

**REGIONAL MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE NATURE CONSERVANCY  
THROUGH ITS WESTERN UNITED STATES DIVISION  
AND ITS  
CALIFORNIA, NEVADA, UTAH, COLORADO, ARIZONA, NEW MEXICO  
CHAPTERS AND THE  
U.S. ARMY CORPS OF ENGINEERS  
SOUTH PACIFIC DIVISION  
ALBUQUERQUE, LOS ANGELES, SACRAMENTO,  
AND SAN FRANCISCO DISTRICTS**

**I. INTRODUCTION.** The U.S. Army Corps of Engineers (USACE) and The Nature Conservancy (TNC) executed a national Memorandum of Understanding (National MOU) on December 14, 2000 to facilitate effective and efficient management of important biological resources within the context of the Corps' civil works and regulatory programs, and to meet the MOU's stated objectives.

This Regional Memorandum of Understanding (Regional MOU) is entered between the USACE South Pacific Division (SPD) along with its San Francisco, Sacramento, Los Angeles, and Albuquerque Districts, represented by their respective District Commanders (hereinafter, SPD Districts), and TNC, acting through its Western United States Division, for the purposes of facilitating the parties' respective regional objectives and promoting the sharing of information and expertise in working together on sustainably, effectively and efficiently managing and restoring important biological resources in our joint regions. This Regional MOU incorporates, and is subject to, all of the conditions and terms of the National MOU. In case of a conflict between this Regional MOU and the National MOU, the National MOU provisions shall prevail. The geographic scope of this Regional MOU shall be the USACE divisional boundaries for the regulatory and civil works programs in SPD and the corresponding areas of responsibility for the SPD Districts.

**II. PURPOSE.** The parties seek to facilitate effective and efficient management of important natural resources within the context of each of the SPD District's civil works missions, and the mission of TNC, to the extent authorized by law and by USACE and TNC policies. The following objectives are agreed upon within the geographic scope of this Regional MOU:

- A. **Ecological Flows:** Promote the goals of the Sustainable Rivers Project to establish ecologically beneficial flows by employing water management practices that maximize the ecological benefits by adjusting the quantities and timing of water releases from USACE projects, while still fulfilling other project purposes and agreements.
- B. **Floodplain, Riparian & Estuarine Restoration:** Encourage floodplain, riparian, estuarine and coastal restoration as an integral part of non-structural and multi-purpose approaches to flood risk management, with the goal of reducing flood risks and restoring native riparian and estuarine ecosystems and floodplain

functions while improving water supply reliability and restoring aquatic habitats and floodplain processes.

- C. **Integrated Watershed Management:** Advance the use of watershed management and planning practices by supporting a comprehensive examination of watershed functions and facilitating simultaneous achievement of multiple societal goals--including public safety, water supply reliability, ecological health, ecosystem services and resiliency to the impacts of climate change.
- D. **Regional Mitigation:** Facilitate the development and implementation of regional mitigation opportunities to enhance the effectiveness, efficiency and sustainability of the Corps' Section 404 Clean Water Act Regulatory Program and other efforts to mitigate adverse impacts of new infrastructure and other forms of development on natural systems, including wetlands, floodplains and other aquatic resources. Any regional mitigation opportunities will be developed in accordance with the final compensatory mitigation rule (as codified in 33 Code of Federal Regulations Part 332).

**III. RESPONSIBILITIES.** The parties to the extent authorized by law and by USACE and TNC policies and within existing legal authorities agree as follows:

- A. The SPD Districts will consider environmental sustainability concepts suggested by TNC for incorporation into the conceptualization, evaluation, planning, construction, and operation of SPD District projects within the geographic scope of this Regional MOU.
- B. TNC will, as appropriate and subject to its internal policy regarding confidential information, contribute pertinent scientific and conservation planning information to SPD Districts for their projects that are within the geographic scope of this Regional MOU.
- C. The SPD Districts and TNC will share information and expertise in exploring potential restoration and water management projects to ensure that these projects, as appropriate, are designed using the best and most current knowledge and technology, take advantage of innovative approaches, include well-designed adaptive management plans, and advance the state-of-the-art for engineering projects that are ecologically sustainable and provide multiple benefits to the public.
- D. The SPD Districts and TNC will work together to encourage and facilitate broader use of floodplain, riparian and estuarine restoration, Integrated Watershed Management, ecologically beneficial flows, and regional mitigation opportunities. This may include identifying and recommending policies and programs needed to implement such techniques on a larger scale.
- E. TNC chapters and the SPD Districts will, as appropriate and subject to staff and funding availability, meet twice annually to review the implementation of this Regional MOU, with the goal of improving, through the assessment of successes and impediments to fulfilling the objectives and duties laid out herein, and to foster good working relationships and communication.

- F. The parties to this Regional MOU recognize that the SPD District projects must operate in accordance with authorized project purposes and funding limitations. All actions taken by the SPD Districts in accordance with this Regional MOU are subject to the availability of funds, and nothing in this Regional MOU shall be interpreted as constituting a violation of the Anti-Deficiency Act. Similarly, nothing herein shall be interpreted as a fiscal nor a funds obligation. Any endeavor involving reimbursement or contribution of funds between the parties to the Regional MOU will be handled in accordance with applicable laws, regulations, and procedures. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This Regional MOU does not provide such authority. Specifically, this MOU does not establish authority for the noncompetitive award to TNC of any contract or other agreement.
  
- G. Nothing in this Regional MOU prohibits the parties from soliciting or receiving advice and assistance in the objectives set forth above from other governmental entities, private groups or individuals. The SPD Districts, while receptive to the provision of suggestions, concepts, and scientific and conservation planning information from TNC and all other public entities, remain responsible for all decisions involving the planning and implementation of projects as authorized by law and for which funds are available.

#### **IV. IMPLEMENTATION.**

- A. This Regional MOU becomes effective when signed by all signatory parties and remains in effect until modified or terminated by SPD or TNC. It may be modified or amended at any time by mutual agreement of SPD and TNC in writing, and may be terminated by either party upon sixty days prior written notice. Modifications to the National MOU will also be considered to have modified this Regional MOU.
  
- B. SPD and TNC intend to conduct the activities laid out in this agreement in accordance with existing authorities. If any provisions of this Regional MOU are determined to be inconsistent with existing laws, regulations or directives, specifically Department of the Army permits under Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act or Section 103 of the Ocean Dumping Act, governing the signatories, (including, without limitation, the Federal Advisory Committee Act 5 U.S.C. Appendix II) then such laws, regulations or directives shall control.



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Signatures redacted

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Karen Berky *✓* 9/25/09  
Date  
Director, Western Division  
The Nature Conservancy

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Mike Sweeney *✓* 9/25/09  
Date  
State Director, California Chapter  
The Nature Conservancy

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Kathryn Landreth *✓* 10/7/09  
Date  
State Director, Nevada Chapter  
The Nature Conservancy

\_\_\_\_\_  
Dave Livermore 10/7/09  
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State Director, Utah Chapter  
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Tim Sullivan 10/7/09  
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State Director, Colorado Chapter  
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\_\_\_\_\_  
Pat Graham  
State Director, Arizona Chapter  
The Nature Conservancy

9-7-09

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Date

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Terry Sullivan  
State Director, New Mexico  
The Nature Conservancy

10-7-09

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Date