequent expenditure of those funds to cure the then-existing failure of SCWA to carry out the specified terms of the ITS leaves insufficient funds to secure completion of the project to which the draw related, SCWA shall, within fifteen (15) days, increase the amount of the Letter of Credit in an amount sufficient to secure completion of the project to which the draw related. Upon final completion of the activity, CDFG shall consent to a reduction in the Letter of Credit pursuant to Section 4 of this MOA.

3. Conversion of Letter of Credit to a Bond. Conversion of the Letter of Credit to a Bond is permissible if SCWA and CDFG agree Security in the form of a Bond is appropriate.

4. Reduction in Principal Sum of Letter of Credit. Upon completion of each of the components of the activities set forth in Sections 2.1.1, 2.2-2.4, 3.1.1, 3.1.2, or 4.3 of the ITS to the reasonable satisfaction of CDFG, CDFG shall consent to a corresponding reduction in the amount of the Principal Sum of the Letter of Credit. CDFG shall evidence its consent to such reductions by executing and forwarding to SCWA and the Issuer of the Letter of Credit a

"Consent to Reduction in Principal Sum of Letter of Credit" substantially in the form attached as Exhibit B.

5. Effective Date and Term of the MOA. Unless extended by written amendment or sooner terminated, this MOA shall become effective as of the date of last signature below, and shall remain in force during the term of the ITS and through the date that is 365 days after the effective date of a Determination of Inconsistency (a withdrawal of the Consistency Determination) by CDFG.

6. Termination. This MOA may be terminated by either party upon providing twelve (12) months written notice to the other party. When the MOA terminated while CDFG is still a beneficiary, and provided there is no other security agreement acceptable to CDFG, the Consistency Determination may be withdrawn at CDFG's discretion. Upon termination of this MOA, CDFG shall immediately cancel the Letter of Credit. In the event CDFG determines that the continued take of coho salmon associated with the Russian River Project would jeopardize the continued existence of the species, CDFG shall terminate this MOA and cancel the Letter of Credit immediately, and shall provide SCWA with written notice by personal delivery, facsimile, and/or email as soon as possible.

7. Notice. All notices provided under this MOA shall be in writing and sent by first-class mail or comparable method of distribution to the other party. For purposes of this MOA, a notice shall be effective seven (7) days after the date on which it is mailed.

8. Authorized Representatives. All communications, notices, and contacts made under this MOA shall be directed to the following individuals. Any party may designate new authorized representatives by providing written notice to the other parties:

For SCWA: General Manager/Chief Engineer
 Sonoma County Water Agency
 404 Aviation Boulevard
 Santa Rosa, CA 95403

For NMFS: Supervisor, Protected Resources Division
 Santa Rosa Area Office
 National Marine Fisheries Service
 777 Sonoma Avenue, Room 325
 Santa Rosa, CA 95494

For CDFG: Regional Manager
 Department of Fish and Game
 7329 Silverado Trail
 Napa, CA 94558

9. Modification, Amendment, or Extension. This MOA may be modified, amended, or extended by mutual written consent of the signatory parties.

10. No Alteration of Existing Agreements. This MOA does not constitute an amendment to the ITS. This MOA is a ministerial action for the implementation of the financial assurances provided in the ITS.

11. Compliance with Law. All activities undertaken pursuant to this MOA must be in compliance with all applicable state and federal laws and regulations.

12. No Third-Party Beneficiaries. This MOA shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this MOA and shall not authorize any non-party to maintain a suit at law or in equity pursuant to this MOA.

13. Signatory Authority. Each signatory to this MOA certifies he or she is authorized to execute this MOA and to legally bind the party he or she represents, and such party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization of such party.

14. Counterparts. This MOA may be signed in any number of counterparts, and each executed copy shall have the same force and effect as an original instrument as if all the signatory parties to all of the counterparts had signed the same instrument.

15. Assignment. The duties, rights, and obligations under this MOA and any associated Letter of Credit may be assigned to a new party upon the express written consent of CDFG and SCWA.

16. Entire Agreement. This MOA sets forth the entire agreement and process of the Parties with respect to the subject matter discussed herein, and it supersedes any other agreements on this subject matter whether oral or in writing.

APPROVAL

[Redacted Signature]

Randy Poole
General Manager/Chief Engineer
Sonoma County Water Agency

10/5/09
Date

[Redacted Signature]

Charles Arm6r
Regional Manager
Bay Delta Region
California Department of Fish and Game

10/1/09
Date

**STANDBY LETTER OF CREDIT
Providing Financial Assurances For
CONSISTENCY DETERMINATION**

North Coast Bank- CONFIDENTIAL

STANDBY LETTER OF CREDIT NO. [REDACTED]

DATE:

ISSUING BANK

North Coast Bank
90 S E Street, Suite 110
Santa Rosa, CA 95404

TO BENEFICIARY:

California Department of Fish and Game
7329 Silverado Trail
Napa, California, 94558
Attention: Regional Manager

Dear Sir or Madam:

1. At the request and on the instructions of our CUSTOMER, Sonoma County Water Agency ("PERMITTEE"), we hereby establish in favor of the BENEFICIARY, the California Department of Fish and Game ("CDFG"), this Irrevocable Standby Letter of Credit ("CREDIT") in the Principal Sum of \$7,770,280.
2. We are advised this CREDIT is established for the benefit of the BENEFICIARY, pursuant to CDFG's consistency determination based on the biological opinion and incidental take statement approved by the National Marine Fisheries Service on September 24, 2008.
3. We are further advised this CREDIT is intended by the PERMITTEE and the BENEFICIARY to serve as a security device for the performance by PERMITTEE of its obligations under the biological opinion and incidental take statement that is the basis for CDFG's consistency determination.
4. The BENEFICIARY shall be entitled to draw upon this CREDIT by presentation of a duly executed CERTIFICATE OF DRAWING in the same form as Attachment A hereto, at our office located at North Coast Bank, 90 S E Street, Santa Rosa, CA 95404.

("ISSUER").

5. The CERTIFICATE OF DRAWING shall be completed and signed by the "Authorized Representative" of the BENEFICIARY as defined in paragraph 12 below. Presentation by the BENEFICIARY of a completed CERTIFICATE OF DRAWING may be made in person or by registered mail, return receipt requested.
6. Upon presentation of a duly executed CERTIFICATE OF DRAWING as provided above, payment in immediately available funds shall be made to the BENEFICIARY in the manner provided on the CERTIFICATE OF DRAWING.
7. Funds may be drawn in one or more drawings not to exceed the Principal Sum in any calendar year.
8. If a demand for payment does not conform to the terms of this CREDIT, the ISSUER shall provide the BENEFICIARY with prompt notice the demand for payment was not made in accordance with the terms of this CREDIT, state the reasons therefore, and await further instructions.
9. Upon being notified the demand for payment was not made in conformity with the CREDIT, the BENEFICIARY may correct any such non-conforming demand for payment prior to the expiration of the CREDIT.
10. All drawings under this CREDIT shall be paid with ISSUER'S funds. Each drawing honored by ISSUER hereunder shall reduce the Principal Sum provided as CREDIT for a calendar year. By paying to the BENEFICIARY an amount demanded in accordance herewith, ISSUER makes no representations as to the correctness of the amount demanded.
11. BENEFICIARY shall cancel this CREDIT by providing ISSUER with a CERTIFICATE OF CANCELLATION, which (i) shall be in the form of Attachment B hereto; (ii) shall be completed and signed by the Authorized Representative of the BENEFICIARY as defined in Paragraph 12 below; and (iii) shall be accompanied by the surrender of this CREDIT.
12. The "Authorized Representative" is the Regional Manager of the Bay Delta Region of the California Department of Fish and Game, or the Regional Manager's designee.
13. Communications with respect to this CREDIT shall be in writing and addressed to North Coast Bank, 90 S E Street, Santa Rosa, CA 95404 with reference made to this CREDIT number.
14. This CREDIT shall expire on the earlier of (a) cancellation by BENEFICIARY pursuant to Paragraph 11 or (b) December 31, 2014.

15. This CREDIT is subject to and governed by Article 5 of Uniform Commercial Code of the State of California.

THEREFORE, North Coast Bank has executed and delivered this Irrevocable Standby Letter of Credit to the BENEFICIARY as of this [REDACTED] day of [REDACTED], 2009.

**Exhibit A
Attachment A**

CERTIFICATE OF DRAWING

ISSUER

North Coast Bank, 90 S E Street, Santa Rosa, CA 95404

CUSTOMER

Sonoma County Water Agency

IRREVOCABLE LETTER OF CREDIT NO. [REDACTED]

BENEFICIARY:

California Department of Fish and Game
7329 Silverado Trail
Napa, California 94558
Attention: Regional Manager

The undersigned, as a duly authorized representative of the BENEFICIARY, the California Department of Fish and Game ("CDFG"), hereby certifies to issuer that:

1. CDFG has made a Determination of Inconsistency and demand for payment after compliance with the standards and procedures set forth in the Memorandum of Agreement between Sonoma County Water Agency and CDFG, dated [REDACTED], 2009; and
2. The undersigned is an Authorized Representative under the terms of the above-referenced CREDIT with authority to present this CERTIFICATE OF DRAWING as the sole means of demanding payment on the CREDIT; and
3. The BENEFICIARY is therefore making a drawing under the above-referenced CREDIT in the amount of \$ [REDACTED]; and
4. The BENEFICIARY directs that the drawing be paid to and deposited in the account of: California Department of Fish & Game, North Coast Bank; Account Number: [REDACTED].
5. The amount demanded does not exceed the Principal Sum; and
6. Sums received shall be used by the BENEFICIARY in accordance with the terms of that certain Memorandum of Agreement between Sonoma County Water Agency and CDFG dated [REDACTED], 2009.

THEREFORE, the undersigned Authorized Representative(s) has executed and delivered this CERTIFICATE OF DRAWING as of the [REDACTED] day of [REDACTED], 20[REDACTED].

California Department of Fish and Game

By

Regional Manager

**Exhibit A
Attachment B**

CERTIFICATE OF CANCELLATION

ISSUER
North Coast Bank, 90 S E Street, Santa Rosa, CA 95404

CUSTOMER
Sonoma County Water Agency

IRREVOCABLE LETTER OF CREDIT NO. [REDACTED]

BENEFICIARY: California Department of Fish & Game
7329 Silverado Trail
Napa, California, 94558
Attention: Regional Manager

The undersigned Authorized Representative of the California Department of Fish and Game hereby certifies to issuer that:

1. The BENEFICIARY hereby requests the above-referenced CREDIT be cancelled.
2. The BENEFICIARY hereby surrenders the attached original Letter of Credit to the Issuer.

Therefore, the BENEFICIARY has executed and delivered this CERTIFICATE OF CANCELLATION as of the [REDACTED] day of [REDACTED], 20[REDACTED].

California Department of Fish and Game

By _____
Regional Manager

Exhibit B

CONSENT TO REDUCTION IN PRINCIPAL SUM
OF LETTER OF CREDIT

ISSUER

North Coast Bank, 90 S E Street, Santa Rosa, CA 95404

CUSTOMER

Sonoma County Water Agency

IRREVOCABLE LETTER OF CREDIT NO. [REDACTED]

BENEFICIARY:

California Department of Fish & Game
7329 Silverado Trail
Napa, California, 94558
Attention: Regional Manager

The undersigned Authorized Representative of the California Department of Fish and Game hereby certifies to issuer that:

- 3. The BENEFICIARY hereby consents to a reduction of \$ _____ in the Principal Sum of the above-referenced Letter of Credit.
- 4. The BENEFICIARY hereby acknowledges that from and after the date set forth below, the new amount of the Principal Sum of the above-referenced Letter of Credit is \$ _____.

Therefore, the BENEFICIARY has executed and delivered this CONSENT TO REDUCTION as of the [REDACTED] day of [REDACTED], 20[REDACTED].

California Department of Fish and Game

By _____
Regional Manager