

MONTEZUMA WETLANDS PROJECT

Technical Review Team (TRT) Charter

1.0 INTRODUCTION

This Charter Agreement (“the Charter”) is established in accordance with Special Condition #1 in the U.S. Army Corp of Engineer’s – San Francisco District (“USACE”) Permit No. 19405N, dated September 24, 2001, authorizing construction and operation of the Montezuma Wetlands Project (“the Project”). Special Condition #1, proved as Attachment A, specifies that the Project permittee, Montezuma Wetlands LLC (“MWLLC”), is to enter into a contract with a non-profit organization to coordinate and manage a technical review team (“TRT”) to provide expert and objective analysis and recommendations on subjects associated with the construction, monitoring, and performance of the Project. This Charter will become part of the contract between MWLLC, and the non-profit entity selected to manage and contract with the TRT. The San Francisco Estuary Institute (“SFEI”) is currently selected by MWLLC to be the non-profit entity.

1.1 Project Summary

The Project will restore approximately 1,820 acres of tidal, seasonal, and managed wetlands in an eastern portion of Suisun Marsh where the Project site has been diked and used for agriculture for more than 100 years. The approximately 2,400 acre site is located on the eastern side of Montezuma Slough near the town of Collinsville, California in Solano County. As a result of perimeter levees that isolate the site from Bay-Delta tidal waters and the historical pumping of surface water off the site for agricultural purposes, the current surface elevations have subsided about 4-6 feet below sea level.

Approximately 17 million cubic yards of sediment dredged from the San Francisco Bay-Delta will be used to raise surface elevations to conditions suitable for tidal marsh to be re-established at the site. Material dredged from the Bay-Delta (cover and noncover sediment suitable for restoration purposes) will be barged to the site, off-loaded, and placed in settling cells until target elevations are reached. The Project also includes a sediment rehandling facility that will be used to dry additional incoming dredged sediments (cover sediment only) for both on-site use in levee construction and for off-site reuse.

The Project will be monitored during Project construction (estimated to take 15 years) and for at least 10 years after the Project has been completed. The monitoring program is extensive and covers a wide range of physical, chemical, and biological elements including levee stability, settlement, sediment and water quality, and vegetation and special status species surveys. Much of the monitoring data will be compared to data collected from selected reference sites throughout Suisun Marsh and the Bay-Delta region; reference site monitoring will be conducted as part of this Project and/or as part of other related projects in the region. Details of the Project’s monitoring program are

presented in the *Mitigation, Monitoring, and Reporting Plan, dated June 20, 2000*, which is updated as needed and in accord with the Project's local, State, and Federal permits.

Monitoring data and specific Project aspects, as requested by the USACE to MWLLC, will be evaluated by a technical review team ("the TRT") that will provide expert and objective analysis and recommendations on subjects associated with Project construction, operations, and performance.

1.2 Charter Purpose

The purpose of the Charter is to outline the working framework and provide the basic understanding between the MWLLC and the non-profit entity, SFEI, selected to administer the TRT. The Charter provides the guidelines for how the TRT will provide their expert and objective analysis and recommendations, how SFEI will manage the TRT, how each of the main entities (MWLLC, SFEI, TRT, and USACE) communicate throughout this process, and the responsibilities of each of these groups. This Charter can be changed only through the agreement of MWLLC and USACE.

1.3 Charter Outline

The elements described in this Charter are provided below in the following Sections:

- Section 2.0** Technical Review Process
- Section 3.0** Technical Review Team (TRT) Membership
- Section 4.0** Expectations of the TRT
- Section 5.0** Expectations of SFEI
- Section 6.0** Expectations of MWLLC
- Section 7.0** Ground Rules for Communication and Meetings
- Section 8.0** Primary Contacts

2.0 THE TECHNICAL REVIEW PROCESS

The overall technical review process and flow of information between the TRT, SFEI, MWLLC and USACE is described below; the main elements of this process can be described sequentially as follows:

- A. USACE will provide a statement of need to MWLLC for specific tasks to be performed by SFEI and the TRT. The tasks may be broad in scope (e.g., assess whether the monitoring results are meeting project objectives) or specific in scope (e.g., assess whether the design elevation in certain portions of the high marsh in Phase I should be lowered by 0.5 to 1.0 feet). The
- B. MWLLC will contract with a non-profit entity, in this case SFEI, to provide services specified in the scope of work ("the Scope") developed from the USACE statement of need. To initiate the Contract, the first Scope may consider Condition #1 in the USACE

Permit No. 19405N to be USACE's "statement of need." Clarifications of the Scope requested by SFEI shall be addressed by MWLLC who, if necessary, will contact USACE to clarify the Scope.

C. SFEI will select and subcontract with individuals for membership and participation in the TRT to implement the Scope requested by MWLLC. Some members of the TRT may be government agency personnel who may not require a subcontract with SFEI.

D. Under contract to MWLLC (or their representatives), the Project's consultants will conduct monitoring, collect data, analyze and interpret data in summary and detailed reports, develop final design plans, or provide any other deliverable required by SFEI to conduct the Scope, and deliver these products to the USACE and SFEI according to the requisite time schedules provided in the Project permit.

E. MWLLC (or their representatives) will compile, synthesize, and make copies of data and evaluations from Project monitoring and distribute that information by hard copy via regular mail, electronic mail, or via a web-based data management system to SFEI and the TRT members (as well as to agencies as required by the Project permits).

F. The TRT will provide analysis of and/or recommendations pertaining to the data and deliverables as requested in the Scope. The Scope could include matters pertaining, but not limited, to the following elements:

- ?? quality of the monitoring data, analyses, results and conclusions;
- ?? assessment of the monitoring results relative to project goals and requirements;
- ?? compliance with performance standards;
- ?? initiation of new Phases;
- ?? determination of when a completed Phase may be breached;
- ?? establishment of appropriate reference sites for monitoring purposes;
- ?? optimum contingency measures to be implement if needed; and
- ?? adaptive management changes to retrieve better monitoring information and to enhance habitat establishment and Project performance.

G. TRT members will review data and information provided by MWLLC for adequacy and provide reports of key findings and recommendations to SFEI and MWLLC. The TRT is not a decision-making body, its purpose is solely advisory.

H. SFEI will summarize the key findings and recommendations and provide a report to the USACE and MWLLC, with copies to the TRT members. MWLLC will provide copies of this summary report to other agencies as needed.

3.0 SELECTION OF TRT MEMBERS

The TRT is expected to be comprised of a variety of scientists and wetland restoration practitioners who will ultimately need to cover a wide range of expertise and subjects, including: wetland restoration science, biology, chemistry, toxicology, ecology of special

status species, plant ecology, and hydraulic and restoration engineering. Because of the overlapping areas of expertise commonly observed in science and in restoration practice, one TRT member can cover more than one area of expertise. Individuals selected to satisfy the range of expertise required are anticipated to come from a variety of sources, including local, state, and federal agencies, universities, non-governmental organizations, and the private sector.

The final selection of TRT members, including any changes made to the team throughout the course of its lifetime, will be at the sole discretion of the non-profit entity, SFEI. Although the final selection of TRT members will be made solely by SFEI, their list of designated TRT members will be submitted to MWLLC for comment prior to contracting with TRT members. SFEI shall submit the list of TRT members to the USACE for review and approval solely as to the sufficiency of the technical qualifications of each designee to cover the tasks the USACE requested the permittee (MWLLC) to evaluate.

3.1 Conflicts of Interest

No individual or immediate family member of an individual currently receiving financial compensation from MWLLC (or from their subcontractors) for performing work related to the study, monitoring, or assessment of the Project may serve on the TRT. Individuals who have worked directly for MWLLC or their contractors on the Project at some time in the past but have ceased their work for MWLLC and their contractors on the Project are not prohibited from participating on the TRT. Similarly, no individual who is receiving compensation from or is associated with any of the entities that have current litigation (or formal threats thereof) pending against the Project or any of their permits may serve on the TRT.

It is the responsibility of any potential (or selected) TRT member to make such relationships known to SFEI and the other TRT members. All TRT members will strive to avoid real or appearances of conflicts of interest to ensure that the review process is fair, objective, and unbiased.

3.2 Termination and Replacement of Membership on the TRT

Membership on the TRT is at the sole discretion of the non-profit entity, in this case SFEI. A member may resign at any time, although a 30-day notice is desirable.

A member may be removed at the sole discretion of SFEI for the following reasons (not all inclusive):

- ?? a member has a conflict of interest as described in Section 3.1;
- ?? a member misses three consecutive unexcused meetings;
- ?? a member fails to meet schedule and budget as outlined in the Scope or in the subcontract that member has with SFEI;
- ?? a member fails to comply with communication ground rules as presented in Section 7.

4.0 EXPECTATIONS FOR THE TECHNICAL REVIEW TEAM (TRT)

A. In accordance with the Scope, TRT members are expected to review the relevant documents (provided by MWLLC) focusing on elements required by the Scope and that fall within the members' areas of expertise. The TRT is not a decision-making body; its findings are solely for advisory purposes. The tasks for a TRT member may vary as the Project progresses and there is a change of needed expertise. However, in general, the USACE is interested to know if during implementation of the Project proper QA/QC procedures are followed, if the monitoring data provide sufficient information to evaluate Project performance, and if conclusions reached by the monitoring contractors to MWLLC are scientifically valid.

B. TRT members may consult as necessary with colleagues on the MWLLC team responsible for collecting and analyzing the monitoring data or generating design plans, provided that the information remains confidential until the related report covering that information is released by SFEI. TRT members shall keep a communication log of contacts with MWLLC representatives. The consultation of TRT members directly with MWLLC contractors or subcontractors is to be primarily for obtaining clarification of technical procedures and findings and gaining additional insight to augment the expertise of the TRT.

C. TRT members need to recognize that they are part of an adaptive management process. As such, TRT participants may be asked to provide recommendations to the SFEI, MWLLC, and USACE on the phasing of the Project, potential changes to the monitoring methods or performance standards currently described in the MMRP, location of reference sites or on important project design and operating elements. In these and all other instances, the TRT members are solely providing advice to the SFEI, MWLLC, and USACE, and final decisions regarding actual implementation of corrective actions, phasing, alterations or revisions to any aspect of the MMRP will reside with the USACE and the relevant permitting agencies.

D. Subjects related to wetland policy, regulations, and other non-technical issues are not within the purview of the TRT and its members should refrain from making comments on issues outside of the relevant technical or scientific realm.

E. TRT members are expected to attend the meetings required to conduct the Scope. There will likely be at least one annual meeting of the entire group and no more than three other meetings per year.

5.0 EXPECTATIONS FOR SFEI

A. SFEI will be responsible for all administrative aspects for implementing and managing the TRT. SFEI will select and subcontract with individual members that serve

on the TRT; subcontracts are not required for TRT members associated with government agencies (e.g., USEPA, RWQCB, BCDC, CDFG, USFWS, NMFS).

B. SFEI will establish a schedule of meetings for the calendar year, prepare agendas for that meeting, provide a facilitator, prepare minutes of the major elements of the meetings, and distribute the minutes within 6 weeks of the meeting date to the TRT members, MWLLC, and the USACE.

C. SFEI will prepare at least one report each year that summarizes the results of the TRT's evaluations and recommendations. SFEI will strive to achieve consensus on the advice, recommendations, and findings provided by the TRT. In SFEI's summary reports, SFEI shall indicate the majority findings of the TRT and, if necessary, include the minority view (including comments by MWLLC), where consensus was not achieved. In all delivered reports, SFEI shall certify the validity, accuracy, and quality of the analysis, conclusions, and any recommendations therein.

6.0 EXPECTATIONS FOR MWLLC AND ITS REPRESENTATIVES

A. MWLLC will prepare a Scope based on the USACE "statement of need" which will direct the efforts of SFEI and the TRT. This Scope can be changed at the request of the USACE, and any changes requested by USACE will be immediately conveyed to SFEI by MWLLC.

B. MWLLC will provide to the SFEI and TRT all necessary Project data, information, and reports required for the TRT to conduct work specified in the Scope.

C. MWLLC will be responsible for providing copies of all relevant data, information, and reports to the necessary agencies as the Project permit requires.

7.0 GROUND RULES FOR COMMUNICATION AND MEETINGS

7.1 Ground Rules for Activities Conducted Outside Regularly Scheduled Meetings

A. TRT members are free to contact any other TRT member or SFEI staff to discuss findings and analyses, or to ask administrative questions.

B. TRT members may contact the MWLLC scientists or technicians who collect or evaluate data and information that is under review for clarification or to answer technical questions (see also Section 4.0.B).

C. TRT members may work with colleagues and associates outside the TRT to complete technical reviews of the TRT. TRT members shall keep a written record of the people who are contacted by the TRT to provide outside technical input, the nature of that input

requested or provided, copies of any written input provided from outside the TRT, and the dates of the contacts. (See also Section 4.0.B).

D. TRT members should not disclose to anyone outside the TRT the results of individual or collective TRT reviews until such time as the related reports of the TRT are produced by SFEI and provided as final report to the USACE. Any unsolicited inquiries from agencies, the general public, or the press who are not contacted by a TRT member for technical input shall be referred directly to SFEI. (See also Section 4.0.B).

E. TRT members shall not talk to the press or any member of the television or radio media about matters related to the Project without express approval of SFEI and MWLLC.

F. MWLLC and their representatives may contact members of the TRT for the purposes of providing new or clarifying data, information, or responding to questions raised by a TRT member.

7.2 Ground Rules for Meetings

The following simple rules shall be followed by each of the TRT members and all meeting attendees:

1. We agree to disagree respectfully.
2. One person speaks at a time; let others finish without interruption.
3. Each person is responsible for coming to the meeting prepared and having completed tasks as agreed to in advance.
4. Encourage each other to speak freely and safeguard confidential statements.
5. Confine your discussion to the present agenda topic.
6. Issues raised within the TRT belong to its whole membership that is responsible for discussing and resolving the issue.
7. There can be no personal attacks; be hard on the issues, soft on the people.
8. Check your own assumptions.
9. Respect time limits; arrive on time; start and end on time; and come back from breaks on time.
10. Always fully comply with the purpose of the TRT as set forth in this charter.

8.0 LIST OF PRIMARY CONTACTS

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