

MEMORANDUM of UNDERSTANDING
BETWEEN
THE DEPARTMENT OF FISH AND GAME AND
THE DEPARTMENT OF WATER RESOURCES
REGARDING HABITAT CREDIT PRIOR TO
THE ACQUISITION OF PROSPECT ISLAND PROPERTY

We the undersigned, as the Director of the California Department of Fish and Game (DFG) and Director of the Department of Water Resources (DWR), hereby enter into this Memorandum of Understanding (MOU) regarding credits for habitat restoration prior to DWR's acquisition of property on Prospect Island.

Prospect Island is the most easterly feature of the Cache Slough Complex, located in the northwestern part of the Sacramento-San Joaquin Delta in Solano County. For a limited time, DWR has the opportunity to acquire from the federal government 1,316 acres of unique land on Prospect Island (Prospect Island property). DWR is in escrow with the U.S. Bureau of Reclamation (Reclamation) and the U.S. General Services Administration to acquire the portion of Prospect Island held by Reclamation. DWR must close escrow before December 30, 2009 in order to acquire the property. DWR intends to develop a plan to restore the acquired property to intertidal and appropriate subtidal habitat for the benefit of native fish and improved aquatic ecosystem function. The plan will be subject to environmental review pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). It is anticipated that environmental review will not be completed until 2010 or later.

DWR's acquisition of the Prospect Island property will increase DWR's costs and risk of liability associated with ownership of the land. Therefore, to provide assurances to DWR that the acquisition of the Prospect Island property will provide mitigation credits, DWR and DFG agree to the following:

1. DWR and DFG agree that acquiring this unique Prospect Island property is important to restoring tidal habitat in the Delta.
2. DWR and DFG agree that the baseline area available for habitat credit on the Prospect Island property, in its current condition, is approximately 1,316 acres (including all levees). DFG will approve credit for preservation, management, and enhancement of existing habitat and/or restoration of riparian and tidal habitat, assuming DWR complies with all necessary laws in carrying out any restoration proposal. DWR intends to design and implement habitat restoration actions on the Prospect Island property which will partially satisfy the habitat requirements in the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) Biological Opinions for delta smelt and salmonids. It is

anticipated such restoration would be considered an early implementation action for the Bay Delta Conservation Plan (BDCP), a Natural Communities Conservation Plan for the Sacramento-San Joaquin Delta Estuary and Suisun Marsh which is currently under development.

3. DWR and DFG agree that appropriately-designed tidal restoration of the Prospect Island property is anticipated to provide habitat benefits for improved estuarine processes and function to support delta smelt, Chinook salmon, steelhead, and other fish species. Because of the current lack of fish habitat on the Prospect Island property, all of the area returned to tidal influence and maintained in perpetuity will be credited to DWR as tidal habitat.

4. The BDCP Planning Agreement allows for the crediting of early implementation actions. Consistent with that agreement, DFG agrees that the restoration actions taken on the Prospect Island property should also be considered BDCP early implementation actions to conserve fish species and restore tidal and riparian natural communities. DFG and DWR will coordinate with the USFWS and NMFS, to obtain the appropriate early implementation credit towards achieving BDCP conservation objectives to the extent that these actions are not being used to mitigate impacts associated with other DWR activities such as levee subventions, levee maintenance, or flood control programs.

5. The USFWS Operations Criteria and Plan (OCAP) Delta Smelt Biological Opinion of December 15, 2008, Reasonable and Prudent Alternative 4: Habitat Restoration, requires DWR to implement a program to create or restore a minimum of 8,000 acres of intertidal and associated subtidal habitat in the Delta and Suisun Marsh. The restoration of the Prospect Island property would partially fulfill this 8,000 acre requirement if USFWS approves the plan for delta smelt habitat improvements.

6. The NMFS OCAP Biological Opinion of June 4, 2009 requires DWR to implement a program to create or restore intertidal and associated subtidal habitat in the Delta and Suisun Marsh as rearing habitat for juvenile salmonids. The restoration of the Prospect Island property would partially fulfill this requirement for salmonids if NMFS approves the habitat restoration plan.

7. Within 180 days of signing this MOU, or a timeframe satisfactory to both parties, DWR and DFG agree to conduct a habitat survey of the Prospect Island property for purposes of establishing a mutual agreement of the baseline types and amounts of habitat that exists on the 1,316 acres of the Prospect Island property as of the date of this MOU. DFG agrees that DWR will receive habitat credit for the agreed upon baseline amounts

and types of habitat acres (including wetland, riparian, upland, etc.), which DWR maintains and protects in perpetuity in the event that tidal restoration is not completed for smelt or salmonid habitat, or in the event the final design for the Prospect Island property includes a mix of existing and restored or enhanced habitat.

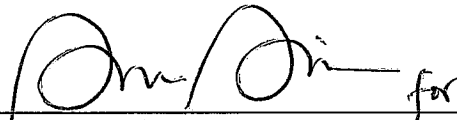
8. DFG and DWR anticipate that no mitigation for impacts to existing habitat or species due to implementation of a restoration plan on the Prospect Island property will be necessary as DWR and DFG agree to design the restoration plan to enhance existing habitat values and avoid, minimize, and offset any impacts to other habitats and species.

9. DWR and DFG also agree that in the event of an unplanned Prospect Island levee breach, DWR will take the appropriate action to address the issues related to flooding prior to completing any Prospect Island property restoration actions. Appropriate action could include not repairing the breach if it occurs in an area that is conducive to restoration of intertidal habitat. DWR will consult with DFG to obtain concurrence of a proposed action, or inaction, before deciding on any action to take.

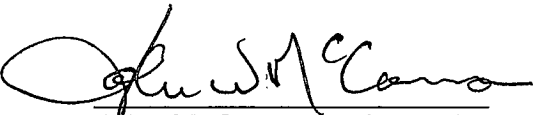
10. By signing this MOU, DWR and DFG agree to undertake planning and feasibility studies for the Prospect Island property but are not committing either department to funding or implementing any restoration action prior to CEQA review.

11. DWR and DFG agree that the execution of this MOU has no effect on the legal or jurisdictional authorities of either department, statutory, regulatory, or otherwise.

Effective as of December 29, 2009 by:


Lester A. Snow, Director

Department of Water Resources


John McCamman, Acting Director

Department of Fish and Game