

ENVIRONMENTAL INDEMNITY AGREEMENT

THIS ENVIRONMENTAL INDEMNITY AGREEMENT ("Indemnity") is made by Kern Water Bank Authority, a California joint powers authority as indemnitor ("Indemnitor") in favor of the California Department of Fish and Game ("Indemnitee"), as of this ___ day of _____, 1997.

RECITALS

A. Concurrently herewith, the United States Fish and Wildlife Service, Indemnitee and Indemnitor are entering into, among other documents, (a) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Implementation Agreement ("Implementation Agreement") of even date herewith relating to 19,900 acres of property in Kern County, California (the "Kern Water Bank"); (b) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Conservation Bank Agreement ("Conservation Bank Agreement"); and (c) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Security Agreement ("Security Agreement"). The Implementation Agreement, the Conservation Bank Agreement and the Security Agreement are collectively referred to herein as the "Permit Documents."

B. Pursuant to the Implementation Agreement, Indemnitor will concurrently herewith convey to Indemnitee two conservation easements in perpetuity covering approximately 1,165 acres on the Kern Water Bank. Pursuant to the Conservation Bank Agreement, Indemnitor will from time to time be conveying additional conservation easements in perpetuity on additional land in the Kern Water Bank to Indemnitee. All property covered by conservation easements shall be collectively referred to as the "Conservation Easement Properties." All the conservation easements shall be collectively referred to as the "Conservation Easements."

C. It is the intent of both Indemnitee and Indemnitor that this Indemnity cover certain potential liabilities and exposures of Indemnitee which are not covered by any covenants, warranties, representations or provisions contained in the Implementation Agreement, Conservation Bank Agreement or Security Agreement (the "Permit Documents"); and that this Indemnity be an independent obligation separate and distinct from Indemnitor's other covenants and obligations set forth in the Permit Documents.

D. Indemnitee, acting through the Department of Water Resources of the State of California ("DWR"), owned the Kern Water Bank in fee from 1988 to 1996. It is the intent of Indemnitee and Indemnitor that this Indemnity cover the potential liabilities and exposures of Indemnitee arising only from Indemnitee's interest in the Conservation Easements, and to exclude from this Indemnity any potential liabilities or

exposures arising prior to Indemnitor's acquisition of the Kern Water Bank, including DWR's prior ownership of the Kern Water Bank.

A G R E E M E N T

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged by Indemnitor, Indemnitor agrees, represents and warrants for the benefit of Indemnitee, its successors and assigns, as follows:

1. Definition. For purposes of this Agreement, the term "**Hazardous Substance**" means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the California Hazardous Waste Control Act, Health and Safety Code Sections 25100 et seq.; the California Hazardous Substance Account Act, Health and Safety Code Sections 25330 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5 et seq.; California Health and Safety Code Sections 25280 et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1 et seq.; California Health and Safety Code Sections 25501 et seq. (Hazardous Materials Response Plans and Inventory); or the California Porter-Cologne Water Quality Control Act, Water Code Sections 13000 et seq., all as amended (the above-cited California state statutes are hereinafter collectively referred to as "the State Toxic Substances Laws"), or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos.

2. Indemnity. Indemnitor agrees, as an independent unsecured obligation, separate from any of its promises or covenants in the Permit Documents, to indemnify, defend with counsel selected by Indemnitee, protect and hold harmless Indemnitee, its assigns, any successor or successors to Indemnitee's interest in the Conservation Easements and any future owners of the Conservation Easements to whom this Indemnity is assigned from and against all claims, actual damages (including but not limited to special and consequential damages), injuries, costs, response costs,

losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys', engineers', consultants' and expert witness fees and costs incurred in connection with defending against the Conservation Easement Properties or any of the foregoing or in enforcing this Indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitee solely due to its interest in the Conservation Easements which arises from or is attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the Conservation Easement Properties, regardless of whether undertaken due to governmental action, with the exception of any such plans which were previously disclosed in writing to Indemnitee or actually known to Indemnitee prior to the date hereof. To the fullest extent permitted by law, the foregoing indemnification shall apply regardless of the fault, active or passive negligence, breach of warranty or contract of Indemnitee.

3. Carve-Out. This Indemnity shall not apply to any claims, actual damages (including but not limited to special and consequential damages), injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitee directly or indirectly arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan concerning any Hazardous Substance on, under or about the Conservation Easement Properties, regardless of whether undertaken due to governmental action arising from or attributable to any act prior to Indemnitor's acquisition of the Kern Water Bank, including but not limited to DWR's ownership of the Kern Water Bank.

4. Governing Law. This Indemnity shall be governed by and construed according to the internal laws of the State of California and applicable federal law.

IN WITNESS WHEREOF, Indemnitor has executed this Indemnity as of the date first above written.

KERN WATER BANK AUTHORITY

By: _____

William D. Phillipmore

Title: Chairman

Approved as to form:
Nossaman, Guthner, Knox & Elliott, LLP
(Indemnitor Counsel)

By: _____
Robert D. Thornton