

**IMPLEMENTING AGREEMENT**  
**for the**  
**HUMBOLDT BAY MUNICIPAL WATER**  
**HABITAT CONSERVATION PLAN**  
**For its**  
**MAD RIVER OPERATIONS**  
**December 7, 2004**

TABLE of CONTENTS

1.0 PARTIES..... 5

2.0 RECITALS AND PURPOSES ..... 5

    2.1 Recitals ..... 5

    2.2 Purposes ..... 5

3.0 DEFINITIONS ..... 6

4.0 OBLIGATIONS OF THE PARTIES..... 8

    4.1 Obligations of the District ..... 8

    4.2 Obligations of the Service ..... 8

    4.3 Interim obligations upon a finding of Unforeseen Circumstances ..... 8

5.0 INCORPORATION OF HCP ..... 9

6.0 TERM ..... 9

    6.1 Initial term ..... 9

    6.2 Permit suspension or revocation..... 9

    6.3 Relinquishment of the permit ..... 9

    6.4 Extension of the permit ..... 10

7.0 FUNDING ..... 10

8.0 MONITORING AND REPORTING..... 11

    8.1 Planned periodic reports..... 11

    8.2 Other reports ..... 11

    8.3 Certification of reports..... 11

    8.4 Monitoring by Services..... 11

9.0	CHANGED CIRCUMSTANCES .....	11
9.1	District-initiated response to Changed Circumstances.....	11
9.2	Service-initiated response to Changed Circumstances.....	11
9.3	Listing of species that are not Covered Species .....	12
9.4	Change in District's Diversion Operations .....	12
10.0	ADAPTIVE MANAGEMENT.....	12
10.1	District-initiated adaptive management .....	12
10.2	Service-initiated adaptive management .....	13
10.3	Reductions in mitigation .....	13
10.4	No increase in Take .....	13
11.0	LAND TRANSACTIONS .....	13
12.0	HISTORIC AND CULTURAL RESOURCES .....	13
13.0	MODIFICATIONS AND AMENDMENTS .....	14
13.1	Minor modifications .....	14
13.2	Amendment of the HCP and Permit.....	15
14.0	REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION .....	15
14.1	In general .....	15
14.2	No monetary damages .....	15
14.3	Injunctive and temporary relief .....	15
14.4	Enforcement authority of the United States .....	15
14.5	Dispute resolution .....	15

15.0 MISCELLANEOUS PROVISIONS ..... 16

    15.1 No partnership..... 16

    15.2 Notices ..... 16

    15.3 Entire agreement..... 17

    15.4 Elected officials not to benefit ..... 17

    15.5 Availability of funds..... 17

    15.6 Duplicate originals ..... 17

    15.7 No third-party beneficiaries ..... 17

    15.8 Relationship to the ESA and other authorities ..... 17

    15.9 References to regulations ..... 18

    15.10 Applicable laws ..... 18

    15.11 Successors and assigns ..... 18

SIGNATORIES ..... 18

## 1.0 PARTIES

The Parties to this Implementing Agreement (hereinafter "Agreement") are the Humboldt Bay Municipal Water District (hereinafter "District") and the National Marine Fisheries Service, also referred to as NOAA Fisheries (hereinafter "Service").

## 2.0 RECITALS AND PURPOSES

**2.1 Recitals.** The Parties have entered into this Agreement in consideration of the following facts:

(a) The Mad River, in Trinity and Humboldt counties, has been determined to provide habitat for the following listed species: the Southern Oregon and Northern California Evolutionary Significant Unit ("ESU") of Coho Salmon, the California Coastal ESU of Chinook Salmon, and the Northern California ESU of Steelhead;

(b) The Mad River has also been determined to provide habitat for the Coastal Cutthroat Trout, which is not currently listed, but is under a status review by the U.S. Fish and Wildlife Service; and

(c) The District has developed a series of measures, described in the Habitat Conservation Plan (hereinafter "HCP"), to minimize and mitigate to the maximum extent practicable the effects of Take incidental to the District's Covered Activities.

**2.2 Purposes.** The purposes of this Agreement are:

(a) To ensure implementation of each of the terms of the HCP;

(b) To describe remedies and recourse should any Party fail to perform its obligations as set forth in this Agreement; and,

(c) To provide assurances to the District that, pursuant to the "No Surprises" regulations, as long as the obligations of the HCP, the permit, and this Agreement are fully performed, no additional mitigation shall be required of the District, with respect to Covered Species, except as provided for in this Agreement or required by law.

### 3.0 DEFINITIONS

The following terms as used in this Agreement will have the meanings set forth below:

- 3.1 Terms defined in Endangered Species Act.** Terms used in this Agreement and specifically defined in the Endangered Species Act (ESA) or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Agreement expressly provides otherwise.
- 3.2 "Changed Circumstances"** means changes in circumstances affecting a Covered Species or the geographic area covered by the HCP that can reasonably be anticipated by the District and that can reasonably be planned for in the HCP (e.g. listing of a new species, natural catastrophic events, or other events such as changes in/additions to existing infrastructure, all of which may occur on Covered Lands over the term of the permit). Changed Circumstances and the planned response to those circumstances are described in Section 14 of the HCP.
- 3.3 "Covered Activities"** means certain activities carried out by the District on Covered Lands that may result in incidental take of Covered Species. Covered Activities are listed in Section 5 of the HCP.
- 3.4 "Covered Lands"** means the land and waterway areas upon which the permit authorizes incidental take of Covered Species, and the areas in which the HCP's conservation and mitigation measures apply. The Covered Lands are all areas within the HCP boundaries as defined in Section 2 of the HCP.
- 3.5 "Covered Species"** means the following species, each of which the HCP addresses in a manner sufficient to meet all of the criteria for issuing an Incidental Take Permit under ESA Section 10(a)(1)(B): Coho Salmon (Southern Oregon/Northern California ESU), Chinook Salmon (California Coastal ESU), and Steelhead (Northern California ESU). In the future, should the Services change from identifying and listing species on an ESU basis to some other basis, the Covered Species in the District's HCP shall remain Coho Salmon, Chinook Salmon and Steelhead which may be present in the Mad River system.
- 3.6 "Effective Date"** means the date upon which the Incidental Take Permit is issued by the Service.
- 3.7 "HCP"** means the habitat conservation plan prepared by the District for its Mad River operations.

- 3.8 **"Listed Species"** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.
- 3.9 **"Permit"** means the Incidental Take Permit issued by the Service to the District pursuant to Section 10(a)(1)(B) of ESA for Take incidental to Covered Activities for the District's Mad River operations, as it may be amended from time to time.
- 3.10 **"Permittee"** means the District.
- 3.11 **"Take"** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed Covered Species. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering. (16 USC § 1532(19); 50 CFR § 222.102)
- 3.12 **"Unforeseen Circumstances"** means changes in circumstances affecting a species or geographic area covered by the HCP that could not reasonably have been anticipated by the District or the Service at the time of the HCP's development and negotiation, and that result in a substantial and adverse change in the status of the Covered Species. (50 CFR § 222.102) Prior to any finding of Unforeseen Circumstances by the Service, the Service shall provide District with all relevant data and information available and shall meet and confer with District concerning such potential finding.
- 3.13 **"Unlisted Species"** means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

## 4.0 OBLIGATIONS OF THE PARTIES

**4.1 Obligations of the District.** The District shall fully and faithfully perform all obligations assigned to it under this Agreement, the permit, and the HCP.

**4.2 Obligations of the Service.** Upon execution of this Agreement by both Parties, and satisfaction of all other applicable legal requirements, the Service will issue the District a Permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take by the District of each listed Covered Species resulting from Covered Activities on Covered Lands.

**4.2.1 Permit coverage.** The Permit will identify all Covered Species. The Permit will take effect for listed Covered Species at the time the Permit is issued. Subject to compliance with all other terms of this Agreement, the Permit will take effect for an unlisted Covered Species upon the listing of such species.

**4.2.2 "No surprises" assurances.** Provided that the District has complied fully with its obligations under the HCP, this Agreement, and the permit, the Service cannot require the District to provide mitigation beyond that provided for in the HCP except under unforeseen circumstances, and only in accordance with the "no surprises" regulations at 50 CFR § 222.22(g). If the governing regulations should be modified from those codified at 50 CFR § 222.22(g), as of the effective date, the modified regulations shall not apply unless reliance on the regulations in effect as of the effective date is prohibited by statute or court order.

**4.2.3 Further Permits.** Nothing in this Agreement shall limit the right or obligation of any Federal agency to engage in consultation with the Service required under Section 7 of the ESA. However in any consultation with regard to the Covered Species that may be required or processed pursuant to Section 7 of the ESA (16 USC § 1536) subsequent to the Effective Date in connection with the Covered Activities, the Service shall, to the maximum extent permitted by law, rely upon and utilize their Section 7 Biological Opinion issued with regard to the approval of this HCP, and, to the maximum extent permitted by law and regulation, ensure that any conservation and mitigation for Incidental Take of Covered Species identified in such Section 7 Biological Opinion conforms to the conservation and mitigation provided under the HCP and does not impose any new, additional or different conservation or mitigation measures on the District beyond the requirements provided for under the HCP and this Agreement.

**4.3 Interim obligations upon a finding of Unforeseen Circumstances.** If after providing all relevant data and information to and meeting with District the Service makes a finding of Unforeseen Circumstances, it shall have up to 120 days, or a longer period with the District's consent, to determine the nature and location of necessary additional or modified mitigation required to address the Unforeseen Circumstances. During such period, the District agrees to avoid undertaking any activity that would appreciably reduce the likelihood of the survival and recovery of the affected Covered

Species. The Service will meet and confer with District during such period concerning the development of any such additional or modified mitigation.

## **5.0 INCORPORATION OF HCP**

The final approved HCP, dated April 2004, and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement will control. In all other cases, the terms of this Agreement and the terms of the HCP will be interpreted to be supplementary to each other.

## **6.0 TERM**

**6.1 Initial Term.** This Agreement and the HCP will become effective on the date that the Service issues the Permit. This Agreement, the HCP, and the Permit will remain in effect for a period of 50 years from issuance of the original Permit, except as provided below.

**6.2 Permit suspension or revocation.** The Service may suspend or revoke the Permit for cause in accordance with regulations and subject to the requirements for notice, review and opportunity to cure in force at the time of such suspension or revocation. (These regulations are currently codified at 50 CFR § 222.306 and 15 CFR Part 904.) Such suspension or revocation may apply to the entire Permit, or only to specified Covered Species, Covered Lands, or Covered Activities. In the event of suspension or revocation for non compliance or violation by the District, the District's obligations under this Agreement and the HCP will continue until the Service determines that all Take of Covered Species that occurred under the Permit has been fully mitigated in accordance with the HCP.

### **6.3 Relinquishment of the Permit.**

**6.3.1 Generally.** The District may relinquish the Permit in accordance with the regulations of the Service in force on the date of such relinquishment. (These regulations are currently codified at 50 CFR § 222.306.) Notwithstanding relinquishment of the Permit, Permittee will be required to provide post-relinquishment mitigation for any Take of Covered Species that the Service determines will not have been fully mitigated under the HCP by the time of relinquishment. The District's obligations under the HCP and this Agreement will continue until the Service notifies the District that no post- relinquishment mitigation is required, or that all post-relinquishment mitigation required by the Service is complete. Unless the Parties agree otherwise, the Service may not require more mitigation than would have been provided if the District had carried out the full term of the HCP.

**6.3.2 Procedure for relinquishment.** If the District elects to relinquish the Permit before expiration of the full term of the HCP, the District shall provide 30 days written notice of the planned relinquishment to the Service. Such notice will include a status report detailing the nature and amount of Take of all Covered Species, the mitigation provided for those species prior to relinquishment, and the status of the District's compliance with all other terms of the HCP. Within 120 days after receiving a notice and status report meeting the requirements of this paragraph, the Service will give written notice to the District stating whether any post-relinquishment mitigation is required and, if so, the amount and terms of such mitigation, and the basis for the Service's conclusions. If the Service determines that no post-relinquishment mitigation is required, all obligations assumed by the Parties under this Agreement will terminate upon the Service's issuance of such notice. If the District disagrees with the Service's determination, the Parties may choose to use the dispute resolution procedures described in Section 14 of this Agreement. The District shall continue to carry out its obligations under the HCP until any such dispute is resolved. If the Parties are unable to agree, the Service will have the final authority to determine whether the District is required to provide post-relinquishment mitigation.

**6.4 Extension of the Permit.** Upon agreement of the Parties and compliance with all applicable laws, the Permit may be extended beyond its initial term under regulations of the Service in force on the date of such extension. If the District desires to extend the Permit, it will so notify the Service at least 180 days before the then-current term is scheduled to expire. Extension of the Permit constitutes extension of the HCP and this Agreement for the same amount of time, subject to any modifications that the Service may require at the time of extension.

## **7.0 FUNDING**

The District warrants that it has, and will expend, such funds as may be necessary to fulfill its obligations under the HCP. The District shall promptly notify the Service of any material change in the District's financial ability to fulfill its obligations. In addition to providing any such notice, the District shall provide the Service with a copy of its annual report each year of the Permit, or with such other reasonably available financial information that the Parties agree will provide adequate evidence of the District's ability to fulfill its obligations.

In the event the District does not fulfill its mitigation and monitoring obligations in a given year, the Service may, at its discretion, require the District to establish a bond, certified letter of credit or escrow account that provides sufficient funds to implement the monitoring. The funding mechanism chosen shall be maintained and updated annually until the monitoring and mitigation is completed.

## 8.0 MONITORING AND REPORTING

**8.1 Planned periodic reports.** As described in the HCP, the District shall submit periodic reports describing its activities and results of the monitoring program provided for in the HCP.

**8.2 Other reports.** The District shall provide, within thirty days of being requested by the Service, any additional information in its possession or control related to implementation of the HCP that is requested by the Service for the purpose of assessing whether the terms and conditions of the HCP, including the HCP's adaptive management plan, are being fully implemented.

**8.3 Certification of reports.** All reports shall include the following certification from a responsible District official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

**8.4 Monitoring by Services.** The Service may conduct inspections and monitoring in connection with the Permit in accordance with their regulations. (See 50 CFR § 222.301.)

## 9.0 CHANGED CIRCUMSTANCES

**9.1 District-initiated response to Changed Circumstances.** The District shall give notice to the Service within seven days after learning that a Changed Circumstance has occurred. As soon as practicable thereafter, but no later than 30 days after learning of the Changed Circumstance, the District shall initiate the process to address Changed Circumstances, in accordance with Section 14 of the HCP. The District shall implement any changes or additional mitigation agreed to in the consultation or technical assistance processes to mitigate effects of the Changed Circumstances on Covered Species, and shall report to the Services on its actions.

**9.2 Service-initiated response to Changed Circumstances.** If the Service determines that Changed Circumstances have occurred, and the District has not responded in accordance with the requirements of Section 14 of the HCP, the Service shall so notify the District and shall direct the District to initiate the required process. Such notice to the District shall include an explanation of the basis for such determination by the Service, and District shall be provided access to all data and analysis used in such determination. District shall also have all opportunities to dispute or appeal such determination as are provided by applicable law or regulation. To the extent not otherwise prohibited by law or judicial order, the Parties may utilize the "Dispute Resolution" process in Section 14.5 of this Agreement. Within 30 days after receiving such notice, the District shall initiate the process to address Changed

Circumstances in accordance with Section 14 of the HCP or shall provide the Service with its basis and additional data supporting a determination that there has been no Changed Circumstance. Upon agreement between the Parties or a final determination of Changed Circumstances, the District shall implement any changes or additional mitigation agreed to in the consultation or technical assistance processes to mitigate effects of the Changed Circumstances on Covered Species, and shall report to the Services on its actions. Any such changes or additional mitigation are provided for in the HCP, and hence, do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP.

**9.3 Listing of species that are not Covered Species.** Upon receipt of notice of the potential listing of a species that is not a Covered Species, the District shall seek the technical assistance of either the Service or the U.S. Fish and Wildlife Service (hereinafter "Services" in paragraph 9.3), depending on which agency has jurisdiction over the species to be listed. The Services shall provide such assistance to: (i) identify measures to avoid take and avoid causing jeopardy to such species; (ii) determine whether incidental take coverage for such species is appropriate and, if so; (iii) identify any modifications to the Plan that may be necessary to provide coverage for the new species. The Services shall also assist the District in determining whether to amend the Plan and the Permit to include the newly-listed species as a covered species. In the event that a non-covered species that may be affected by covered activities becomes listed under the ESA, the District shall implement the "no-take/no-jeopardy" measures, resulting from the process described above (i.e. (i) through (iii)), until the permit is amended to include such species, or until the Service notifies the District that such measures are no longer needed to avoid jeopardy to take of, or adverse modification of critical habitat of, the non-covered species.

**9.4 Change in District's Diversion Operations.** If for any reason during the term of this Agreement, the District no longer operates its direct diversion facility (also known as Station 6), all mitigation and monitoring identified in the HCP associated with operation of said facility and the other Covered Activities related directly thereto, shall be suspended by the District. If at a later date during the term of this Agreement, the District resumes operation of the direct diversion facility, the District may do so with the screen retrofit as implemented under the HCP, but it shall also resume all mitigation and monitoring identified in the HCP associated with operation of said facility and the other Covered Activities related directly thereto.

## 10.0 ADAPTIVE MANAGEMENT

**10.1 District-initiated adaptive management.** The District shall implement the adaptive management provision in Section 11 of the HCP, when changes in management practices are necessary to achieve the HCP's biological objectives, or to respond to monitoring results or new scientific information. The District will make such changes without awaiting notice from the Service, and will report to the Service on any actions taken pursuant to this section.

**10.2 Service-initiated adaptive management.** If the Service determines that one or more of the adaptive management provisions in the HCP have been triggered and that the District has not yet changed its management practices in accordance with Section 11 of the HCP, the Service will so notify the District and will direct the District to make the required changes. Within 30 days after receiving such notice, the District will make the required changes and will report to the Service on its actions. Such changes are provided for in the HCP, and hence, do not constitute Unforeseen Circumstances or require amendment of the Permit or HCP, except as provided in this section.

**10.3 Reductions in mitigation.** The District will not implement adaptive management changes that may result in less mitigation than provided for Covered Species under the original terms of the HCP, unless the Service first provides written approval. The District may propose any such adaptive management changes by written notice to the Service, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 120 days of receiving such a notice, the Service will either approve the proposed adaptive management changes, approve them as modified by the Service, or notify the District that the proposed changes constitute Permit amendments that must be reviewed under Section 13.2 of this Agreement.

**10.4 No increase in Take.** This section does not authorize any modifications that would result in an increase in the amount and nature of Take, or increase the impacts of Take, of Covered Species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a Permit amendment under Section 13.2 of this Agreement.

## **11.0 LAND TRANSACTIONS**

Nothing in this Agreement, the HCP, or the Permit limits the District's right to acquire additional lands. Any lands that may be acquired will not be covered by the Permit except upon amendment of the Permit as provided in Section 13.2 of this Agreement.

## **12.0 HISTORIC AND CULTURAL RESOURCES**

All ground disturbing activities which are covered by HCP and the Permit shall avoid site CA-HUM-931 as identified in the October 2003 report titled "Cultural Resources Investigation of the Humboldt Bay Municipal Water District Properties Located at Essex, Humboldt County and Matthews Dam, Trinity County, California."

In the event that historic properties are encountered during ground disturbing activities which are covered by the associated Incidental Take Permit, work shall halt and/or shift to another area and the District shall immediately contact the Service. Work near such finds will not resume until efforts to evaluate, avoid, minimize, or mitigate adverse effects to the area have been undertaken pursuant to 36 CFR § 800.13(b). Historic properties include, but are not limited to, prehistoric materials which could include obsidian or chert flakes or tools, locally darkened midden, groundstone artifacts, deposits of shell, dietary bone, and human burials. Should human remains be encountered, State laws require that the County Coroner be contacted immediately. Should the County Coroner determine that the remains are likely those of a Native American, he or she must contact the Native American Heritage Commission. The Native American Heritage Commission will consult with the most likely Indian descendants from the area to determine the appropriate treatment of the remains.

### **13.0 MODIFICATIONS AND AMENDMENTS**

#### **13.1 Minor modifications.**

(a) Any Party may propose minor modifications to the HCP or this Agreement by providing written notice to the other Parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species. The Parties shall use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed minor modifications shall become effective, and the HCP/and or this Agreement shall be deemed modified accordingly, immediately upon all other Parties' written approval. Among other reasons, a receiving Party may object to a proposed minor modification based on a reasonable belief that such modification would result in operations, burdens or obligations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional Take not analyzed in connection with the original HCP. An objecting Party shall provide the other Party with written notice of the objection that includes a statement of the reason for the objection. If a Party objects, the proposal is not approved as a minor modification but may be processed as an amendment of the Permit in accordance with Subsection 13.2 of this Section.

(b) Minor modifications to the HCP and Agreement processed pursuant to this subsection may include but are not limited to the following:

- corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
- changes to any maps, tables or exhibits to correct errors in such maps or tables, or to reflect previously approved changes in the Permit or HCP;
- minor changes to survey, monitoring or reporting protocols; and

- other types of modifications that are minor in relation to the HCP, that the Service has analyzed and agreed to, and on which the public has had an opportunity to comment.

(c) Any other modifications to the HCP or Agreement will be processed as amendments of the Permit in accordance with subsection 13.2 of this section.

**13.2 Amendment of the HCP and Permit.** The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the Service's Permit regulations. The Party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species.

#### **14.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION**

**14.1 In general.** Except as set forth below, each Party shall have all remedies otherwise available in equity to enforce the terms of this Agreement, the Permit, and the HCP.

**14.2 No monetary damages.** No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement.

**14.3 Injunctive and temporary relief.** The Parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

**14.4 Enforcement authority of the United States.** Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

**14.5 Dispute resolution.** The Parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the HCP, and the Permit may arise from time to time. The Parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the Parties may later agree. However, if at any time any Party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

**14.5.1 Informal dispute resolution process.** Unless the Parties agree upon another dispute resolution process, or unless an aggrieved Party has initiated

administrative proceedings or suit in federal court as provided in this section, the Parties may use the following process to attempt to resolve disputes:

(a) The aggrieved Party will notify the other Parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

(b) The Party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved Party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the Parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all Parties, or will establish a specific process and timetable to seek such a solution.

(d) If any issues cannot be resolved through such negotiations, the Parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

## **15.0 MISCELLANEOUS PROVISIONS**

**15.1 No partnership.** Neither this Agreement nor the HCP shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

**15.2 Notices.** Any notice permitted or required by this Agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail.

Service: Regional Administrator  
National Marine Fisheries Service  
501 West Ocean Boulevard, Suite 4200  
Long Beach, CA 90802-4213

Permittee: Humboldt Bay Municipal Water District  
Attention: General Manager  
828 7<sup>th</sup> Street  
Eureka, CA 95501  
Telephone: (707) 443-5018  
Telefax: (707) 443-5731

**15.3 Entire agreement.** This Agreement, together with the HCP and the Permit, constitutes the entire Agreement among the Parties. It supersedes any and all other Agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

**15.4 Elected officials not to benefit.** No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

**15.5 Availability of funds.** Implementation of this Agreement and the HCP by the Services is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

**15.6 Duplicate originals.** This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

**15.7 No third-party beneficiaries.** Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third Parties shall remain as imposed under existing law.

**15.8 Relationship to the ESA and other authorities.** The terms of this Agreement shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal

obligations and responsibilities of the Service as an agency of the federal government. Nothing in this agreement will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of the District under the HCP and this Agreement will be considered in any consultation affecting the District's use of the Covered Lands.

**15.9 References to regulations.** Except as otherwise provided in this Agreement, any reference in this Agreement, the HCP, or the Permit to any regulation or rule of the Service shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

**15.10 Applicable laws.** All activities undertaken pursuant to this Agreement, the HCP, or the Permit must be in compliance with all applicable state and federal laws and regulations.

**15.11 Successors and assigns.** This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Assignment or other transfer of the Permit shall be governed by the Service's regulations.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Service issues the Permit.

BY *Robyn R McInnis* Date 6-6-05  
Regional Administrator  
National Marine Fisheries Service

BY *[Signature]* Date 12/9/04  
President, Board of Directors  
Humboldt Bay Municipal Water District