

United States

Department of the Interior

Bureau of Reclamation

Central Valley Project

American River Division

MANAGEMENT AGREEMENT

Between

THE UNITED STATES OF AMERICA AND THE STATE OF CALIFORNIA

For the

ADMINISTRATION, OPERATION, MAINTENANCE, AND DEVELOPMENT OF  
RECREATION USES AND FACILITIES

At

FOLSOM LAKE, LAKE NATOMA, AND AUBURN DAM AND  
RESERVOIR AREA PROJECT LANDS

Managing Agreement No. 12-LC-20-0017

Date: JAN 24 2012

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Central Valley Project  
American River Division

MANAGEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA  
AND THE STATE OF CALIFORNIA  
FOR THE ADMINISTRATION, OPERATION, MAINTENANCE, AND  
DEVELOPMENT OF RECREATION USES AND FACILITIES AT FOLSOM LAKE, LAKE  
NATOMA, AND AUBURN DAM AND RESERVOIR AREA PROJECT LANDS

Article No.	Table of Contents	Page No.
Preamble		1
1	Definitions	5
2	Management of the Project Areas	12
3	Terms of Agreement and Termination of Existing Management Agreements	12
4	Funding/Cost Share	13
5	Fees and Revenues	16
6	Reserve Fund	16
7	Reclamation Use Paramount	17
8	Partnership and Cooperation	19

9	Administration	19
10	Risk and Damages/Hold Harmless	20
11	Operations and Maintenance	21
12	Use Authorization, Concessions, Special Events	30
13	Facility Development	35
14	Title to Land, Recreation Facilities, Improvements	35
15	Resource Management Plan/General Plan	37
16	Reservoir Water Levels	38
17	Real Property Management	39
18	Fire Prevention, Protection and Suppression	41
19	Sever or Reassign Lands	42
20	Extraordinary or Catastrophic Occurrences	42
21	Consumptive Use of Water by State	43
22	Reservations	43
23	Contingent on Appropriations	44
24	Miscellaneous Provisions	44
25	Notice of Cure/Dispute Resolution	46
26	Modification	47
27	Termination	47
28	Designated Representatives/ Notices	48
29	Severability	48
30	Officials or Employees Not to Benefit	49
31	Survivor Clause	49
	Signature Page	49

## EXHIBITS

Exhibit A Project Areas Map

Exhibit B Environmental Requirements

Exhibit C Equal Opportunity Requirements

Exhibit D Title VI, Civil Rights Act of 1964

Exhibit E Non-Expendable Government Property Requirements

Exhibit F Reclamation Manual/ Directives and Standards LND 02 and

LND 04-02 Concession Management by Non-Federal Partners

Exhibit G Department of the Interior, Department Manual

Intergovernmental Relations

Exhibit H 43CFR 423 & 43CFR 429

Exhibit I Listing of Relevant Laws, Regulations and Executive Orders

Exhibit J Reserve Fund Annual Reconciliation

Exhibit K Assigned Government Property

Exhibit L Types of Authorized Activity Fees

Exhibit M Listing of Existing Third Party Agreements and Contracts

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Central Valley Project

American River Division

MANAGEMENT AGREEMENT BETWEEN THE UNITED STATES OF AMERICA  
AND THE STATE OF CALIFORNIA

FOR THE ADMINISTRATION, OPERATION, MAINTENANCE, AND  
DEVELOPMENT OF RECREATION USES AND FACILITIES AT FOLSOM LAKE, LAKE  
NATOMA, AND AUBURN DAM AND RESERVOIR AREA PROJECT LANDS

THIS MANAGING PARTNER AGREEMENT, hereinafter referred to as "Agreement" or "MPA", made as of this 24<sup>th</sup> day of January 2012, pursuant to Act of Congress June 17, 1902 (32 Stat. 388) and acts amendatory thereof and supplementary thereto, collectively known and referred to as Federal Reclamation Laws, particularly the Federal Water Project Recreation Act of July 9, 1965, Public Law 89-72 (79 Stat. 213), as amended particularly by Title XXVIII of Reclamation Recreation Management Act of October 30, 1992 (102-575, 106 Stat. 4690-4693), between the United States of America acting by and through the Regional Director, Mid-Pacific Region, Bureau of Reclamation, or his duly authorized representative hereinafter styled "Reclamation", and the State of California, acting by and through the Director, Department of Parks and Recreation, hereinafter referred to as the "State" or "California State Parks", in accordance with California Public Resource Code Section 5080.30 et seq., as amended.

WITNESSETH THAT:

WHEREAS, the United States has constructed Folsom and Nimbus Dams and Reservoirs (Folsom Lake and Lake Natoma) and associated diversion facilities and canals located in Placer, El Dorado, and Sacramento Counties, California pursuant to the Flood Control Act of 1944 (Act of December 22, 1944, h. 665, 58 Stat. 887) and the American River Basin Development Act (Act of October 14, 1949, ch. 690, 63 Stat. 852), and;

WHEREAS, the United States acquired certain lands, hereinafter referred to as “Auburn Dam and Reservoir Area Project Lands” for the purpose of constructing, operating and maintaining the Auburn Folsom South Unit, Auburn Dam and Reservoir, an authorized feature of the Central Valley Project, located in Placer, El Dorado and Sacramento Counties, California as well as portions of the cities of Folsom and Rancho Cordova, and;

WHEREAS, the Public Law 89-161 (79, Stat 615) authorized the Auburn-Folsom South Unit of the Central Valley Project including Auburn Dam, and further authorized the Secretary of the Interior to construct, operate and maintain public outdoor recreation and fish and wildlife enhancement facilities and to provide for public use and enjoyment of unit lands in a manner coordinated with other unit purposes, and;

WHEREAS, the Auburn Project remains a congressionally authorized water resource project and Reclamation must preserve and maintain the Auburn Dam Project Lands for the project purposes and minimize uses and development that could significantly impact those lands for the construction of Auburn Dam, and;

WHEREAS, the parties hereto have previously entered into recreation area specific agreements and/or contracts including No. 14-06-200-7171 “Folsom Lake Lease of Land for State Park,” dated August 16, 1956 as amended; and various agreements for the management of Auburn State

Recreation Area since 1977, including Purchase Order R11PX2002 – Auburn State Recreation Area; for the management and development of public recreation and recreation facilities at the above referenced projects in order to provide for law enforcement, public safety, resource protection, use and enjoyment of those areas consistent with project purposes, and;

WHEREAS, the California State Park and Recreation Commission has classified Folsom Lake as a State Recreation Area, the Folsom Powerhouse as a State Historic Park, and the Auburn Dam Project Lands as a State Recreation Area, and;

WHEREAS, the mission of California State Parks is to provide for the health, inspiration and education of the people of California by helping to preserve the state’s extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high quality outdoor recreation, and;

WHEREAS, the State has purchased approximately 2500 acres of land as additions to these recreation areas (see Definitions, “Recreation Area”) and has funded the development of significant recreation facilities in these areas, and;

WHEREAS, Folsom Lake State Recreation Area encompasses approximately 20,000 acres of water and land and is a major recreational resource for the Sacramento region, with an annual visitation of approximately two million visitors, and;

WHEREAS, Auburn State Recreation Area encompasses approximately 30,000 acres of federal lands and has become a major recreational resource for the greater Sacramento region with an annual visitation of approximately 1 million visitors, and;

WHEREAS, California Public Resources Code Section 5080.30 allows California State Parks to enter into agreements with the United States “...for the care, maintenance, administration, and control by any party to the agreement, of lands under the jurisdiction of any party to the agreement for the purpose of the state park system”, and;

WHEREAS, the parties wish to continue a longstanding partnership to provide for the public services and project purposes described above, but in a more efficient and comprehensive manner by incorporating all lands of the Folsom Lake, Lake Natoma, and Auburn Dam And Reservoir Area Project Lands into a single Managing Partner Agreement, and;

WHEREAS, the parties hereto mutually agree to enter into a Managing Partner Agreement for the continued administration, operation, maintenance and development of public recreation facilities, protection of natural and cultural resources and provision of public health and safety at Folsom Lake, Lake Natoma and Auburn Dam and Reservoir Area Project Lands, and;

WHEREAS, the parties acknowledge and agree that the longstanding partnership between Reclamation and the State has been a benefit to the Project Area and the visiting public.

**NOW, THEREFORE**, it is agreed as follows:

1. DEFINITIONS

When used herein unless otherwise distinctly expressed or manifestly incompatible with the intent hereof, the terms

- (a) “Appropriation” means any funds, subject to Federal appropriation law, provided to the State from the Federal government without regard to the authorization for such funds or the manner in which they were transferred.
- (b) “CEQA” means the California Environmental Quality Act, California Public Resources Code 21000 et seq.
- (c) “Commercial Filming” means any still photography or filming activity within the Project Area by “for-profit” or “non-profit” entities pursuant to Public Law 106-206 (Commercial Filming on Public Lands Act).
- (d) “Concession (Federal)” means a non-Federal commercial business that supports appropriate public recreational uses and provides facilities, goods, or services for which



revenues are collected. A concession generally involves use of the Federal Lands and Water and may involve the use or development of real property improvements.

(e) “Concession (State)” means a person, corporation, partnership or association contracted with the State to provide services not normally provided by State employees for the safety and convenience of the general public in the use and enjoyment of and the enhancement of recreational and educational experiences as units of the State Park System. Concessions shall not be entered into solely for their revenue producing potential (Cal. Pub. Resources Code § 5080.3).

(f) “Cost Share” means the value of Federal Government or non-Federal Partners’ contributions that is reasonable and allowable for the proper accomplishment of a project or program. Contributions can be third-party and in-kind contributions when allowed in the Financial Assistance Agreement. All contributions must be verifiable in the records of the partners.

(g) “Deferred Maintenance” means the practice of postponing maintenance activities such as repairs on both real property (i.e. infrastructure) and personal property (i.e. machinery) in order to save costs, meet budget funding levels, or realign available budget monies.

(h) “EAP” means the Reclamation Emergency Action Plan.

(i) “ESA” means the Endangered Species Act of 1973; and 16 U.S.C. §1531 et seq.

(j) “Emergency” means any situation that requires immediate action to reduce or avoid endangering public health and safety, the environment or protection of property.

(k) “Federal Ceiling” means the maximum amount of appropriated Federal funds that Reclamation will commit for consideration of Cost Share funding.

(l) “Federal Fiscal Year” means that annual period, from October 1 of one calendar year to September 30 of the next calendar year, on which the United States government bases its budget.

(m) “Federal Lands and Water” means those land and water areas within the Project Areas owned by the United States and managed by the Department of the Interior, Bureau of Reclamation.

(n) “Financial Assistance Agreement” means the appropriate legal instrument to reflect the relationship between the United States Government and a non-Federal partner when the principal purpose of the relationship is to provide Federal funding to accomplish a mutual public benefit and support, as authorized and defined by law.

(o) “Fire Management Plan” means a strategic Federal plan that defines a program to manage wildland and prescribed fires and documents the Fire Management Program in the approved land use plan. The plan is supplemented by operational plans such as preparedness plans, preplanned dispatch plans, prescribed fire plans, and prevention plans.

(p) “General Plan” means the State plan prepared in accordance with the State’s Planning Handbook, California Public Resources Code, Section 5002.2 and related sections that apply to the Recreation Areas. General Plans direct the long-range development and management of a park unit by providing a broad framework of goals, policies and guidelines.

(q) “Good Repair” means maintaining functional use and longevity of facilities and equipment through use of appropriate actions including, but not limited to, controlled maintenance, standard operating procedures, maintenance manuals; meeting Federal,

State and applicable local health department standards; meeting public safety needs and standards; and maintaining facilities in a safe, neat, clean, and well kept condition.

(r) “Hazardous Material” means (1) any substance, pollutant, or contaminant listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Section 9601 (14) and (33); (2) oil as defined by the Clean Water Act, 33 U.S.C. Section 1321 (a) and the Oil Pollution Act, 33 U.S.C. Section 2701 (23); (3) thermal pollution, refuse, garbage, sewage effluent, industrial waste, mine or mill tailings, mineral salts, pesticides, and other solid waste; and (4) any other substance regulated as hazardous or toxic under Federal, State, local, or Tribal law.

(s) “Industrial Areas” means those areas reserved by Reclamation to manage project facilities including dam works, power generation, water delivery, and related functions. Industrial Areas include all areas within the Project Areas surrounding the dam, outlet works, feeder canals, and distribution works, wherein Reclamation and/or water user organization(s) retains responsibility for the protection, operation, and maintenance of Project Facilities. The Industrial Areas are shown on Exhibit A.

(t) “Integrated Pest Management Plan” (IPMP) means the Federal plan which is systematic and environmentally compatible to maintain pest populations within economically and environmentally tolerable levels.

(u) “Maintenance” means the act of keeping fixed assets in Good Repair. It includes preventive maintenance, normal repairs, replacement of parts and structural components, and other activities needed to preserve the asset so that it continues to provide acceptable services and achieves its expected life. Maintenance excludes activities aimed at expanding the capacity of an asset or otherwise upgrading it to serve needs different from, or significantly greater than, those originally intended.

(v) “Management of the Project Areas” means to administer, operate, maintain, and develop the Project Areas identified in Exhibit A – Area Map, to provide a benefit to the public and to assist Reclamation to meet the authorized project purposes including providing public health and safety, recreation, and protection of lands and surface waters in accordance with this Agreement. Management includes preserving and managing resource values and conditions as opportunities and funding are available.

(w) “Mutually Agree” or “Mutually Agreed” means each parties’ designated representatives are in agreement on a proposed action. Such agreements will be in writing.

(x) “NEPA” means the National Environmental Policy Act 42 USC § 4321, et. seq.

(y) “Operations & Maintenance (O&M)” means the functions, duties and labor associated with the daily operations and normal repairs, replacement of parts and structural components, and other activities needed to preserve an asset so that it continues to provide acceptable services and achieves its expected life.

(z) “Operational Deficit” means the difference between the amounts of Revenue collected and the State’s actual operation and maintenance costs for Management of the Project Areas. State’s actual operation and maintenance costs include, but are not limited to, costs incurred for management of the District relative to the Project Areas, as well as administrative overhead. Operational Deficit does not include indirect overhead such as required audits.

(aa) “Private or Exclusive Use” as defined by 43 CFR 429 means any use that involves structures or other improvements used for recreational or residential purposes to the exclusion of public uses or which creates the perception of such exclusion and are not associated with the official management of a Reclamation Project. This includes, but is

not limited to boat docks, cabin sites, residences, trailers, manufactured or mobile homes, structures, roads, or other improvements.

(bb) "Project Areas" means all lands withdrawn or acquired in the name of the United States, and waters within the Folsom and Auburn Folsom South Unit cited in the title to this agreement (as shown on Exhibit A) for which management of recreation and recreation facilities is authorized pursuant to this Agreement. The Project Areas also include lands covered by flood easements and lands withdrawn by Federal agencies other than Reclamation when these lands are part of the authorized projects, and included in current or future agreements between the Federal agency and Reclamation for management of recreation and other purposes.

(cc) "Project Facilities" means those water diversion, collection, storage, and carriage facilities, and appurtenant ancillary facilities constructed as features of the Central Valley Project related to Folsom Unit and Auburn/Folsom South Unit for flood control, water supply and other purposes.

(dd) "Project Operations" means functions, duties and labor associated with Project Facilities.

(ee) "Reclamation" means the United States Department of the Interior, Bureau of Reclamation, or its duly authorized representative(s).

(ff) "Recreation Area" means all Federal lands and water within the Project Areas and adjoining state owned lands as shown in Exhibit A.

(gg) "Recreation Facilities" means those facilities constructed or installed at the Project Areas for recreational purposes for the public or for support of such recreational purpose. Recreation Facilities include, but are not limited to, buildings such as park headquarters, visitor centers, and maintenance shops; other structures or amenities including

campgrounds, picnic grounds, boat docks and ramps; and infrastructure; consisting of electrical lines, water systems, roads, trails, parking areas, sewer systems, signs, trash facilities, and interior fencing.

(hh) “Reserve Fund” means a separate fund established by the State to facilitate available funds for capital improvements, major repairs, or replacement of facilities, roads or other infrastructure, emergency purposes or catastrophic incidents.

(ii) “Resource Management Plan(s)” means the plan(s) prepared in accordance with Title XXVIII of Public Law 102-575 and Reclamation’s Resource Management Plan Guidebook.

(jj) “Revenues” means all receipts derived from entry, use fees and permits which the State is permitted to collect pursuant to its authority; including, but not limited to fees, charges, tolls, and rents, charged by the State for public recreation use, special events and uses and concessionaire agreements issued or administered by the State pursuant to California Public Resources Code §§ 5010(a) and 5080.32.

(kk) “State” or “California State Parks” means the State of California, Department of Parks and Recreation, or its duly authorized representative(s).

(ll) “State Fiscal Year” means that annual period, from July 1 of one calendar year to June 30 of the next calendar year, on which the State government bases its budget.

(mm) “Third Party Agreements” means agreements and contracts, including, but not limited to, special use, Concession contracts, and service contracts, issued by the State to another entity to provide recreation related services and facilities for the Project Area other than Commercial Filming and Rights-of-Use.

(nn) “Use Authorization” means various land use or resource management documents or instruments including, but not limited to, license agreements, contracts, rights-of-way,

rights of entry, easements, leases, permits, and other rights of use issued or granted by Reclamation on, over, across or under the Federal Lands and Water.

(oo) "Use-Authorization Permittee" means the person or entity that has been granted a "Use Authorization".

(pp) "Water User Organization(s)" means the Water Districts and Water Authorities associated with the Recreation, Industrial and Project Areas or their duly authorized representative(s).

(qq) "Wildfire Management Plan" means a State plan to identify and coordinate responsibilities and actions for the prevention and suppression of wildfires and post-fire stabilization and restoration.

## 2. MANAGEMENT OF THE PROJECT AREAS

(a) The State agrees to accept Management of the Project Areas, including any changes or alterations to the boundaries or definition of the Project Areas from time to time through a notification process by both parties and such changes or alterations shall be noted and described on the Project maps (Exhibit A).

(b) This transfer of Management of the Project Areas is subject to any existing or subsequently issued Use Authorization.

(c) If such Use Authorization materially affects either the scope or provisions of the MPA, including but not limited to recreation use of the Project Areas and Revenues then Reclamation and the State will review the terms and conditions of the MPA affected by the Use Authorization and amend the MPA, if necessary.

### 3. TERMS OF AGREEMENT AND TERMINATION OF EXISTING MANAGEMENT AGREEMENTS AND/OR CONTRACTS

The term of this MPA will be twenty five (25) years from the date first written above, unless terminated sooner as provided herein. If either party desires to renew this MPA, notice is to be provided to the other party no later than three years prior to expiration of this MPA, and the parties hereto shall, in good faith, commence negotiation of a new management agreement. By execution of this MPA, all other agreements including leases and permits between the State and Reclamation for the management of public recreation and Recreation Facilities at the subject Project Areas are terminated and superseded.

### 4. FUNDING AND COST SHARE

(a) Reclamation and the State recognize that costs for Management of the Project Areas pursuant to this Agreement may exceed the Revenue generated, resulting in an “Operational Deficit”. Reclamation shall, in situations where the State’s actual Operation and Maintenance (O&M) costs at the Project Areas exceed Revenues and result in an Operational Deficit, enter into a Financial Assistance Agreement with the State to provide O&M funding of no more than fifty percent by way of a Cost Share arrangement as authorized by law. As provided in the Reclamation Recreation Management Act “Reclamation may cost share up to fifty percent of O&M for periodic, short-term situations when cost sharing is determined by Reclamation to be in the best interest of the United States and the public.” O&M Cost Share amounts provided by Reclamation shall be solely for the purposes identified in this MPA.

(b) Reclamation intends to enter into Financial Assistance Agreements subject to Federal appropriations to Cost Share up to fifty percent of the annual Operational Deficit



not to exceed the Federal Ceiling. This Federal Ceiling is initially established at \$2.5 million; however, both parties will revisit this ceiling in conjunction with the development of subsequent Financial Assistance Agreements and through an amendment of this MPA, as necessary. Reasonable adjustments to the Federal Ceiling may be made as frequently as annually, but no less frequent than upon the issuance of each new successive Financial Assistance Agreement. Such adjustments are to be based upon increased management costs, inflation, cost of living, available appropriations, and other factors. Notwithstanding the above, both parties will review this value every five years in conjunction with any future Financial Assistance Agreement, and make reasonable adjustments through an amendment of this MPA.

(c) Award of Cost Share funds by Reclamation will require the State, at their own expense, to conduct an annual audit in accordance with the Single Audit Act Amendments of 1996, as may be amended, for each year that funds are received.

(d) Should circumstances preclude a Cost Share by Reclamation, or adequate State appropriations and/or revenues in any particular year, both parties will meet immediately to devise a strategy to address the funding shortfall (see section (i)).

(e) The following Cost Share formula shall be applied and will be determined annually on a State Fiscal Year basis:

- **State operational costs minus Revenues = Operational Deficit**
- **Operational Deficit divided by 2 = O&M Cost Share**

Cost Share figures will be used by each party, subject to the limits identified in the MPA, for the purposes of requesting budget appropriations for future fiscal years.

(f) State and Federal appropriations and Revenues will comprise the funding mechanism for the operation and maintenance for the Project Areas pursuant to this MPA.

(g) Outside funding sources, when available, may be used to offset the Cost-Share obligation for each party for the purpose of this MPA.

(i) Outside sources of funding are those other than Revenues and Federal or State appropriations.

(ii) Not all outside funding sources may be applicable to the O&M Cost Share.

(iii) It is recognized by both parties that different sources of outside funding may have specific applications.

(h) The parties agree to consider in-kind services within their respective agency authorities that may be mutually beneficial to the overall objectives of this MPA. By mutual agreement, the value of any in-kind services or work may be applied in determining annual Cost-Share obligations. Application of in-kind services for this purpose will be based upon official financial or other documentation.

(i) Reclamation and the State will

(i) Convene annually prior to the beginning of the State Fiscal Year to review the State's proposed operating plan including any projected operating deficit, and will work together in good faith to review the opportunities and feasibility of reducing the projected operational deficit through adjustment to the fee structure, identification of additional revenue sources such as special use fees, and reduction in cost elements.

- (ii) Convene periodically during the calendar year but not less than quarterly to review financial information, evaluate the status of any emerging operational deficit and take reasonable action to minimize the deficit.
- (iii) Develop an operating plan for the upcoming State Fiscal Year as a basis of the Financial Assistance Agreement's scope of work and financial accountability. For this purpose the State shall provide the use data, financial and other information requested by Reclamation by January 15th of each year.
- (iv) Create efficiencies through the sharing of resources for the purposes stated in this MPA.

## 5. FEES AND REVENUES

(a) Fees will be set in accordance with the fee schedule established for California State Parks in accordance with State statutes, and shall comply with Federal laws relating to recreation on Federal lands. Consistent with California Public Resources Code §§ 5010.1, 5080.30, and 5080.32, the State will collect, and retain Revenues for use at the Recreation Area. Types of fees authorized by Reclamation are shown on Exhibit L. The current approved fee schedule shall be provided as part of the annual financial documentation. All Revenue collected by the State shall be retained in a State account and shall be used for the purposes of this MPA consistent with California Public Resources Code § 5080.32. In the event of termination of this MPA for any reason, or expiration of this MPA, any unexpended Revenues shall become the property of the State.

## 6. RESERVE FUND

(a) Both parties agree that the State shall implement and utilize a Reserve Fund to facilitate availability of adequate funds for capital improvements, major repairs and replacement of Recreation Facilities. The State, with the concurrence of Reclamation, will determine the appropriate use for funds contained within the Reserve Fund in accordance with the purposes of this Article 6.

(b) Upon mutual agreement of both parties the Reserve Fund may be used for emergency situations or catastrophic occurrences at the Recreation Area.

(c) The Reserve Fund will be comprised of:

(i) A Capital Improvement and Repair (CIR) fee assessed by California State Parks and paid by park visitors for activities including but not limited to entrance, camping, boat launching, annual passes and day use occurring within the Project Areas. Generally, the CIR fee will range in the amount of 10% to 25% above the existing base fees identified in the annual financial document but may be adjusted in response to market conditions, special programs, fee type or category and special needs.

(ii) CIR fee percentage will be established and implemented by the State within one year of the date of execution of this MPA, and will be periodically reviewed and adjusted.

(1) An inventory and prioritization of all Deferred Maintenance intended to be accomplished through the CIR shall be identified in each Financial Assistance Agreement.

(2) Deferred Maintenance project costs shall determine the amount of funds required to establish a funding target for the CIR.

(iii.) The Reserve Fund shall not be considered in the Cost Share calculations and obligations.

(d) In the event of termination of this MPA for any reason, or expiration of this MPA, any unexpended funds of the Reserve Fund shall become the property of the State.

## 7. RECLAMATION USE PARAMOUNT

(a) The rights of the State under this MPA are subordinate to the prior rights of Reclamation and Water User Organization(s) or Use-Authorization Permittees (Exhibit M) to use any portion of the Project Areas for the primary purposes of the Project Facilities or activities pursuant to Federal Reclamation Law, rules and regulations. Reclamation will give written notice to the State if Reclamation determines that changes in land use within the Project Areas are necessary for the primary purposes of the project.

(b) Reclamation and Water User Organization(s) retain responsibility over the Industrial Areas as defined herein and shown at Exhibit A. Jurisdiction is retained by Reclamation to provide proper operation, maintenance, repair, and protection of Project Facilities, including, but not limited to the Industrial Areas. Any use of the Industrial Areas for recreation purposes by the State must have specific prior written approval by Reclamation's designated representative and written concurrence from Water User Organization(s), and shall not interfere with the operation of the Industrial Areas. In areas where authorized recreational use currently exists such as trail use across the top of Dikes 1-6, Mormon Island Auxiliary Dam, the State is responsible for managing the recreation use and Reclamation is responsible for the operation and maintenance of the Project Facilities.

(c) Pursuant to Title 43 CFR 423, Reclamation may close the Project Areas, or any portion thereof, including the Industrial Areas to public use whenever Reclamation determines such restriction is necessary in the interest of Project operation, public safety, or national security. Reclamation's designated representative shall give written notice to the State of any such closure. This notice shall be given as soon as practicable after a determination for closure is made and shall include the date when the closure becomes effective. The State shall enforce such closure and such enforcement shall include coordination and cooperation with Reclamation and Water User Organization(s). Reclamation will work with the State to minimize impacts to Revenues during such closures. Enforcement of such closures shall be at no cost to the State.

#### 8. LIAISON

Both parties agree to identify individuals who will serve as liaisons and points of contact for each party to ensure timely responses to inquiries, the smooth, uninterrupted flow of information and compliance with this MPA. The liaisons do not have any authority to direct any activity under the MPA or to amend or modify the MPA.

#### 9. ADMINISTRATION

(a) The parties will meet annually, to review and inspect the Project Areas regarding compliance with this MPA. The purpose being to ensure that administration, operation, maintenance, and development procedures are adequate; to identify and correct deficiencies and problems; and to ensure the Management of the Project Areas is in accordance with the MPA.

(i) Reviews will be in accordance with the Reclamation Manual and will include, but are not necessarily limited to: monitoring health and safety; appropriate use of the Federal Lands and Water; land interests and resources; and inspections of Recreation Facilities and operations, including third party Concession contracts or permits, and basic service contracts, within the Project Areas.

(ii) Deficiencies and problems within the Project Areas will be corrected in a timely manner in accordance with the terms of this MPA. Conclusions and recommendations based upon such reviews and inspections will provide direction for, and possible modification of the administration, operation, maintenance, and development responsibilities pursuant to this MPA.

(b) The State shall maintain financial accounting record for Project Areas to satisfy the requirements of this MPA and shall furnish to Reclamation an annual report not later than 120 days following the close of the State Fiscal Year. An annual financial report shall include all revenues received and expenditures for operations and development of Recreation Facilities and Management of the Project Areas. The State will keep all financial records in accordance with generally accepted accounting principles.

(c) RECREATION USE DATA REPORT – On September 15 of each year, the State will furnish to Reclamation’s designated representative an annual summary of recreation related visitor uses at the Project Areas for the year (eg. September 15, 2011 to September 14, 2012). Reclamation will provide the forms for this report, which is currently titled “Recreation Use Data Report”.

(d) The State agrees that Reclamation shall have the right to examine and to access any pertinent books, documents, papers, and records of the State and/or third party entities involving transactions related to this MPA.

(e) Reclamation's designated representative may at any time request an independent audit or examination of records related to any third party Concession contract or other service contracts. Such independent audit or examination of records shall be performed at Reclamation's cost.

#### 10. RISK AND HOLD HARMLESS

(a) The parties hereto will each be responsible and liable only for the negligent acts or omissions of their respective employees to the extent provided by law. However, nothing in this Agreement will be construed to be an admission of fault or liability, and nothing will limit the defenses and immunities legally available to each party against each other and third parties.

(b) The State agrees to hold harmless the United States, its employees, contractors, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising from the State's activities under this Agreement.

(c) The United States agrees to hold harmless the State of California, its employees, contractors, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising from the United States' activities under this Agreement.



11. OPERATIONS AND MAINTENANCE

(a) In accordance with this MPA, the State will be responsible for providing the following services in the Project Area: visitor services, law enforcement and emergency services, recreation facility maintenance, management of recreation and public use, environmental compliance, resource protection and management as defined in subsection (v). The State will determine the proper and/or minimum service and staffing levels necessary for ongoing provision of the above services, consistent with available funding.

(b) The State must ensure its management activities under this MPA, do not compromise Reclamation's responsibility to meet statutory, regulatory and policy requirements for flood control, the delivery of water and power and other project purposes.

(c) The State will ensure that land use and administration of the Project Areas will conform to all applicable Federal laws, rules, regulations, policies, and Executive Orders. (Exhibit "I"). Where State policy, law, and/or regulations are more stringent, but do not conflict with Federal policy, law, and/or regulations, the State's will be the required standard.

(d) Scope of Services to be provided by the State:

(i) LAW ENFORCEMENT

1. The State assumes full responsibility for maintaining lawful order and providing for the safety of the public in the Project Areas managed by the State pursuant to this MPA.

2. The State will exercise its law enforcement authority in the Project Areas, as staffing and resources allow, to maintain and preserve

law and order, and to protect Recreation Facilities, resources, and Federal Lands and Water from unauthorized use.

3. The State will, under its authority (Cal. Pub. Resources Code § 5003), adopt and enforce rules and regulations as necessary and desirable to effectively manage the Project Areas, including law enforcement, public health and safety pursuant to this MPA.

4. The State's rules and regulations will be consistent with regulations promulgated by Reclamation in 43 Code of Federal Regulations, Part 423 and Part 429 (Attachments) and other applicable Federal and State laws, rules, regulations, and policies currently in place or as may be adopted in the future. Reclamation will notify State of new or updated regulations or policies as they apply to the provisions of this MPA.

5. The State is not responsible for security requirements of Project Facilities within the Industrial Areas; but may be requested to coordinate and cooperate with Reclamation security personnel and contractor.

6. The State will exchange law enforcement information with Reclamation's designated Regional Special Agent (RSA) as appropriate on a case by case basis. State law enforcement personnel and the designated RSA will collaborate as necessary and reasonable in the exchange of law enforcement information related to the Project Areas. The RSA may provide resources and expertise as applicable and necessary to address violations of federal laws.

7. The State will perform initial response for incidents involving cultural and natural resources for the purpose of preventing further damage to resources. As appropriate, the State may investigate and prosecute or may turn over cases to Reclamation personnel for necessary follow up.

8. The State will ensure appropriate safety, fire, medical and search and rescue procedures are developed and in place to respond, or cooperate in the investigation, or cooperate in the investigation by the agency having jurisdiction, for all incidents involving death, serious injury or property damage, hazardous material spills or other incidents of a serious nature within the Project Areas. The State will make an initial verbal report on such incidents to Reclamation's emergency official or other designated representative within one working day of knowledge of the incident. The State will submit a written report to Reclamation's Emergency Official or other designated representative in accordance with Reclamation's Emergency Action Plan (EAP). Annually, Reclamation will provide orientations and briefings on the EAP to the State.

(ii) FACILITIES

1. Reclamation manages the Federal owned infrastructure and structures within the Project Areas which pre-existed State management of recreation in these areas and which were not constructed by the State to serve recreation use, including but not limited to the Ponderosa Way Bridge and the historic Mountain Quarries

Railroad Bridge. The State is authorized but not responsible for the replacement of Federal-owned Infrastructure and structures.

2. In the event of a catastrophic occurrence the State and Reclamation will work together to seek solutions for repairs or replacement of the Federal-owned infrastructure and structures.

3. To the extent that specific roads are used for recreation purposes the State and Reclamation will share in the annual operations and maintenance costs for these roads. Major repairs and/or replacement of Project Area roads are not the responsibility of the State.

4. Reclamation will continue to provide the existing administrative facilities (Exhibit K) at no cost to the State for its Management of the Project Areas. The State shall be responsible for annual operation and maintenance costs for these facilities.

5. Reclamation may fund major repairs and/or replacement of these administrative buildings and facilities as necessary for the administration and management of the Project Areas.

6. Reclamation and the State may cost share replacement of Recreational Facilities on a project by project basis outside of the O&M Financial Assistance Agreement in accordance with Article 4 per LND 01-01.

(iii) MAINTENANCE

1. The State will provide for maintenance of Recreation Facilities within the Project Areas subject to the provisions of this MPA.

2. The State will develop and implement a recycling and waste reduction plan for the Project Areas.

(iv) HAZARDOUS MATERIALS AND FEATURES

1. The State shall not be responsible for existing known or unknown hazardous features on the Federal lands within the Project area, such as, abandoned mines, drainage tunnels associated with historic mining and unstable cliffs and slopes resulting from past mining, or similar features.

2. The State is responsible for any damages or claims related to their actions related to any contamination or pollution incidents arising by or on behalf of the State.

3. The State shall not knowingly allow contamination or pollution on any Federal lands and waters or facilities by its employees or agents.

4. Within the authority provided by this MPA, the State shall take reasonable precautions to prevent such contamination or pollution.

Substances causing contamination or pollution shall include but are not limited to hazardous materials, refuse, garbage, sewage effluent, industrial waste, petroleum products, misused pesticides, and pesticide containers.

5. The State shall comply with all applicable Federal, State, and local laws and regulations, and Reclamation policies, directives and standards, existing or hereafter enacted or promulgated, concerning any hazardous material that will be used, produced, transported, stored, or disposed of on or in the federal lands, water or facilities.

6. Upon discovery of any event which may or does result in contamination or pollution of the Federal lands, waters or facilities, the State shall be an initial responder and will implement initial measures necessary to protect public health and the environment, including notification of the appropriate agencies, and shall report full details of the actions to Reclamation's Emergency Official or other designated representative in accordance with Reclamation's Emergency Action Plan (EAP). Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.

7. The State agrees to include the provisions contained in paragraphs (2) through (6) of this Article in any third party permits, agreements, contracts or Concession contracts it may enter into pursuant to this MPA.

(v) ENVIRONMENTAL COMPLIANCE

1. Reclamation will be the Federal lead for NEPA, ESA, NHPA and other applicable statutes and agreements for activities within the Project Areas. Reclamation reserves the exclusive authority to approve any proposal for use of Project Areas.

2. California State Parks shall be the State lead for CEQA and any State permits.

3. The California State Parks will ensure compliance with all applicable environmental clearances and permits as indicated in section v

(2). Reclamation agrees to provide timely information and approvals within a reasonable time frame, once requested by State.

4. Each party shall bear its own environmental review costs under the terms of this MPA related to recreation management projects consistent with this agreement. The parties may agree to share costs for environmental review.

(vi) NATURAL RESOURCE MANAGEMENT

1. Reclamation is responsible for the protection of natural resources on Federal property.

2. The State is not responsible for tree hazard management and response outside the Recreation Areas within the Project Areas, including along the federal property boundary.

3. The State is responsible for tree hazard management in the Recreation Areas including developed campgrounds and day use areas in accordance with the State Park Tree Hazard policy.

4. If funded and as staffing allows, the State may assist in the protection and management of natural resources within the Project Areas.

(vii) PEST MANAGEMENT

1. The State is not responsible for Pest Management in Project Areas. If funded and as staffing allows, the State may assist in the Pest Management Program.

2. The State shall only use pesticides in the Project Areas that are approved by Reclamation.

3. Activities for the control of undesirable plants and animals in the Project Areas will incorporate Integrated Pest Management concepts and practices consistent with Reclamation Policy.
4. All pesticides used by the State and its contractor's or third party permittee shall be in accordance with the current registration, label direction, or other directives regulating their use and with applicable Reclamation policy, directives and standards.
5. Applicators will meet applicable Federal and state training or licensing requirements.
6. Records maintenance shall be in accordance with the MPA and State requirements.
7. Any equipment, tools and machines used for pesticide application shall be in good repair and suitable for such use.
8. Mixing, disposal, and cleaning shall be done where pesticide residues cannot enter storm drains, sewers, or other non-target areas consistent with all state and Federal requirements.
9. The State shall take any necessary measures for containment and clean up of pesticide spills caused by the State. Spills shall be reported to the Reclamation's authorized representative with full details of the actions taken. Reporting shall be within a reasonable time period but shall not exceed 24 hours from the time of discovery if it is an emergency and the first working day following discovery in the event of a non-emergency.



10. The State agrees to include the provisions contained in paragraphs 2 through 9 of this Article in any subcontract or third-party contract it may enter into pursuant to this MPA.

(viii) CULTURAL RESOURCE MANAGEMENT

1. The State is not responsible for Cultural Resource Management in the Project Areas. If funded and as staffing allows, the State may assist in the Cultural Resource Management.

2. State personnel will coordinate with Reclamation to ensure that compliance with section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C 470f), and implementing regulations at 36 CFR Part 800, is completed prior to project implementation. The management of cultural resources located within the Project Areas shall be consistent with (Exhibit F) Reclamation's Cultural Resources Management Policy, Directives and Standards

3. In the event that human remains are found within the Project Areas, immediately notify the respective Reclamation Area Manager and follow provisions of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 et seq.) and Reclamation's Directives and Standards for the Inadvertent Discovery of Human Remains on Reclamation Lands (LND 07-01).

4. The unauthorized excavation of prehistoric, cultural or historical artifacts is prohibited by the Archaeological Resources Protection Act (ARPA) (16 U.S.C.70a et seq.). Planned collections of such items are not allowed unless approved through the issuance of a permit by

Reclamation pursuant to ARPA. Any archaeological or historical items removed from the Project Areas, including items collected and turned in by members of the public, shall be assessed by Reclamation to determine whether they constitute federal museum property. If so, they will be managed by Reclamation in a manner consistent with 36 CFR Part 79, the curation of Federally-Owned and Administered Archaeological Collections.

(ix) EDUCATION AND INTERPRETATION

The State may provide educational and interpretive services within the Recreation Area as funding and staffing allow.

12. USE AUTHORIZATIONS, CONCESSIONS, CONTRACTS, AND  
SPECIAL EVENTS

Reclamation and the State will coordinate regarding any administration, operation, maintenance, and development activities pursuant to this MPA that affect any management, operation, and maintenance activities of the Use-Authorization Permittees.

(a) USE AUTHORIZATIONS

The State may issue and administer third party permits, agreements, contracts or Concession contracts to businesses, organizations, associations or other appropriate entities for the purpose of providing appropriate and necessary services, goods, and facilities for the purposes of this MPA and in accordance with any current or future planning documents.

Such contracts, agreements and permits shall contain language subjecting the rights and privileges there under to all terms, conditions, exceptions, and reservations in this MPA.

(1) Any contract, agreement or permit issued shall contain language that recognizes the right of paramount use by Reclamation of the Project Areas and shall hold harmless and indemnify Reclamation its officers, agents, employees, contractors, and assigns from any loss or damage and from any liability on account of injury, damage or death due to construction, operation and maintenance activities. The State may include similar hold harmless and indemnification provisions in any such contract, agreement or permit.

(2) The State shall require all contractors, concessionaires, agreement holders and permittees operating within the Project Areas to carry adequate liability and property damage insurance. Said insurance will be of sufficient amount to cover, as a minimum, the State's liability under its governmental liability statutes and will be consistent with the services and facilities provided and the potential for injury or damage to life and property. Reclamation shall be named as an additional insured party on all such insurance, and a certificate of insurance shall be provided to the State by the contractor, concessionaire, agreement holder or permittee to ensure that the insurance is in effect. State may also be named as an additional insured party on such insurance.

(3) No third party permits, agreements, contracts or Concession contracts issued by the State as provided in subsection (a) above shall purport to transfer or convey any interest in the land, water or any public facilities; and, the right given to the State to enter into such contracts and permits shall not be construed as a

right to grant or convey an interest in the land, water, or any public facilities. No assignment or transfer of a Concession contract or permit or interest therein, whether as security or otherwise, shall be effective until such assignment or transfer has been approved. All Concession contracts including transfers and assignments issued by the State must comply with Reclamation's Concession Management Policy and Directives and Standards, attached as Exhibit F.

(4) All Concession contracts must provide that they are not assignable from the State to Reclamation and will terminate at the expiration or termination of this MPA. In the event of termination of this MPA and at Reclamation's discretion, Reclamation may issue a new Concession contract or permit that is in compliance with the Concessions Management Policy and Directives and Standards. In the event this MPA is terminated, the State may pay to the concessionaires, contractors, or Permittees the pro-rated unexpended portion of any fees or rents paid to the State.

(5) The term for a third party permits, agreements, contracts or Concession contracts may not extend beyond the term of this MPA. Reclamation may authorize extension of said Concession contract or agreements to a monthly basis based upon an extension to the MPA. In general, the term of such contracts or permits should be as short as possible and based on economic factors, conditions, and any new investment, as determined by the State through a financial feasibility evaluation. Reclamation will work with the State to determine reasonable lengths of term.

(6) Concessionaires, contractors and permittees shall be required to comply with all applicable provisions of Federal, State, and local laws, rules and

regulations, Executive Orders, and Reclamation Policies, in force now or as may be promulgated or changed in the future.

(7) In accordance with Title 43 CFR part 429, except for uses associated with official management of the Project Areas the State shall not issue, or allow to be issued, directly or through the actions of its concessionaires or permittees, new permits or other forms of agreements that allow for the development of privately owned exclusive uses, as defined in 43 CFR 429.2 and including such as, but not limited to, cabin sites; mobile homes or travel trailer sites; private boat docks; ski clubs; boat clubs; or, the issuance of livestock grazing permits. Uses associated with the official management of the Project Areas include, but are not limited to, employee housing, such as State employees, concessionaire security and management staff and volunteers for the purpose of executing this MPA.

(8) The State may enter into basic service contracts without prior review and written approval of Reclamation. Such contracts are limited to essential services for routine maintenance, including, but not necessarily limited to, trash removal and disposal, toilet pumping, building painting and repairs, road maintenance or general grounds maintenance.

(9) Subject to Reclamation review of project plans and environmental compliance, including NEPA, the State may enter into contracts and agreements for the construction and repair of public use and recreation facilities consistent with this MPA.

(10) Subject to Reclamation review of project plans and environmental compliance, including NEPA, the State may enter into contracts and agreements for other management purposes consistent with this MPA, including but not

limited to treatment of weeds, vegetation modification for fuel reduction purposes, hazard tree removal and other resource management purposes.

(b) SPECIAL USE AND EVENT PERMITS

(1) The State is authorized to issue special event permits in accordance and in compliance with 43 CFR § 429 and limited to permits for the following activities identified in 43 CFR 429.3, Commercial guiding and outfitting, Commercial or organized sporting events, organized recreational activities, and public gatherings, with a single event lasting seven days or less.

(2) The State is authorized to issue special use permits for Commercial Filming. The State may recover their cost for administering and managing special use permits for Commercial Filming activities. Reclamation reserves the right to collect Commercial Filming fees for Commercial Filming special use permits issued on the Project Areas. These fee amounts shall be developed by Reclamation and provided to the State. The special use applicant will pay Reclamation directly for the Commercial Filming fee. The State shall not issue a special use permit for Commercial Filming until Reclamation acknowledges receipt of the Commercial Filming fee. Commercial Filming fees shall be sent to:

Attn: Area Manager

Central California Area Office

7794 Folsom Dam Road, Folsom CA 95630

(3) With prior Reclamation approval the State may also issue permits related to the above activities occurring on an annual basis, with no single event lasting more than seven days at a time, or one-time events exceeding seven days.

(4) Reclamation reserves the right to establish and collect fees for Rights-of-Use pursuant to Public Law 102-575 (Title 28) Section 2805 (a)(1)(A).

(5) Applicable fees for these activities shall be collected by the State and are considered as Revenues in accordance with P.L. 89-72. The financial reporting for these Revenues will be performed in accordance with Exhibit "E".

(6) The State is not granted authority to issue special use permits or other types of authorizations related to the following activities as identified in 43 CFR 429.3 Grazing, farming or agricultural uses; Infrastructure including transportation, telecommunications, utilities, pipelines; Removal or exploration of sand, gravel or other minerals; or timber harvesting.

### 13. FACILITY DEVELOPMENT AND IMPROVEMENTS

Recreation Facilities shall be developed, operated and maintained and visitor services shall be provided in accordance with the Resource Management Plan/General Plan for each Recreation Area, subject to the provisions of this MPA.

The State shall be the lead agency for the planning, development and construction of Recreation Facilities. The State shall provide Reclamation with any development plans for review and concurrence that could affect Reclamation's current or future management, operation, and maintenance activities within any of the Project Areas. In reviewing plans for improvements Reclamation shall consider all O&M costs associated with any improvements and the impacts such improvements would have on the authorized purposes of the Project Areas.

14. TITLE TO LAND, RECREATION FACILITIES AND IMPROVEMENTS,  
EQUIPMENT AND RESTORATION

- (a) Permanent structures and improvements constructed on the Federal Lands and Water which were funded, or partially funded, by the United States shall remain the property of the United States.
- (b) The State shall keep a current and accurate property record/inventory of all Recreation Facilities installed or constructed within the Project Areas and all equipment purchased with Federal funds for use at the Project Areas pursuant to this MPA.
- (c) The State shall keep a current and accurate inventory of any Recreation Facilities installed or constructed solely at its own expense or at the expense of its contractors, concessionaires and permittees and shall annually provide Reclamation such inventory so that Reclamation inventory records can be maintained accordingly.
- (d) No concession area shall be developed unless State ensures that the disposition of all improvements is included in the concessions agreement.
- (e) Upon termination of this MPA, Reclamation may purchase, at the Cost Less Depreciation value, those Recreation Facilities determined necessary for the future operation and maintenance of the Project Areas, provided the facilities were exclusively constructed and financed by the State its contractors, concessionaires or permittees.
- (f) State may relinquish ownership of Recreation Facilities to Reclamation through mutual consent of both parties.
- (g) Upon termination of this MPA or such longer period as may be determined by Reclamation to be reasonable, the State, its contractors, concessionaires or permittees, shall at their sole cost or expense, be responsible for salvaging and/or removing of the Recreation Facilities that were exclusively financed, constructed or installed by the State,



its contractors, concessionaires or permittees, which are determined by Reclamation to be unnecessary for continued Management of the Project Areas.

(h) The State, its contractors, concessionaires and permittees shall restore the land occupied by such removed Recreation Facilities to a satisfactory condition as determined by Reclamation.

(i) Upon failure of the State, its contractors, concessionaires and permittees to perform removal or restoration requirements the State shall be responsible for payment of all expenses incurred by the United States or its assigns, related to the removal of Recreation Facilities and restoration of said lands.

#### 15. RESOURCE MANAGEMENT PLAN / STATE GENERAL PLAN &

##### OTHER PLANNING

(a) The State's administration, operation, maintenance, and development of the Project Areas will be consistent with the Reclamation approved Resource Management Plan and State Park and Recreation Commission approved General Plan for each area. Any authorization given by Reclamation to the State for any activity related to the Project Areas shall include a provision requiring compliance with said plans.

(b) Where a Resource Management Plan/General Plan does not exist such Plans will be prepared for the Project Areas as funds are available. Said Resource Management Plan/General Plan will be jointly prepared by Reclamation and the State.

(c) The Resource Management Plan/General Plan will be prepared and/or updated in compliance with Reclamation's Resource Management Plan Guidebook and NEPA Handbook, the State Parks Planning Handbook, and other applicable Federal and State policies and guidelines.

(d) Reclamation and the State will consult and cooperate in commenting on plans, projects and proposals by third parties outside the Project Area which may affect public use, facilities and resources within the Project Areas.

(e) The State will have the lead in the development of specific recreation management plans such as road and trail management plans.

(f) Reclamation and the State will coordinate and cooperate regarding resource management planning. Each agency is responsible for specific resource management planning efforts on their respective lands (e.g. vegetation management plans, prescribed fire, etc.) within the Project Areas. If funded and as staffing allows, the State may assist in the development of other specific resource management plans on Project lands within the Project Area.

#### 16. RESERVOIR WATER LEVEL

Reclamation reserves the right to vary both the Folsom Reservoir and Lake Natoma water levels as necessary for Project purposes. Reclamation's designated representative will, to the extent reasonably practicable, provide timely notice to the appropriate California State Park Manager of any emergency increases or decreases in water levels that would significantly or adversely affect recreational use and related facilities of the Project Areas.

Both parties recognize that fluctuating water levels directly affect recreation use and the revenue generating ability within the Recreation Area and will have a direct effect on the Cost Share obligations from both parties pursuant to this MPA.

Many State funded recreation facilities at Folsom Reservoir exist between the current operational high pool elevation (466') and the Folsom Dam crest (480.5'). These facilities were sited and constructed assuming the current operational high pool level (466'). In the event that

changes in established reservoir operations causes water fluctuations either above the operational high pool elevation (466') or below the dead and/or conservation pool elevation (327'), Reclamation and State Parks shall consult to determine feasible options to mitigate impacts to recreation use. If either party fails to Mutually Agree on a course of action, then the remedies outlined in this MPA may be utilized.

#### 17. REAL PROPERTY MANAGEMENT

(a) Except as authorized in this MPA, only Reclamation may issue land use authorizations within the Project Areas. Reclamation may delegate authority to the State for Concession contracts, agreements, short term special use permits and other entry permits specific to the State's management purposes. No easements will be granted by the State for any activities occurring in the Project Areas.

(b) Reclamation will provide within 180 days of the effective date of this MPA, a list of existing third-party agreements and contracts to the State to be included in the Appendix (Exhibit M). Reclamation will annually provide an updated list of all third party agreements and contracts to the State.

(c) Reclamation shall, prior to approval of any use authorization, provide the State with a copy of any Use Authorization application for review and comment. The State may review any such application and make written comment to Reclamation. Reclamation shall consider timely written comments of the State during the approval process and, if appropriate, incorporate them into the Use Authorization. Reclamation shall include in each Use Authorization disclosure of the State's role as managing partner and except for any such Use Authorization issued to the State include provisions whereby the grantee indemnifies and holds harmless the State, its employees, agents, and assigns

from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out of the Use Authorization granted by Reclamation. Should any Use Authorization materially affect the scope of the MPA the process as outlined in Article 2 (c) shall be followed. Reclamation shall also include measures in each applicable Reclamation-issued Use Authorization to protect the recreating public and Recreation Facilities, to provide for replacement or repair of damages of Recreation Facilities which may occur as a result of the Use Authorization.

(d) As permitted by 43 CFR Part 429 and other applicable law or regulation, administrative fees incurred by Reclamation and the State for costs associated with the review of Use Authorization applications may be recouped by both parties. The Use Applicant shall be responsible for negotiating and providing payment to State for costs that such use may have on their operations. The State shall validate and notify Reclamation of receipt of payment prior to the issuance of a Use Authorization. The Use Authorization is based on the appraised value of such use as determined by Reclamation and is separate of the State's administrative costs. The payment for the value of such Use Authorization and the incurred administrative charges for issuance of the authorization will be collected by Reclamation at the time for which a Use Authorization is issued.

(e) The State shall take all reasonable measures necessary to identify, investigate, and resolve incidents of unauthorized recreation facility use within the Project Areas. This includes any legal actions necessary to prevent or prosecute such unauthorized use provided that any such action by the State cannot bind the United States in a manner either to payment of money or any other form or commitment. Reclamation hereby

delegates to the State the right to bring action in the State's name in order to protect each party's interests, and carry out their responsibilities.

(f) The State is not responsible for any real property management including, but not limited to; unauthorized land uses, resource damage boundary encroachments and disputes and other real property issues on Federal lands within the Project Areas. The State shall provide initial investigation and will notify Reclamation regarding unauthorized land, resource or encroachment issues within the Project Areas. The State shall notify Reclamation's designated representative of boundary disputes, encroachments or other unauthorized use incidents within 10 calendar days of discovery. To the extent funding and staffing permit, the State may assist Reclamation in addressing these real property issues.

(g) The State shall not be responsible for marking and fencing the boundary of the Federal lands and for any required survey of the boundary.

#### 18. FIRE PREVENTION, PROTECTION AND SUPPRESSION

Reclamation and State Parks acknowledge that fire management is critical to the protection of public lands and provides for the health and safety of the visiting public. Both parties will cooperate and coordinate to address fire prevention, fire management and vegetation management issues that affect both state and Federal lands.

The State is not responsible for fire prevention, suppression, hazard fuel management and fire management planning for Federal owned lands within the Recreation Areas. This may include, but is not limited to; development of Fire Management Plans, fuel management and reduction project planning and implementation pursuant to federal policies/plans and the responsibility for fire suppression within the Project Areas.

The State is responsible for fire prevention, suppression, vegetation and hazard fuel management for state owned lands within the Recreation Areas. This may include, but is not limited to, the development of Wildfire Management Plans, vegetation management and fuel reduction project planning and implementation pursuant to state policies, plans and coordination with the state or local agency responsible for fire suppression on the state owned lands within the Recreation Area.

#### 19. SEVER OR REASSIGN LANDS

The State recognizes that the United States retains the right to sever or reassign lands from the Project Areas (Folsom Unit and the Auburn Folsom South Unit). If such severance or reassignment materially affects either the scope or provisions of the MPA, the parties will revisit the terms and conditions of the MPA affected by the severance or reassignment. This is particularly applicable to the Federal Land and Waters associated with the Auburn Dam Project Lands where Congress, the Secretary of the Interior, or Secretary of the Army may require the severance or reassignment of some or all lands for construction or other purposes to another agency, sale or other disposition of lands within the Project footprint.

#### 20. EXTRAORDINARY OR CATASTROPHIC OCCURRENCES

In the event of extraordinary or catastrophic occurrences, such as flooding, large debris build-ups on or along waterways, earthquakes and fires, that cause major damage to structures, facilities or resources, for example major damage to Project Areas, office buildings, bridges, and roads or large debris build-ups, Reclamation and the State shall cooperate to identify Cost Share or other solutions for repair or replacement of the damaged facilities/resources or the clean-up of debris.

## 21. CONSUMPTIVE USE OF WATER BY STATE

The State may pursue acquisition of water, water wells, potable water supplies piped in from commercial sources, and/or water rights for consumptive use for recreation purposes within the Project Areas. Such consumptive uses may include, for example, water for operation of bathrooms, showers, fire fighting, campgrounds, riding stables, irrigation, and other recreation related purposes. Said water, water wells, water supplies, or water rights, except for commercial water sources, will be obtained in the name of Reclamation and upon termination or expiration of this MPA, will be retained for use at the Project Areas for which it was obtained.

## 22. RESERVATIONS

The State's management of the Project Areas is subject to the following conditions and reservations:

- (a) Existing land uses, rights, or interests within the Project Areas and lawfully held by Reclamation, Water User Organization(s), Use-Authorization Permittees or persons or entities not party to this MPA (Exhibit M).
- (b) The right of Reclamation, its assigns, employees, contractors and agents, to enter upon the Project Areas on official business without charge, for the purpose of enforcing, protecting, and exercising the rights of Reclamation, and also to protect the rights of those not party to this MPA.
- (c) The right of Reclamation, and its agents, employees, assigns, contractors, lessees, or permittees, to remove from the Project Areas, any and all materials necessary for the construction, operation, and maintenance of Project works and facilities. All such

removal activities shall not encroach on developed sites without mutual agreement of the parties hereto.

(d) The right of Reclamation and its agents, assigns, permittees, or lessees to prospect for, extract, and carry on the management of oil, gas, coal, and other minerals, and the right to issue leases or permits to prospect for oil, gas, or other minerals under the Act of February 25, 1920 (41 Stat. 437), and amendatory acts, the Act of August 4, 1939 (53 Stat. 1187), as amended, and the Act of August 7, 1947, (61 Stat. 913).

(e) Except in emergency situations, Reclamation's designated representative shall give written notice to the State's designated representative 30 calendar days prior to the exercise of the above rights.

#### 23. CONTINGENT ON APPROPRIATIONS

The expenditure of any funds and the performance of any work by Reclamation or the State as provided for by the terms of this MPA is made contingent on Congress or the California Legislature making the necessary appropriations and shall be contingent upon such appropriation funds being made. The failure of Congress or the California Legislature to appropriate funds shall not impose any liability on Reclamation or the State.

#### 24. MISCELLANEOUS PROVISIONS

(a) The State, its contractors, concessionaires or permittees shall comply with the Environmental Requirements set forth in Exhibit B attached hereto and incorporated herein.



- (b) The State, its contractors, concessionaires or permittees (Exhibit M) shall comply with the Equal Opportunity requirements set forth in Exhibit C and Title IV of the Civil Rights Act of 1964 set forth in Exhibit D attached hereto and incorporated herein.
- (c) The State, its contractors, concessionaires or permittees, shall perform this MPA consistent with all applicable Federal, State and local laws, regulations and policies.
- (d) The State, its contractors, concessionaires or permittees shall comply with the most current version of all applicable accessibility laws, rules, regulations, executive orders, and Reclamation policies including but not limited to, the Rehabilitation Act of 1973 as amended; the Architectural Barriers Act of 1968; 43 CFR part 17 subparts B and E; and Reclamation Manual Directive and Standards CRM 03-01 "Nondiscrimination on the Basis of Disability in Federally Conducted Programs, Activities, and Services"
- (e) The State, its contractors, concessionaires or permittees, shall perform this MPA consistent with Reclamation's Federal Indian trust responsibilities as set forth in Exhibit G, entitled "Departmental Manual Part 512, Chapter 2, Departmental Responsibilities for Indian Trust Resources", attached hereto and incorporated herein.
- (f) The State, its contractors, concessionaires, or permittees shall make all Recreation improvements at a minimum compliant with the Reclamation Recreation Facility Design Guidelines. The State, its contractors, concessionaires or permittees shall submit proposed improvement plans and design drawings to Reclamation for approval.
- (g) The State, its contractors, concessionaires or permittees shall comply with Reclamation Visual Identity Standards and incorporate applicable Reclamation "Sign Guidelines" when planning, designing, fabricating installing and maintaining facility

signs, displays and exhibits throughout the Project Area. Reclamation shall be provided an opportunity to review proposed signs.

(h) The parties hereto understand and agree that the various terms and conditions within this MPA apply to the MPA as a whole, and are not to be narrowly defined within the specific article under which a given term or condition is located.

(i) Each party hereto will provide to the other parties any additional reports or information which may be reasonably requested.

(j) Any activity deemed to be illegal on the Federal Lands and Water will be cause for immediate action under Articles 27 and 29 of this MPA.

## 25. NOTICE OF CURE/ DISPUTE RESOLUTION

(a) Reclamation and the State may provide notice of any non-compliance with the terms and conditions of this MPA. Notification of non-compliance shall be in writing, giving a 90-day period of time in which the non-compliant act or omission shall be corrected. If either party fails to Mutually Agree to satisfactorily correct any substantial or persistent non-compliance within the specified time the following remedies are available: Reclamation may close all or part of the Project Areas, Reclamation or the State may temporarily suspend Management of the Project Areas, or terminate the MPA after notice in writing of such intent, in accordance with Article 27.

(b) In the event Reclamation and the State cannot Mutually Agree on a proposed action within 90 calendar days, a longer period may be Mutually Agreed to by the parties hereto, to address any notice of non-compliance. Each party shall present its proposed action to the Director of California State Parks and the Director of the Mid-Pacific Region of the Bureau of Reclamation. If within 90 calendar days after submitting such

proposal to the respective Directors, the parties have still not Mutually Agreed on the proposed action, Reclamation's proposed action shall take precedent. In the absence of a cure each party shall have the right to terminate this MPA after notice in writing as set forth in Article 27.

#### 26. MODIFICATION OF MPA

This MPA may be modified, amended, or superseded at any time during its term as Mutually Agreed by the parties hereto. At a minimum, this MPA will be subject to review and modification or amendment every five years as to coincide with the inception or renewal of any funding agreements.

#### 27. TERMINATION

(a) This MPA will terminate and all rights and obligations of the parties under this MPA will cease under the following conditions:

- (i) Upon expiration of the term of this MPA, as provided in Article 3; or
- (ii) Upon receipt of a written notice of non-compliance, efforts to resolve have not been Mutually Agreed to by the parties under the terms of Article 25 and a written notice of termination has been received by Reclamation or the State; or

(b) If the U.S. Congress or the California Legislature fails to provide O&M Cost Share funding to enable Reclamation or the State to carry out their respective obligations under this MPA in any respective fiscal year as provided in Article 4, either party may give written notice that this MPA shall terminate on a certain date at least 180 days after the date of notice.

(c) For conditions other than those expressed in (a) and (b) herein, Reclamation or the State will give the other party at least 2 years written notice of the intent to terminate this MPA.

## 28. DESIGNATED REPRESENTATIVES / NOTICES

The parties hereto agree the designated representatives for administration of this MPA are as follows, or as may be further delegated in writing by the following:

- (a) Reclamation - Area Manager, Central California Area Office, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, CA 95630.
- (b) State of California, District Superintendent, Gold Fields District, 7806 Folsom Auburn Road, Folsom, CA 95630.
- (c) Any written notice, demand, or request, as required or authorized by this MPA, will be properly given if delivered by hand, or by mail, postage prepaid, to the other party as above listed. All parties hereto are responsible for notifying all affected parties of any subsequent change of address, organizational changes, responsibility adjustments, and other related changes, as they take place.

## 29. SEVERABILITY

Each provision of this MPA shall be interpreted in such a manner as to be valid under applicable law, but if any provision of this MPA shall be deemed or determined by competent authority to be invalid or prohibited hereunder, such provision shall be ineffective and void only to the extent of such invalidity or prohibition, but shall not be deemed ineffective or invalid as to the remainder of such provision or any other remaining provision, or this MPA as a whole.

30. OFFICIALS OR EMPLOYEES NOT TO BENEFIT

No member or delegate of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon.

31. SURVIVOR CLAUSE

Terms and conditions that require action by the State or its contractors, concessionaires, permittees, agents or assigns may survive the termination of this MPA when they are deemed by Reclamation for the benefit of the United States.

IN WITNESS WHEREOF, the parties hereto have executed this MPA as of the first date written above.


STATE OF CALIFORNIA


Department of Parks and Recreation

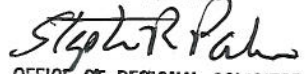
United States of America

Department of the Interior

Bureau of Reclamation

By   
Ruth Coleman, Director  
State of California  
Department of Parks and Recreation

By   
Donald R. Glaser, Regional Director  
Mid-Pacific Region

APPROVED AS TO LEGAL  
FORM AND SUFFICIENCY  
  
OFFICE OF REGIONAL SOLICITOR  
DEPARTMENT OF THE INTERIOR