

1 **Note to Reviewers:** *This handout presents the second draft of Chapter 6, Implementation Plan,*
2 *the contents of which is subject to change. This draft has been revised to address comments*
3 *received at the November 3, 2010 Stakeholder Committee meeting and to include a description*
4 *of the processes for making changes to the BRCP during implementation. Other implementation*
5 *provisions of this Chapter are under development and will be included in subsequent drafts.*
6 *These provisions include: the implementation schedule; issuance of certificates of inclusion for*
7 *requests for incidental take coverage by other entities; provisions for acquisition of conservation*
8 *lands, including securing conservation easements; the role of mitigation banks; stay ahead*
9 *provisions addressing the timing and extent of impacts versus the timing and extent of*
10 *conservation provided under the BRCP; regulatory assurances provided under the BRCP; and*
11 *permit revocations and reissuance of permits. Because this is drafted as a Chapter section of the*
12 *BRCP HCP/NCCP document, it includes references to other relevant document sections that are*
13 *under development or for which drafts have not yet been prepared.*

14 **Chapter 6. Plan Implementation**

15 **6.1 BRCP Implementation Schedule**

16 *This section will describe the BRCP implementation schedule.*

17 **6.2 Compliance and Progress Reporting Requirements**

18 The BRCP Implementing Entity will regularly prepare planning documents and implementation
19 reports to demonstrate compliance with the Plan and terms and conditions of its ESA section 10
20 and NCCP Act permits. Preparation of these documents and reports will satisfy requirements
21 that the USFWS/NMFS Five-Point Policy (65 FR 106, June 1, 2000) recommendation that HCP
22 monitoring plans provide for the reporting of compliance with permit terms and conditions and
23 NCCP Act requirements that implementation agreements include “provisions for periodic
24 reporting to wildlife agencies and the public for purposes of information and evaluation of plan
25 progress.” (California Fish & Game Code § 2820(b)(7)) The Implementing Entity will, over the
26 term of the BRCP, submit various documents and reports and plans to USFWS, NMFS, and DFG
27 that:

- 28 • Provide the necessary data and information to demonstrate that the BRCP is being
29 properly implemented;
- 30 • Provide monitoring results and analyses demonstrating progress towards achieving the
31 BRCP biological goals and objectives;
- 32 • Document the process and results of adaptive management (decisions, changes,
33 corrective actions);
- 34 • Disclose issues and challenges concerning plan implementation, and identify potential

1 modifications to the Conservation Strategy that would increase the likelihood of success;
2 and

- 3 • Provide annual BRCP implementation plans and budgets.

4 Over the term of BRCP implementation, the Implementing Entity will prepare and submit to
5 USFWS, NMFS, and DFG the following documents:

- 6 • Annual workplan and budget;
- 7 • Annual progress report; and
- 8 • Five-year comprehensive review report.

9 These documents will provide the information necessary to enable USFWS, NMFS, and DFG,
10 stakeholders, and the general public to assess on an ongoing basis the progress and performance
11 of the BRCP toward meeting the BRCP biological goals and objectives and to make informed
12 recommendations for implementation to the Implementing Entity.

13 **6.2.1 Annual Workplans and Budgets**

14 On an annual basis, the Implementing Entity will prepare a workplan and budget for the
15 upcoming implementation year for submittal to USFWS, NMFS, and DFG by [date to come] of
16 each year over the term of the BRCP. The workplan will identify planned actions for the
17 implementation of conservation measures and the monitoring and adaptive management
18 plans. The budget will identify planned expenditures and sources of funding for those
19 expenditures. A final workplan and budget will be completed no later than one month prior to
20 the beginning of the implementation year. A draft of the annual workplan and budget will be
21 provided to USFWS, NMFS, DFG, and the BRCP Stakeholder Advisory Committee for review
22 no later than one month prior to the annual due date for each final workplan. If no response is
23 received from USFWS, NMFS, or DFG within 30 days of receipt of the workplan, the workplan
24 will be adopted as proposed by the Implementing Entity.

25 At a minimum, the workplan and budget will contain the following information:

- 26 • A description of the planned actions to implement conservation measures, including
27 acquisition of conservation lands, and the entities that will carry out the actions;
- 28 • A description of the planned monitoring actions and any anticipated research studies to
29 be undertaken, and the entities that will conduct the research;
- 30 • A budget reflecting the costs of implementing the planned actions; A summary of the
31 projected and actual budgets for all prior implementation years; and
- 32 • A description of the sources of funding to support the budget.

1 6.2.2 Annual Progress Reports

2 At the end of each implementation year, the Implementing Entity will prepare an Annual
3 Progress Report. These reports will provide a summary of the activities carried out during the
4 previous implementation year. Annual progress reports will be completed within █ months of
5 the close of each reporting year to provide sufficient time to compile data and complete analyses.

6 Each annual progress report will provide the following information.

- 7 1. Documentation of the implementation of habitat conservation measures (i.e., protection/
8 enhancement/ creation/ restoration) in relationship to the implementation schedule
9 described in Section 6.1, *Plan Implementation Schedule*, including:
 - 10 • A summary of the completed or in-progress habitat conservation actions, including
11 information related to type, extent, and location of restored enhanced, and existing
12 protected habitats and natural communities. The report will document, on an annual
13 and cumulative basis, the habitat conservation actions that have been carried out.
 - 14 • A summary of all land management activities undertaken on BRCP conservation
15 lands and a discussion of parcel-specific management issues encountered by the
16 Implementing Entity.
 - 17 • Identification of habitat protection, restoration, or enhancement actions that have not
18 been implemented in accordance the implementation schedule (i.e., behind or ahead
19 of schedule) and an explanation for the deviation from the schedule.
2. 20 2. An assessment of nature and extent of the impacts of covered activities on natural
21 communities and covered species, including:
 - 22 • a description of each activity, the entity implementing the covered activity, and the
23 location of habitat permanently or temporarily disturbed;
 - 24 • A cumulative summary of all impacts of BRCP covered activities on covered natural
25 communities and covered species habitats, habitat mitigation implemented to address
26 these impacts, and a description of how implementation of conservation measures is
27 roughly proportional in time and extent to the impacts on covered species and their
28 habitat; and
 - 29 • The status of the BRCP conservation lands system assembly with respect to
30 authorized take/habitat loss, and an assessment of the progress toward all acquisition
31 goals, including those related to land-cover types, landscape linkages, covered plant
32 populations, and wetland protection.
- 33 3. An evaluation of the results of monitoring and research activities, including:
 - 34 • A description of monitoring activities undertaken during the reporting period and a

- 1 summary of monitoring results and results of data analysis.
- 2 • A description of all BRCP directed research conducted during the reporting period, a
3 summary of research results to date, and a description of how these results were or
4 will be integrated into implementation.
- 5 4. A description of adaptive management activities, including:
- 6 • A description of the adaptive management decisions made during the reporting
7 period, including how existing information was used to guide these decisions and the
8 rationale for the action.
- 9 • A description of the use of independent scientists or other experts in the adaptive
10 management decision making processes.
- 11 • A description of adopted and recommended changes to the conservation measures
12 based on interpretation of monitoring results and research findings.
- 13 5. A financial report describing:
- 14 • funds provided to the Implementing Entity by source;
- 15 • annual and cumulative expenditures by cost category;
- 16 • deviations in expenditures from the annual budget; and other relevant information as
17 appropriate.
- 18 6. A description of implemented or actions to respond to changed circumstances, including:
- 19 • A description of the changed circumstance and its effects on covered species and
20 natural communities.
- 21 • A description of the actions taken to address the changed circumstance and the
22 effectiveness of those actions, including the outcomes of actions to address changed
23 circumstances from earlier years.
- 24 7. A summary of any administrative changes, minor modifications, or major amendments to
25 the BRCP proposed or approved during the reporting period.

26 **6.2.3 Five-Year Comprehensive Review Report**

27 As described in Section 5.8.6, *Program Status Reviews*, the BRCP adaptive management plan
28 provides for five-year reviews of BRCP implementation to provide the Implementing Entity with
29 a methodical process to periodically evaluate its implementation procedures. The Implementing
30 Entity will prepare a report for submittal to USFWS, NMFS, DFG, and the Stakeholder Advisory
31 Committee describing findings of each review within █ months following the completion of
32 each BRCP 5-year implementation period.

1 **6.3 Regulatory Assurances**

2 *This section will describe the regulatory assurances provided under ESA section 10 and the*
3 *NCCP Act.*

4 **6.4 Changed Circumstances and Unforeseen Circumstances**

5 **6.4.1 Definitions**

6 USFWS regulations define changed circumstances as “changes in circumstances affecting a
7 species or geographic area covered by a conservation plan that can reasonably be anticipated by
8 plan developers and the [USFWS and NMFS] and that can be planned for...” (50 C.F.R. §17.3)
9 and the NCCP Act defines changed circumstances as "...reasonably foreseeable circumstances
10 that could affect a covered species or geographic area covered by the plan.” (Fish and Game
11 Code §2805(c)). To ensure successful implementation of the Conservation Strategy, the BRCP
12 also identifies measures designed to respond to these anticipated future changes. The BRCP
13 changed circumstances and responses to those circumstances should they occur are described in
14 Section 6.4.2, *Changed Circumstances*.

15 The USFWS and NMFS define unforeseen circumstances as those changes in circumstances that
16 affect a species or geographic area covered by an HCP that could not reasonably have been
17 anticipated by the plan participants during the development of the conservation plan, and that
18 result in a substantial and adverse change in the status of a covered species (50 C.F.R. §17.3; 50
19 C.F.R. §222.102). Under ESA regulations, if unforeseen circumstances arise during the term of
20 the BRCP, USFWS may not require the commitment of additional land or financial
21 compensation, or additional restrictions on the use of land, water, or other natural resources other
22 than those agreed to in the Plan, unless the BRCP permitted entities consent.

23 Within these constraints, USFWS and/or NMFS may require additional measures, but only if: (1)
24 the USFWS and/or NMFS proves an unforeseen circumstance exists; (2) such measures are
25 limited to modifications of the BRCP’s operating conservation program for the affected species;
26 (3) the original terms of the Plan are maintained to the maximum extent practicable; and (4) the
27 overall cost of implementing the BRCP is not increased by the modification. USFWS and
28 NMFS bear the burden of demonstrating that unforeseen circumstances exist. A finding of
29 unforeseen circumstances must be clearly documented, based upon the best available scientific
30 and commercial information and made considering certain specific factors (see 50 C.F.R.
31 §17.22(b)(5)(iii)(C); 50 C.F.R. §222.307(g)(3)(iii)). If such a finding is made and additional
32 measures are required, the BRCP permitted entities will work with USFWS to appropriately
33 redirect resources to address the unforeseen circumstances.

34 Similarly, unforeseen circumstances are defined in the NCCP Act as changes affecting one or
35 more species, habitat, natural community, or the geographic area covered by a conservation plan
36 that could not reasonably have been anticipated at the time of plan development, and that result
37 in a substantial adverse change in the status of one or more covered species (Fish and Game

1 Code §2805(k)). The NCCP Act further provides that, in the event of unforeseen circumstances,
2 DFG shall not require additional land, water, or financial compensation or additional restrictions
3 on the use of land, water, or other natural resources without the consent of the plan participants
4 for a period of time specified in the Implementation Agreement. However, such assurances are
5 not applicable in those circumstances in which DFG determines that the plan is not being
6 implemented consistent with the substantive terms of the BRCP Implementation Agreement
7 (Fish and Game Code §2820(f)(2)).

8 **6.4.2 Changed Circumstances**

9 Ecological conditions in the Plan Area are likely to change as a result of future events and
10 circumstances that may occur over the term of BRCP implementation. This section identifies
11 changes in circumstances that are reasonably foreseeable and that could adversely affect BRCP
12 species and natural communities, consistent with the “changed circumstances” provisions of
13 ESA regulations and in the NCCP Act described in Section 6.4.1, *Definitions*. The changed
14 circumstances provisions of the BRCP are intended to address reasonably foreseeable events,
15 both inside and outside of the Plan Area, that may impede or prevent the BRCP from achieving
16 its biological goals and objectives within the Plan Area. The BRCP identifies a range of
17 potential changed circumstances, including events or conditions that may cause population-level
18 declines in covered species, such as new invasive species, or that may substantially degrade
19 habitat functions, such as flooding and climate change.

20 To address the potential for changed circumstances, the BRCP identifies set funding
21 commitments for remedial measures (see Chapter 8, *Implementation Costs and Funding*
22 *Sources*). In the event that changed circumstances occur, the Implementing Entity will
23 implement the remedial measures identified in this section will be implemented within the levels
24 of funding set out in the BRCP for these purposes.

25 The following describes the process for identifying the occurrence of changed circumstances, the
26 changed circumstances that will be addressed by the BRCP, and the remedial measures that
27 would be implemented in response to such occurrences.

28 ***Process to Identify Changed Circumstances***

29 The occurrence of a changed circumstance will generally become apparent to the Implementing
30 Entity through information gained from system-wide or effectiveness monitoring, scientific
31 study, or by notification received from another party (e.g., a reported wildfire on BRCP
32 conservation lands). With indication that a changed circumstance has occurred, or is likely to
33 occur, the Implementing Entity will immediately investigate and confirm the occurrence of the
34 event. If a changed circumstance appears to have occurred, the Implementing Entity will contact
35 USFWS, NMFS, and DFG to confirm the changed circumstance. The Implementing Entity will
36 notify the BRCP Permittees and relevant supporting entities of the changed circumstance. [*Note*
37 *to Reviewers: “supporting entities” are those that may be identified as part of the BRCP*
38 *implementing structure.*]

1 After establishing an occurrence of a changed circumstance identified in this section, the
2 Implementing Entity, in coordination with USFWS and DFG, will determine specific remedial
3 actions that are consistent with the responses described below for the particular changed
4 circumstance and develop a schedule for implementation. After implementing remedial actions,
5 the Implementing Entity will monitor the effectiveness of the measures and report the associated
6 results and findings.

7 *Changed Circumstances Addressed by the BRCP*

8 **1. Floods**

9

10 *Nature of the Changed Circumstance*

11

12 The effects of floods on BRCP conservation lands and covered species depend on several
13 factors, including the severity of the flood event, its duration, and the type of habitat affected.
14 Flood events are a natural process that maintain aquatic, riparian, and wetland ecosystems and
15 small flood events are expected have relatively minor effects on protected natural communities
16 and covered species. Furthermore, many of the covered species are either adapted to flooding
17 (e.g., the giant garter snake and western pond turtle), would likely not be present or nesting
18 during winter flood events (e.g., Swainson's hawk, western burrowing owl), or are capable of
19 fleeing flooded areas (e.g., bank swallow, tricolored blackbird). More severe flood events,
20 however, can have deleterious consequences on protected resources, including erosion of
21 protected habitats, deposition of sediment and debris on conservation lands that damage habitat
22 functions for covered species, and loss of vegetation plantings in restored riparian habitats.

23

24 Flood damage to protected natural communities and habitats caused storms at or below a 50-year
25 flood event on a given stream are considered to be a changed circumstance that are reasonably
26 foreseeable over the term of the BRCP.

27

28 *Unforeseen Circumstance*

29

30 Flood events causing damage to BRCP conservation lands that are greater than a 50-year flood
31 event are an unforeseen circumstance.

32

33 *Planned Response*

34

35 Following a flood event, affected conservation lands will be inspected within 30 days of the
36 event by the Implementing Entity to evaluate the extent of damage to the protected habitats and
37 evaluate the need for implementing actions to rehabilitate affected habitat functions. If the
38 habitat functions are unlikely to naturally reestablish the former conditions through natural
39 processes at a similar or greater rate than with implementation of remedial management actions,
40 the Implementing Entity will identify and implement management actions necessary to restore
41 affected habitat conditions within 1 year of the flood event.

41

2. Drought

Nature of the Changed Circumstance

The climate of the Plan Area is characterized by a Mediterranean climate, with cool, wet winters and warm, dry summers. El Niño and La Niña climatic events typically cause large annual fluctuations in precipitation levels (Minnich 2007, Reeve-Morghen et al. 2007). Precipitation is almost exclusively received in the form of rain, approximately 90 percent of which is received from October through April. Drought is a natural part of Mediterranean climates and drought conditions experienced over the term of the BRCP could result in the loss of restored riparian and wetland habitats and BRCP maintained agricultural habitats. Drought is defined as [text to come].

Unforeseen Circumstance

[Text to come.]

Planned Response

BRCP conservation land management plans (see Conservation Measure *CM9: Enhance and Manage Protected Natural Communities* in Section 5.4, *Conservation Measures*) include drought monitoring and protection measures to minimize the risk of losing restored and agricultural habitats to drought. Preventative measures include the following actions.

- Monitoring Butte County rain data and gages to determine if the seasonal rainfall at the end of March and April indicate a drought (near 75% of mean seasonal precipitation).
- Monitoring habitat restoration sites that are beyond their establishment periods (i.e., no longer sustained by irrigation) for stress due to low soil moisture or high evapotranspiration rates.

In the event of drought conditions, the Implementing Entity will evaluate habitat restoration sites to assess the degree of effect on habitat development and functions. Following the evaluation, the Implementing Entity will prepare a report that documents effects of drought on restoration sites and identifying management actions that will be implemented through the adaptive management process (see Section 5.8, *Adaptive Management Plan*) to alleviate the effects of drought (e.g., providing supplemental irrigation of riparian plantings). For droughts that affect the availability of water for irrigation of BRCP agricultural habitats, the Implementing Entity will purchase additional water supplies necessary to maintain crop types that support the target habitat functions of the agricultural land or acquire natural habitat areas to replace the habitat functions provided by the affected agricultural habitat.

3. Water Availability

[Text to come. This changed circumstance will address the potential effects of changes in the availability of water that supports existing covered species habitats on the ability to implement conservation measures for protecting and restoring those habitats.]

4. Levee Failures

Nature of Changed Circumstance

During the course of BRCP implementation, levee failures could occur within the Plan Area that may affect benefits to covered species provided by the BRCP. To guide responses to such events, levee failures will be considered a changed circumstance under the BRCP if the failure: (a) significantly diminishes the function of BRCP restored and protected natural communities as habitat for covered species, as jointly determined by the Implementing Entity, USFWS, and DFG or (b) precludes implementation of habitat conservation measures.

Unforeseen Circumstance

Damage caused by levee failures to BRCP conservation lands that are not repaired by the entity responsible for the failed levee is an unforeseen circumstance.

Planned Responses

Following repair of the levee, the Implementing Entity will, to the extent practicable, identify and undertake actions through the adaptive management process to restore the degraded or lost BRCP habitat. To the extent feasible, the Implementing Entity will coordinate restoration efforts with the entity or entities with responsibility for repair and rehabilitation of the levee. Should a levee failure occur with no subsequent repair (an unforeseen circumstance), the Implementing Entity will assess the new habitat conditions to determine the ability of the site to continue to achieve one or more of the BRCP biological objectives. If so, the Implementing Entity will identify and implement revised habitat enhancement and management measures for the affected lands that are conducive to supporting the revised objectives within the funding allocated for the affected unit of habitat. If, under the new conditions, the affected habitat is no longer capable of achieving BRCP biological objectives, no specific responses would be required under the BRCP.

5. Fire

Nature of Changed Circumstance

Fire is defined as any fire not prescribed by the Implementing Entity on conservation lands that removes a sufficient extent of vegetation such that the intended habitat functions of the protected land for covered species is substantially degraded, as jointly determined by the Implementing Entity, DFG, and USFWS, or that destroys infrastructure that is necessary to maintain conservation benefits of the affected conservation lands over time.

1 *Unforeseen Circumstance*

2
3 Any area in excess of a cumulative total of █ acres burned by non-BRCP prescribed fires over
4 the term of BRCP implementation that result in the loss of intended habitat functions for the
5 target covered species is an unforeseen circumstance.

6
7 *Planned Response*

8 To minimize the risk of fire, the Implementing Entity will identify conservation lands with a high
9 risk of fire (e.g., grasslands situated near roadways) and implement fire risk reduction measures
10 on those lands, including:

- 11 ▪ establishing and maintaining fuel breaks around high risk conservation lands;
- 12 ▪ coordinating with state and local fire agencies to improve fire suppression preparedness
13 for conservation lands; and
- 14 ▪ developing post-fire monitoring plans.

15 In the event of a fire, the Implementing Entity will assess the proportion of the protected habitat
16 area that has burned and its likely effects on habitat use by covered species. The Implementing
17 Entity will make an initial determination of whether or not a changed circumstance exists, and
18 will notify USFWS and DFG of the fire event. If a changed circumstance is determined to exist,
19 the Implementing Entity will implement the appropriate post-fire monitoring plan for a two-year
20 period following the fire. If over the course of the monitoring period it is determined that
21 vegetation is not recovering sufficiently in the burned area to reestablish the original functions of
22 the affected habitat, the Implementing Entity will develop and implement through the adaptive
23 management process a habitat restoration plan to enhance recovery of the affected habitat area.
24 Elements of habitat restoration plans may include provisions for planting and caring for native
25 vegetation and controlling the establishment of invasive plant species.

26 **6. Invasive Species and Diseases**

27 *Nature of Changed Circumstance*

28 A changed circumstance that involves the infestation of new or existing non-native animals,
29 plants, or diseases affecting native wildlife, fish, and plant species will be considered to have
30 occurred if the Implementing Entity, USFWS, and DFG jointly determine that such species or
31 diseases are established within the Plan Area and that the presence of the species or disease will
32 substantially diminish the benefits to covered species provided by the BRCP conservation
33 measures. It is highly unlikely that large infestations of a new or existing non-native animal,
34 plant, or disease within BRCP conservation lands can be addressed within the operating budget
35 BRCP or the authority of the Implementing Entity.

36
37
38

1 *Unforeseen Circumstances*

2
3 Except as noted below, any infestation of new or existing species and diseases beyond █ percent
4 of baseline condition within BRCP conservation lands, as determined through surveys conducted
5 at the time conservation lands are acquired are considered to be an unforeseen circumstance.
6 Any existing or new species or disease and their effects on covered species that can only be
7 effectively controlled through implementation of actions outside of the BRCP Plan Area (e.g.,
8 contraction of debilitating diseases or parasites by life stages of anadromous fish species that do
9 not use the Plan Area) or that are not under the jurisdiction of the Implementing Entity to
10 effectively control (e.g., recurring infestations emanating from lands that are not under control of
11 the Implementing Entity) are an unforeseen circumstance.

12
13 *Planned Response*

14
15 As described in Section 5.7, *Monitoring Plan*, the Implementing Entity will take steps to detect,
16 through the monitoring program and through collaboration with other responsible entities,
17 infestations of existing or new non-native animal, plant, or diseases in the Plan Area. If an
18 infestation of a non-native animal, plant, or disease is discovered, the Implementing Entity in
19 coordination with USFWS, NMFS, and DFG will conduct an assessment to determine the
20 possible threats of the species or disease to covered species and the Plan Area ecosystems. The
21 BRCP Implementing Entity, through the adaptive management process, will identify and
22 implement measures to reduce and/or control the adverse effects of the species or disease on the
23 functions provided by habitat restored and protected under the Plan (e.g., control of non-native
24 plant species in restored and protected habitats). If methods to adequately reduce and/or control
25 adverse effects of the species or disease are not available or practicable, the Implementing Entity
26 will identify alternative design, implementation, and management approaches to future habitat
27 restoration actions to avoid or minimize potential adverse effects of the disease on covered
28 species. If such modifications are not practicable, the Implementing Entity, through the adaptive
29 management process, will identify and implement alternative conservation measures that provide
30 equivalent levels of benefit to applicable covered species.

31 Infestations of conservation lands held in short-term easements may not be renewed to avoid the
32 effects of the infestation on benefits to covered species. In such an event, the Implementing
33 Entity will acquire other lands that are not subject to the infestation to provide the intended
34 benefits of the affected lands.

35 If an agricultural pest or disease establishes such that crop types that are anticipated to be
36 cultivated on BRCP conservation lands to provide habitat for covered wildlife species can no
37 longer be grown, the Implementing Entity in coordination with USFWS and DFG through the
38 adaptive management process will identify and provide alternative crop types that can be
39 practicably cultivated and that are not affected by the pest or disease that provide the same or
40 higher habitat values of the affected crop type(s). If suitable replacement crop types that provide
41 the same or higher values are not available, the Implementing Entity will provide available crop
42 types that can be practicably cultivated that provide the highest possible values for the target

1 covered wildlife species.

2 **7. Long-Term Changes in Precipitation and Temperature**

3 *Nature of Changed Circumstance*

4 Long-term changes in precipitation and temperature will be considered a changed circumstance
5 in the event that such changes in the timing and amount of rainfall and ambient air temperature
6 in the Plan Area as a result of climate change are of a magnitude sufficient, as jointly determined
7 by the Implementing Entity, USFWS, and DFG, to diminish the benefit to covered species
8 provided by BRCP restored and protected natural communities.

9 *Unforeseen Circumstance*

10 Any changes in precipitation and temperature that diminish the intended benefits of conservation
11 lands for the target covered species that cannot be addressed through the BRCP adaptive
12 management program is an unforeseen circumstance.

13 *Planned Response*

14 Changes in precipitation and temperature patterns may affect vegetation composition and
15 structure of BRCP protected, enhanced, and restored habitat areas. In the event of this changed
16 circumstance, the Implementing Entity will identify and implement actions through the adaptive
17 management plan to the extent such actions would help to moderate the ecological effects of
18 changes in precipitation and temperature. Such adaptive management responses, which may
19 require minor or major amendments to the BRCP HCP/NCCP, may include adjusting the natural
20 community objectives to provide for protection of an altered mix of habitats to accommodate
21 changes in the distribution of species that may be caused by altered conditions. Measures beyond
22 those contemplated by the adaptive management plan would likely be impracticable and
23 ineffective given the magnitude and pervasiveness of such changes within Plan Area and, as
24 such, are not provided for under the BRCP.

25 **8. Toxic or Hazardous Spills**

26 *Nature of Changed Circumstance*

27 Toxic or hazardous spills will be considered a changed circumstance if the spills of chemicals
28 into BRCP restored and protected natural communities could significantly reduce the ecosystem
29 and habitat functions they support as jointly determined by the Implementing Entity, USFWS,
30 and DFG.

31 *Unforeseen Circumstance*

32 Effects of any toxic or hazardous spill on the benefits of conservation lands to the targeted
33 covered species that is caused by a party(ies) other than the Implementing Entity is an
34 unforeseen circumstance.

1 *Planned Responses*

2 The Implementing Entity will respond to toxic or hazardous spill events that occur in habitat
3 areas that have been protected, enhanced, or restored through BRCP actions. To minimize the
4 potential effects of a toxic or hazardous spill, the Implementing Entity will develop a toxic and
5 hazardous spill response plan in coordination with responsible regulatory entities (e.g., local,
6 state and federal specialized response teams) to guide its initial responses on detection of a spill
7 event.

8 For a spill event that is caused by a BRCP action, the Implementing Entity will coordinate its
9 response with DFG's Office for Oil Spill Prevention, the Regional Water Quality Control Board,
10 and other state or federal regulatory entities as appropriate to the nature of the spill event to
11 curtail the immediate spread and minimize the effects of the spill. The Implementing Entity will
12 also identify and undertake management measures sufficient to remediate the effects of the toxic
13 substance on covered species and affected habitats (i.e., removal or isolation of the material) and
14 restore the ecological functions of the degraded habitat. If the affected habitat areas cannot be
15 feasibly and effectively restored, the Implementing Entity, through the adaptive management
16 process, will identify and implement measures to contain the ecological effects of the spill and
17 compensate for the loss of habitat functions at other locations that provide equivalent or greater
18 ecological benefits to the affected covered species.

19 If the spill event is not caused by a BRCP action, the Implementing Entity, will coordinate with
20 responsible regulatory agencies and the party(ies) responsible for the spill event to identify the
21 measures that will need to be funded and/or undertaken to adequately remediate the effects of the
22 spill and restore the ecological functions of the affected habitat.

23 **9. New Species Listings**

24 *Nature of the Changed Circumstance*

25 The USFWS, NMFS, or DFG may list additional species as threatened or endangered under the
26 ESA or CESA (including designated CESA candidate species) that are not BRCP covered
27 species. In the event that USFWS, NMFS, or DFG lists a species not covered by the BRCP, the
28 provisions of this changed circumstance will be automatically triggered.

29 *Unforeseen Circumstance*

30 The listing of new species that precludes the ability to implement the conservation provisions of
31 the BRCP with or without amendments to the HCP/NCCP is an unforeseen circumstance.

32 *Planned Response*

33 The Implementing Entity will undertake the following measures in the event of the listing of a
34 new species under State or federal endangered species laws that is present in the BRCP Plan
35 Area:

- 1 • Evaluate the potential impacts of covered activities on the newly-listed or candidate
2 species and conduct an assessment of the presence of suitable habitat in areas of potential
3 effect.
- 4 • Implement measures to avoid impacts to the newly listed species until such time as the
5 BRCP has been amended to include the newly listed species as a covered species.

6 In the event that a species not covered by the BRCP becomes listed as threatened or endangered
7 or designated as a candidate species, or is proposed or petitioned for listing, the Implementing
8 Entity may request that USFWS, NMFS, and DFG add the species to the relevant take
9 authorizations issued pursuant to the BRCP. In determining whether to seek take coverage for
10 the species, the Implementing Entity will consider, among other things, whether the species is
11 present in the Plan Area and if the covered activities could result in the take of the species. If
12 such take coverage is sought, the BRCP and its authorizations will be amended. Alternatively,
13 the Implementing Entity, on behalf of the Permittees could seek new and separate take
14 authorizations.

15 **10. New Designation of Critical Habitat**

16 *Nature of the Changed Circumstance*

17 The USFWS or NMFS may designate new areas of critical habitat within the Plan Area for
18 species that are covered or not covered under the BRCP. In the event that USFWS or NMFS
19 designates new critical habitat areas, the provisions of this changed circumstance will be
20 automatically triggered.

21 *Unforeseen Circumstance*

22 The designation of new critical habitat areas that precludes the ability to implement the
23 conservation provisions of the BRCP with or without amendments to the HCP/NCCP is an
24 unforeseen circumstance.

25 *Planned Response*

26 The Implementing Entity will undertake the following measures in the event of the designation
27 of new critical habitat areas under federal endangered species laws that are present in the BRCP
28 Plan Area:

- 29 • Evaluate the potential impacts of covered activities on the constituent elements of newly-
30 designated critical habitat.
- 31 • If the designated critical habitat is for a BRCP covered species, implement measures to
32 avoid impacts on the constituent elements of newly-designated critical habitat until such
33 time as the BRCP has been amended, if needed, to address any such impacts on the
34 designated critical habitat.

- 1 • If the designated critical habitat is for a newly listed species not covered under the BRCP,
2 implement measures to avoid impacts on the constituent elements of newly-designated
3 critical habitat until such time as the BRCP has been amended to include the newly listed
4 species as a covered species.

5 **6.5 Future Recovery Plans**

6 Recovery plans under the ESA describe actions necessary to recover and protect federally-listed
7 species. Recovery plans, however, do not constitute obligations for Permittees to implement
8 recovery plan actions. Consequently, ESA recovery plans will not affect BRCP implementation
9 except to the extent that they provide new information that may improve BRCP implementation
10 effectiveness. Any recovery plan addressing any covered species within the Plan Area that is
11 developed after the approval of the BRCP will:

- 12 • Not require any additional water, land, or financial compensation to be provided by the
13 Permittees;
- 14 • Be finalized only after the USFWS or NMFS has conferred with and requested input
15 from the Implementing Entity on the preparation of the recovery plan; and
- 16 • In no way diminish the take authorizations provided pursuant to the BRCP and the IA.

17 **6.6 Permit Duration and Renewal, Plan Amendments, Permit 18 Suspension and Revocation**

19 **6.6.1 Permit Duration and Extension**

20 *This section is in development and will describe the requested duration of BRCP permits and the
21 process for requesting permit extensions.*

22 **6.6.2 Administrative Changes without Modification, Revision, or Amendment**

23 Over the course of BRCP implementation, there will be a need for ongoing interpretation of
24 components of the BRCP. Changes to the BRCP that do not substantively change BRCP
25 requirements will not require an amendment of the BRCP or its authorizations. Examples of
26 administrative revisions that may be implemented by the Implementing Entity include, but are
27 not limited to:

- 28 • Clerical corrections to edit errors in text (e.g., typographical errors), maps, and other
29 portions of the BRCP and its authorizations that do not change their intended meanings;
- 30 • Changes to conservation measures or habitat management actions developed through and
31 adaptive management process described in Section 5.8, *Adaptive Management Plan*.

- 1 • Variations in common conservation land management practices, such as adjusting
2 irrigation schedules for created or restored habitat on the basis of observed water needs of
3 planted vegetation;
- 4 • adjustments to the design of directed studies;
- 5 • Adjustments to monitoring methods to incorporate new USFWS, NMFS, and DFG
6 monitoring protocols;
- 7 • Changes in JPA members and Implementing Entity staff and functions; and
- 8 • Changes in the membership of BRCP advisory committees.

9 **6.6.3 Minor Modifications and Revisions**

10 To respond appropriately to new information, scientific understanding, technological advances,
11 and other such circumstances, the Implementing Entity may need to make minor adjustments to
12 the BRCP. Minor modifications or revisions are primarily expected to address the need for
13 technical updates that will involve changes that would not adversely affect covered species, the
14 level of take, or the obligations of Permittees. Minor modification or revision may include, but
15 are not limited to, the following:

- 16 • Minor corrections to land ownership descriptions;
- 17 • Changes to survey, monitoring, reporting and/or management protocols approved through
18 the adaptive management process described in Section 5.8, *Adaptive Management Plan*,
19 that do not adversely affect covered species or habitat functions and values;
- 20 • Transfers of habitat protection and restoration targets among the CAZs that do not affect
21 the level of conservation benefits provided to the targeted covered species or preclude
22 achieving the biological goals and objectives described in Section 5.3, *Biological Goals*
23 *and Objectives*;
- 24 • Updates/corrections to the vegetation or other resource maps, species occurrence data,
25 and other biological data; and
- 26 • Other proposed changes to the BRCP that USFWS, NMFS, and DFG have determined to
27 be appropriate for implementation as a minor amendment

28 **6.6.3.1 Procedures for Minor Modifications and Revisions**

29 The Implementation Entity, Permittees, or USFWS, NMFS, and DFG may propose minor
30 modification or revision by providing a written request to each of these parties. Requests will
31 include a description of the proposed changes, an explanation of the reason for the proposed
32 changes, an analysis the effects of the change on impacts to covered species and natural
33 communities, and a description of why the proposed changes would not differ from the

1 biological effects described in the original BRCP, conflict with the terms and conditions of the
2 original BRCP, and substantially affect BRCP implementation.

3 The Permittees and USFWS, NMFS, and DFG may submit comments on the proposed minor
4 modification or revision in writing within sixty (60) days of receipt of notice. If any Permittee
5 disagrees with the proposed changes, the revisions or minor modifications will not be
6 incorporated into the BRCP. If USFWS, NMFS, and/or DFG do not concur that the proposed
7 changes meet the requirements for a revision or minor modification, the proposal must be
8 approved according to the Amendment process.

9 If the Permittees agree to the proposed minor modification or revision, and USFWS, NMFS, and
10 DFG find that the requirements for a minor modification or revision have been met and the
11 modification or revision should be incorporated into the BRCP, the BRCP will be appropriately
12 modified. If USFWS, NMFS, or DFG do not respond within the 60-day period to the written
13 request, the agency will be considered to have approved the proposed minor modification or
14 revision.

15 **6.6.4 Formal Amendment**

16 Over the term of the BRCP, it may be necessary to substantially amend the BRCP to address new
17 conditions not envisioned during the BRCP planning process. The occurrence of such instances
18 are expected to be infrequent or may not occur over the term of the BRCP. Any proposed
19 changes to the BRCP that are not considered to be administrative changes or a minor amendment
20 or revision do will require a formal amendment. Formal amendments will also require
21 corresponding amendments to the BRCP authorizations and permits, in accordance with
22 applicable laws and regulations-regarding permit amendments. The Implementing Entity will be
23 responsible for submitting any proposed amendments to USFWS, NMFS, and DFG.

24 Formal amendments include, but are not limited to:

- 25 • Substantive changes to the boundary of the Plan Area, other than those associated with
26 the acquisition of conservation lands to address potential effects of climate change on the
27 distribution of natural communities as described in Section [to come];
- 28 • The addition of species covered under the BRCP;
- 29 • Adjustments to BRCP implementation schedules that would have substantial adverse
30 effects on the covered species; and
- 31 • Changes in the extent of natural community types to be protected under the BRCP that
32 substantially reduce the level of conservation benefits provided to the covered species.

1 **6.6.4.1 Process for Formal Amendment**

2 Formal amendments will involve the same process that was required for the original approval of
3 the BRCP. In most cases, an amendment will require public review and comment, CEQA/NEPA
4 compliance, and intra-Service Section 7 consultation. Amendments will require approval of the
5 Implementing Entity and the Permittees. USFWS, NMFS, and DFG will use reasonable efforts
6 to process proposed amendments within 180 days following receipt of a proposed amendment.

7 **6.6.6 Permit Revocation and Suspension**

8 *This section will describe the processes for revocation and suspension of permits issued under*
9 *ESA section 10 and the NCCP Act.*

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