

**AGREEMENT REGARDING ASSUMPTION OF MITIGATION RESPONSIBILITY  
AND CONSENT TO TRANSFER OF KERN WATER BANK LANDS**

This Agreement for Assumption of Mitigation Responsibility and Consent to Transfer of Kern Water Bank Lands ("Agreement") is made and entered this \_\_\_ day of August, 1996 by and between Kern Water Bank Authority ("KWBA") a joint powers authority, and the California Department of Fish and Game ("DF&G").

**Recitals**

A. The California Department of Water Resources ("DWR") is the owner of approximately 20,000 acres of land ("Water Bank Lands") in Kern County, California in an area commonly known as the Kern Water Bank. DWR has entered into a purchase agreement to sell the Water Bank Lands to the Kern County Water Agency ("KCWA"). The purchase agreement contemplates that the Water Bank Lands will be subsequently transferred from KCWA to KWBA including a 530-acre parcel of land within the Water Bank Lands and more particularly described on Exhibit "A" attached hereto (the "530-Acre Parcel"). The purchase agreement between DWR and KCWA requires DWR and KCWA to obtain the consent of DF&G to the transfer of the Water Bank Lands to KWBA. KWBA is acquiring fee title to the 530-Acre Parcel. This Agreement is intended to memorialize DF&G's consent to such transfer and to establish the terms of the transfer.

B. DWR has previously committed itself to engage in certain environmental mitigation and compensation activities on the 530-Acre Parcel, and certain other obligations concerning the relocation of blunt-nosed leopard lizards, as more fully set forth in the documents listed in Exhibit "B" hereto (the "Mitigation Documents").

C. Concurrently with the transfer of the 530-Acre Parcel from KCWA to KWBA, KWBA is granting a conservation easement to DF&G on the 530-Acre Parcel.

D. By this Agreement, KWBA is assuming certain responsibilities of DWR set forth in the Mitigation Documents which relate to the 530-Acre Parcel and certain other obligations concerning the monitoring of relocated blunt-nosed leopard lizards, as specifically listed in Exhibit "C" hereto.

E. KWBA is preparing a habitat conservation plan ("Water Bank HCP") to be approved by DF&G with regard to the operation of the Kern Water Bank and the conservation of threatened and endangered species and their habitat within the Water Bank Lands. The Water Bank HCP will impose responsibilities on KWBA with regard to the 530-Acre Parcel consistent with this Agreement.

### **Agreement**

NOW, THEREFORE, in consideration of the foregoing, the receipt and adequacy of which are acknowledged, the parties hereto agree as follows:

#### **1. DUTIES AND OBLIGATIONS.**

##### **(a) Management of 530-Acre Parcel; Conservation Easement.**

KWBA hereby assumes the obligations of DWR described in the Mitigation Documents and set forth on Exhibit "C" with regard to the 530-Acre Parcel and with regard to the monitoring of relocated blunt-nosed leopard lizards, but only to the extent and in the manner that such responsibilities are described in Exhibit "C". Concurrently with the execution of this Agreement, KWBA shall deliver to DF&G a conservation easement grant with regard to the 530-Acre Parcel substantially in the form of Exhibit "D".

**(b) Management of 530-Acre Parcel Pending Approval of Habitat Conservation Plan.**

Within sixty (60) days of the effective date of this Agreement, KWBA shall submit to DF&G for its review and approval, which approval shall not be unreasonably withheld, an interim plan ("Interim Management Plan") for the management of the 530-Acre Parcel until the approval of the Water Bank HCP by DF&G. The Interim Management Plan shall include measures to control unauthorized access to the 530-Acre Parcel and to manage the 530-Acre Parcel in a manner to protect the conservation values of the 530-Acre Parcel, including, but not limited to, the habitat of any endangered species or threatened species within the 530-Acre Parcel.

**2. TERMINATION.**

This Agreement shall terminate upon the approval by DF&G of the Water Bank HCP.

**3. REPRESENTATIONS BY DF&G.**

DF&G hereby represents and warrants that:

(a) Exhibit "B" hereto is a full and complete list of all documents creating any obligation of DWR pursuant to the California Endangered Species Act relating to the Water Bank Lands ; and

(b) Exhibit "C" hereto is a full and complete list of all responsibilities of KWBA pursuant to the Mitigation Documents.

**4. CONSENT BY DF&G TO TRANSFER OF WATER BANK LANDS.**

DF&G hereby consents to the transfer of the Water Bank Lands from DWR to the KCWA and the subsequent transfer from the KCWA to KWBA.

**5. CONDITIONS PRECEDENT.**

The conditions precedent to the effectiveness of this Agreement are the following:

(a) Recordation of a deed transferring fee simple title in the Water Bank Lands from DWR to KCWA in accordance with Section 3.1 of that certain Agreement for the

Exchange of the Kern Fan Element of the Kern Water Bank dated as of December 13, 1995 (“Exchange Agreement”) and transfer of title to the personal property in accordance with Section 3.2 of the Exchange Agreement; and

(b) Transfer of fee simple title in the Kern Water Bank Lands from KCWA to KWBA, and transfer of rights and obligations of KCWA, in accordance with Section 3.3 of the Exchange Agreement.

## **6. MISCELLANEOUS**

### **A. Notices.**

Any notice required or permitted to be given under this Agreement shall be in writing and sent by (i) United States mail, registered or certified, postage prepaid, return receipt requested, and addressed as follows, and shall be deemed to have been given upon the date of delivery (or refusal to accept delivery); (ii) by facsimile transmission, with a copy sent by first class United States mail, and shall be deemed to have been given upon the date of such facsimile transmission; or (iii) by national overnight courier, and shall be deemed to have been given upon the date of delivery:

If to DF&G:

California Department of Fish and Game  
Regional Manager, Region 4  
1234 East Shaw Avenue  
Fresno, CA 93710

with a copy to:

General Counsel  
California Department of Fish and Game  
1416 9th Street  
Sacramento, CA 95814

If to KWBA:

William Phillimore  
Kern Water Bank Authority

P.O. Box 80607  
Bakersfield, CA 93380-0607

with a copy to:

Robert D. Thornton, Esq.  
Nossaman, Guthner, Knox & Elliott, LLP  
18101 Von Karman  
Suite 1800  
Irvine, CA 92612-1047

or such other address as any party may from time to time specify in writing to all other parties in the manner aforesaid.

**B. Governing Law.**

The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

**C. Severability.**

If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found invalid, as the case may be, shall not be affected thereby.

**D. Captions.**

The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

**E. Counterparts.**

The parties hereto may execute this instrument in one or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party which signed it.

**F. Exhibit List.**

This Agreement incorporates and includes the following exhibits:

- Exhibit A Map of the 530-Acre Parcel
- Exhibit B List of Documents Setting forth DWR's Mitigation Responsibilities
- Exhibit C Obligations of KWBA under the Mitigation Documents
- Exhibit D Form of Conservation Easement for 530-Acre Parcel

Each of these Exhibits shall be attached to this Agreement.

**IN WITNESS WHEREOF, THE PARTIES HERETO** have executed this Agreement as of the date first above written.

Dated: Aug. 7, 1996

CALIFORNIA DEPARTMENT OF FISH AND GAME




By: JACQUELINE E. SCHAFER

Title: DIRECTOR

Dated: August 1, 1996

KERN WATER BANK AUTHORITY,  
A Joint Powers Authority



By: William D. Phillimore

Title: Chairman



## EXHIBIT B

### LIST OF DOCUMENTS SETTING FORTH DWR'S MITIGATION RESPONSIBILITIES

#### **La Hacienda Water Reclamation Project**

1. Memorandum of Agreement, dated September 30, 1991, by and between California Department of Water Resources and the California Department of Fish and Game.
2. Formal Section 7 Consultation Concerning the La Hacienda Water Extraction and Conveyance Project Proposed by the California Department of Water Resources in Kern County, California, dated January 7, 1992, from Fish and Wildlife Service to Bureau of Reclamation.
3. Memorandum, dated February 3, 1993, from Department of Water Resources to Department of Fish and Game re: Mitigation for the La Hacienda Extraction Program, the 1991 Emergency Maintenance Program and the Mile 56 Repair Program.
4. Letter, dated February 3, 1993, from Department of Water Resources to Fish and Wildlife Service.

#### **1991 Emergency Maintenance Program**

1. Management Agreement, dated October 30, 1991, by and between California Department of Water Resources and California Department of Fish and Game re: 1991 California Aqueduct Emergency Maintenance Program.
2. Formal Section 7 Consultation Concerning Proposed Emergency Maintenance Operations on the California Aqueduct in Kern County California, dated November 27, 1991, from the Fish and Wildlife Service to Bureau of Land Management.
3. Memorandum, dated February 3, 1993, from Department of Water Resources to Department of Fish and Game re: Mitigation for the La Hacienda Extraction Program, the 1991 Emergency Maintenance Program and the Mile 56 Repair Program.
4. Letter, dated February 3, 1993, from Department of Water Resources to Fish and Wildlife Service.

#### **1991 Interim Land Management Program**

1. Formal Section 7 Consultation Concerning an Interim Land Management Program Proposed by the California Department of Water Resources on Its Kern Fan Element Property in Kern County, California.



2. Memorandum, dated April 14, 1995, from Department of Fish and Game re: withdrawal of two California Endangered Species Act opinions and associated memoranda of understanding with Department of Water Resources.

### **Los Banos Grandes Geologic Exploration**

1. Letter, dated October 6, 1992, from Department of Water Resources to Department of Fish and Game re: Phase II of Geologic Exploration Program.
2. Memorandum, dated July 29, 1993, re: disturbed area at Los Banos Grandes.

### **Coastal Branch, Phase II**

1. California Endangered Species Act Memorandum of Understanding, dated September 29, 1993, by and between California Department of Water Resources and California Department of Fish and Game re: the Operation, Maintenance, and Construction of the Coastal Branch, Phase II.
2. Translocation Plan for Blunt-Nosed Leopard Lizard, Giant Kangaroo Rat, and San Joaquin Antelope Squirrel Within the Construction Easement for Coastal Branch, Phase II, dated July 30, 1993.
3. Memorandum, dated August 3, 1993, from Department of Fish and Game to Department of Water Resources re: Translocation Plan for Coastal Branch, Phase II.

EXHIBIT C  
OBLIGATIONS OF KWBA

**Maintenance of 530-Acre Parcel**

1. Post the property boundaries designating the area as protected habitat for threatened and endangered species.
2. Conduct annual maintenance, including monitoring of the effectiveness of habitat improvement measures, fence repairs, and other measures to maintain habitat in good condition as reasonably specified by DF&G.

**Monitoring of Blunt-Nosed Leopard Lizard**

1. Surveys for blunt-nosed leopard lizards shall be conducted twice a year within the area designated as "Relocation Area for Blunt-Nosed Leopard Lizard" shown on Figure 1 to this Exhibit C, during the active season through 1998. Results from the surveys will be reported annually to DF&G, and a final summary report prepared. The surveys will be conducted using the same methods used by DWR.
2. Habitat quality of the translocation site will be evaluated by annual inspection. As reasonably specified by DF&G, moderate vegetation management shall be conducted to prevent a substantial decline in habitat quality on the site through 1998.

Figure 1

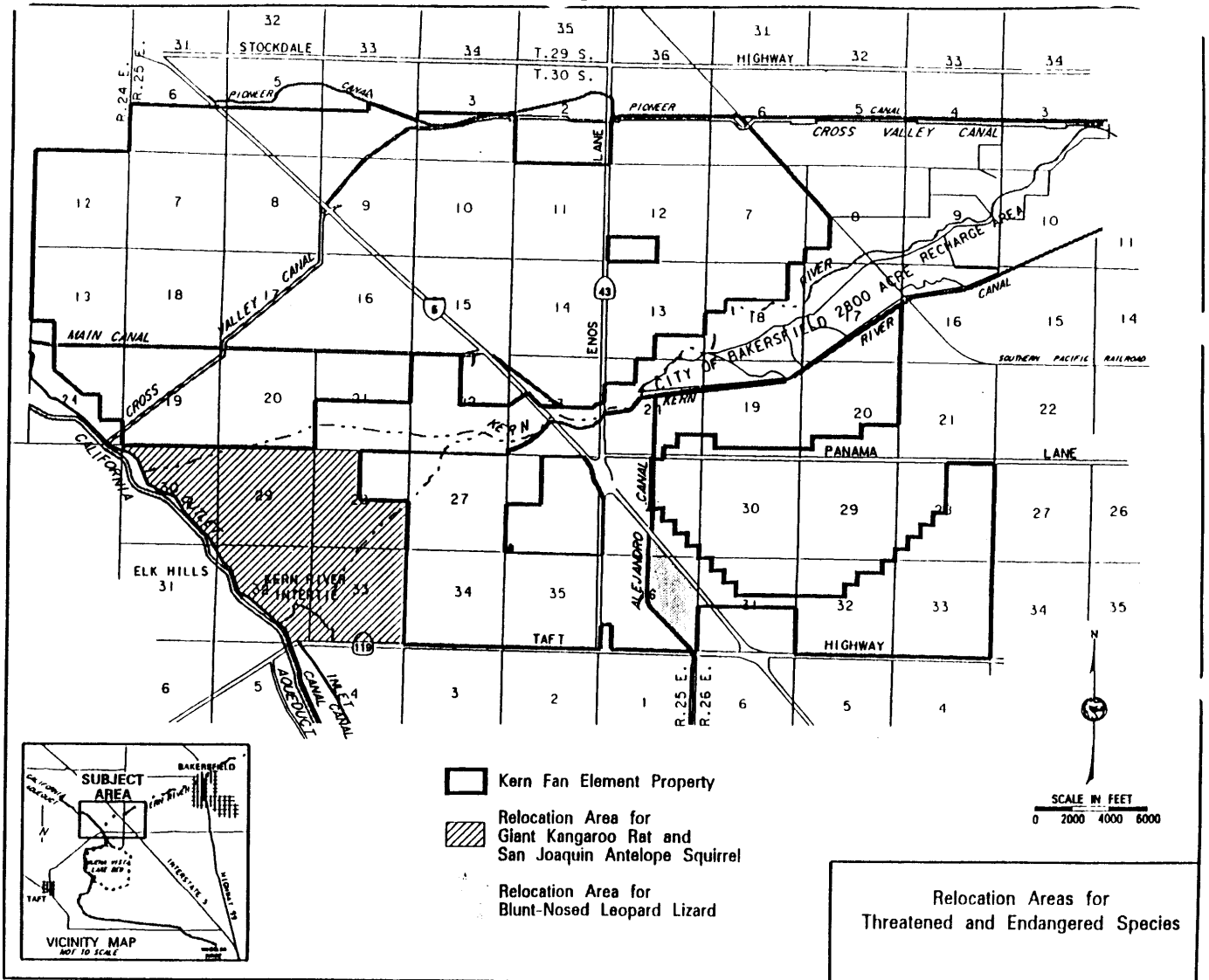


EXHIBIT D  
FORM OF CONSERVATION EASEMENT  
(530 Acre Parcel)

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Kern Water Bank Authority  
P.O. Box 80607  
Bakersfield, CA 933080-007  
Attention: Mr. William Phillimore

The undersigned declares that this document is recorded for the benefit of the Kern Water Bank Authority, a joint powers authority, and is therefore exempt from the payment of the recording fee pursuant to Government Code Section 6103 and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

By: \_\_\_\_\_  
Authorized Representative for Authority

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(Space above this line for Recorder's use only)

**KERN WATER BANK CONSERVATION EASEMENT**

**(530 Acre Parcel)**

THIS CONSERVATION EASEMENT (the "Easement Agreement") is made this \_\_\_ day of \_\_\_\_\_, 1996 by and between the Kern Water Bank Authority, a joint powers authority ("Grantor"), and the State of California, acting by and through its Department of Fish and Game, a subdivision of the California Resources Agency ("Grantee"), with reference to the following facts:

## **RECITALS:**

A. Grantor is the sole owner in fee simple of certain real property in the County of Kern, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Conservation Easement Property"). The Conservation Easement Property totals approximately 530 acres.

B. The Conservation Easement Property possesses open space and other habitat values which are important to the conservation of the certain sensitive species and also possesses attributes (collectively, "conservation values") of great importance to Grantee and the people of the State of California. Such conservation values provide habitat for threatened and endangered species.

C. Grantor is a joint powers authority formed by certain public agencies and other entities in the County of Kern pursuant to Government Code section 6500 et seq. for the purpose of operating a water bank project.

D. Grantor intends to convey to Grantee the right to preserve, enhance and protect the conservation values of the Conservation Easement Property in perpetuity subject to the terms of this Easement Agreement.

E. Grantor is preparing a long-term habitat conservation plan ("Habitat Conservation Plan") with regard to the Conservation Easement Property and other property for approval by Grantee. The Habitat Conservation Plan will identify uses of the Conservation Easement Property that will be consistent with this Easement Agreement.

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, Grantor and Grantee agree as follows, and Grantor hereby grants and conveys to Grantee an easement in perpetuity over the Conservation Easement Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. **Purpose.** It is the purpose of the Easement to assure that the Conservation Easement Property will be retained forever in an open space condition (subject to those uses permitted in Sections 2 and 4 of this Easement Agreement) and for the conservation of threatened, endangered and other sensitive species and related purposes and to prevent any use of the Conservation Easement Property that will impair or interfere with the conservation values of the Conservation Easement Property other than as set forth herein. Grantor intends and agrees that the Easement shall limit the use of the Conservation Easement Property, subject to the uses permitted in this Easement Agreement, to such activities, including without limitation those involving the management of the Conservation Easement Property, that protect or enhance the conservation values of the Conservation Easement Property. While the Habitat Conservation Plan is in force, the Conservation Easement Property may be subject to the additional uses and limitations imposed by the Habitat Conservation Plan. Nothing in the Habitat Conservation Plan shall be construed to impose a limit on the duration of the Easement.

2. **Rights of Grantee and Character of Easement.**

(a) **Rights Conveyed.** To accomplish the purpose of the Easement, the following rights and obligations are hereby conveyed to and accepted by Grantee by the grant contained herein:

(i) To preserve, enhance and protect the conservation values of the Conservation Easement Property; and

(ii) To enter upon the Conservation Easement Property to carry out the purposes of the Easement.

(b) **Use of Surface and Subsurface.** The use of the surface of the Conservation Easement Property for conservation values is the exclusive use for the Conservation Easement Property subject to those other purposes set forth in Section 4 below. With respect to the subsurface of the property comprising the Conservation Easement Property, Grantor retains the right to reasonable access to and use thereof for the Grantor's wells and

waterlines and canals. so long as Grantor's exercise of such retained rights does not materially disturb, disrupt or interfere with the Easement; provided, however, that any such access and use shall be consistent with the purposes set forth herein. Grantee recognizes that this Easement Agreement is not binding upon the third-party owners of the mineral rights underlying the Conservation Easement Property.

(c) Prohibited Uses. The following uses by Grantor, its agents, and all third parties, are expressly prohibited, unless specifically authorized in the Habitat Conservation Plan or necessarily incident to the exercise by Grantor of its reserved rights under Section 4 below:

(i) Unseasonal watering, use of herbicides and/or rodenticides, weed abatement activities, incompatible fire protection activities and any and all other uses which may adversely affect the purposes of the Easement;

(ii) Use of off-road vehicles;

(iii) Erecting of any building, billboard or sign;

(iv) Depositing of soil, trash, ashes, garbage, waste, bio-solids or any other material;

(v) Excavating, dredging or removing of soil, loam, gravel, rock, sand or other material;

(vi) Altering the general topography of the Conservation Easement Property, including construction of roads; and

(vii) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, or (3) prevention or treatment of disease.

(d) Use By General Public. No use of the Conservation Easement Property by the general public is authorized hereunder without the express prior written consent of Grantor and Grantee and their respective successors in interest in the Conservation Easement Property, and Grantor and Grantee shall not encourage or permit the general public to use or enter upon the Conservation Easement Property. For purposes of this subparagraph, the term "general public" shall not include persons accompanied by Grantor or Grantee or its employees, agents, representatives, contractors or subcontractors and entering onto the Conservation Easement Property for purposes related to the conservation values of the Conservation Easement Property and the purposes set forth in Section 4. Notwithstanding the foregoing, Grantor and Grantee acknowledge that representatives of the Grantee shall have a right of access onto the Conservation Easement Property for purposes associated with the conservation values hereof upon 24 hours notice to Grantor. In addition, so long as Grantee is a subdivision of the State of California, it shall have the right to administer a managed hunting program ("Hunting Program") on the Conservation Easement Property, provided that Grantee submits to Grantor for Grantor's approval, a description of such Hunting Program and specifying measures to insure that such Hunting Program will not interfere with, or damage, the Reserved Rights and Uses described in Section 4 or create a hazard to Grantor's officers, employees or agents. Without limiting in any way Civil Code section 846, in the event that Grantor approves the Hunting Program, such approval, or any actions of Grantor pursuant to such approval, does not thereby (a) extend any assurance that the Conservation Easement Property is safe for hunting purposes, or (b) impute or otherwise establish any person to whom access is provided pursuant to the Hunting Program to be an invitee or licensee to whom a duty of due care is owed, or (c) assume responsibility by Grantor for, or incur liability, any injury to person or property caused by any act of such person to whom permission has been granted pursuant to the Hunting Program. The approval of the Hunting Program by Grantor does not create a duty of care or a ground for liability for injury to person or property.

(e) Reservation of Rights. Grantee's rights under this Easement are expressly made subject to Grantor's reserved rights under Section 4 and all other easements,



covenants, conditions, restrictions, reservations, rights and rights-of-way of record, apparent or of which Grantee has actual notice as of the date of recordation of this Easement Agreement.

(f) Assignment by Grantee. Grantee may assign its rights and obligations under this Easement Agreement only to an organization that is (1) approved by the Grantor which approval shall not be unreasonably withheld, and (2) a public agency or a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision applicable), and the applicable regulations thereunder, and (3) authorized to acquire and hold a conservation easement under California Civil Code Section 815 et seq. (or any successor provision then applicable).

(g) No Abandonment. Grantee shall not abandon its rights and obligations under this Easement Agreement. In the event Grantee is unwilling or unable to carry out Grantee's obligations under this Easement Agreement, then Grantee shall transfer the easement to a public entity or qualified organization willing to assume Grantee's rights and obligations, in accordance with Section 2(f)(1), (2) and (3).

### **3. No Encumbrances.**

Neither Grantor nor Grantee shall suffer or permit to be enforced against the Conservation Easement Property, or any portions thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any services, supplies, labor or materials furnished or alleged to have been furnished to or for Grantor or Grantee at or for use on the Conservation Easement Property, and each party shall promptly pay or cause to be paid all of said liens, claims or demands caused by such party before any action is brought to enforce the same. If any such lien shall at any time be recorded against the Conservation Easement Property as a result of the foregoing, and the party causing the same shall fail, within 60 days after such recording, to either (i) pay and discharge the underlying claim and cause a lien release to be recorded or (ii) furnish to the other party a surety bond or other security reasonably satisfactory to the other party protecting the other party against liability for such lien and holding the Conservation Easement Property free from the effect of such lien, then the other party may,

but shall not be obligated to take such action or pay such amounts as may be necessary to remove such lien, and the failing party shall immediately pay to the other party the amount so expended, together with interest thereon at the rate of 10% per annum accruing from the date of such payment until paid in full.

**4. Reserved Rights and Uses and Responsibilities of Grantor.**

(a) Utilities and Uses. The Easement is subject to the easements, covenants, conditions, restrictions, reservations, rights and rights-of-way of record, apparent or of which Grantee has actual notice, and Grantor's use and maintenance of existing wells, appurtenant structures, waterlines, canals and roadways as of the date this Easement Agreement is recorded in the Official Records of the County of Kern, and such additional easements, wells, appurtenant structures, waterlines, canals and roadways as Grantor shall designate at any time after the date of recordation of this Easement Agreement, subject to Grantee's prior written approval, which approval shall not be unreasonably withheld. In exercising its reserved rights under this Section 4(a), Grantor shall use its best efforts to limit disturbance of the habitat of endangered species and threatened species and shall, to the extent feasible, promptly restore all disturbed habitat.

(b) Water Storage and Extraction. Grantor shall have the right to store water in the subsurface of the Conservation Easement Property. Grantor shall have the right to drill additional extraction wells in the Conservation Easement Property, and build the improvements and infrastructure necessary to support the additional extraction wells, as permitted under the Habitat Conservation Plan.

(c) Grazing. Grantor shall have the right to use the Conservation Easement Property for grazing purposes, or to permit grazing, if permitted by, and in accordance with, the Habitat Conservation Plan. If Grantor elects to graze or permit grazing in accordance with the Habitat Conservation Plan, Grantor shall provide security for the Conservation Easement Property.

(d) Prevention of Trespass; Fencing. Grantor shall undertake all reasonable actions to prevent the unlawful entry or trespass by persons whose activities may degrade or harm the conservation values of the Conservation Easement Property. Until the Habitat Conservation Plan is approved, Grantor shall maintain the existing fencing on the Conservation Easement Property. Upon approval of the Habitat Conservation Plan, fencing shall be installed and maintained only in accordance with the Habitat Conservation Plan.

(e) Costs of Management. Grantor retains all responsibilities and shall bear all costs of any kind relating to the ownership, operation, upkeep, and maintenance of the Conservation Easement Property.

## 5. Sale of Fee Interest.

(a) Grantor may transfer the fee title interest or grant a security interest in the Conservation Easement Property provided it gives Grantee not less than 30 days prior written notice of its intent to transfer such fee title interest. Notice shall be given in the manner required in this Easement Agreement. Grantor agrees to incorporate the terms of this Easement Agreement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conservation Easement Property. The failure of Grantor to perform any act required by this section shall not impair the viability of this Easement Agreement or limit its enforceability in any way. Upon Grantee's approval of the Habitat Conservation Plan, Grantor may only enter into leases of the Conservation Easement Property and may only convey other interests in such lands as expressly permitted by the Habitat Conservation Plan.

## 6. Insurance.

(a) Requisite Coverages. Grantee shall, at all times during Grantor's ownership of the Conservation Easement Property, at its sole cost and expense, obtain and thereafter maintain comprehensive general liability and automobile insurance (including non-owned auto), which shall provide a 30-day notice to Grantor in the event of cancellation or any material change in coverage. The foregoing insurance policies shall reflect that the policy is

primary insurance as respects any claim, loss or liability arising directly or indirectly from any of Grantee's activities on the Conservation Easement Property, and any other insurance maintained by Grantor shall be considered noncontributing. This liability insurance must be in a form satisfactory to Grantor and written with limits of liability not less than \$1,000,000 combined single limit bodily injury and property damage liability per occurrence covering the activities and obligations contemplated of Grantee under this Easement Agreement. Grantee shall furnish a Certificate of Insurance (or, if requested by Grantor, copy of the policy) evidencing the foregoing coverage to Grantor for approval. Grantee shall also maintain worker's compensation insurance in an amount required by law, together with employers' liability insurance. Grantee shall provide Grantor with evidence of the worker's compensation and employer's liability insurance coverage, with a waiver of subrogation agreement by the insurance carrier as respects Grantor. Nothing in this paragraph shall limit Grantee's obligations under the other provisions of this Easement Agreement. Any policies required hereunder may be made a part of a blanket policy of insurance, so long as such blanket policy contains all of the provisions required herein and does not in any way reduce the coverage, impair the rights of Grantor hereunder or negate the requirements of this Easement Agreement.

(b) **Self-Insurance.** So long as Grantee is a subdivision of the State of California and the State of California self-insures, Grantee may self-insure any portion of the insurance required under this section. Otherwise, Grantee shall not self-insure any portion of the insurance required under this section without the express written consent of Grantor, which consent may be withheld by Grantor in its sole and absolute discretion. If Grantee is self-insured pursuant to this paragraph, the requirements of furnishing evidence of insurance are waived.

(c) **Release/Waiver of Subrogation.** Grantee, for itself and its successors, hereby releases and discharges Grantor from all claims and liabilities arising from or caused by any hazard covered by the insurance coverage required herein in connection with the activities conducted on the Conservation Easement Property pursuant to this Easement Agreement, regardless of the cause of the damage or loss.

(d) Obligations. Nothing herein shall limit Grantee's obligations under the other provisions of this Easement Agreement. The insurance required to be maintained hereunder shall insure against any acts or omissions of Grantee, provided nothing herein shall be interpreted to waive any rights Grantor may have as to any of Grantee's insurance nor shall Grantor be required to make a claim against any such Grantor's insurance.

(e) Grantor's Obligations. To the extent Grantor enters the Conservation Easement Property under the Easement, then Grantor shall comply with the insurance provisions of this section 6 applicable to Grantee prior to its entry onto the Conservation Easement Property.

7. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Property by competent authority (collectively "taxes"), except that Grantor shall have no obligation to pay any taxes or assessments which may be levied against the Easement itself, as opposed to the underlying fee and Grantor shall furnish Grantee with satisfactory evidence of payment of taxes and assessments upon request. Grantee shall be responsible regarding the imposition of any taxes or assessments levied against the Easement itself, it being understood that while the Easement is held by a governmental entity for public benefit purposes, such Easement should be exempt from all such taxes and assessments.

8. Notices. Any notice, demand, request, covenant, approval, or other communication to be given by one party to the others shall be given by personal service, telegram, or express mail, Federal Express, DHL or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties at their respective addresses as follows:

To Grantor: Kern Water Bank Authority  
P.O. Box 80607  
Bakersfield, CA 93380-0607

With a copy to: Robert D. Thornton, Esq.  
Nossaman, Guthner, Knox & Elliott, LLP  
18101 Von Karman, Suite 1800  
Irvine, California 92612

To Grantee: California Department of Fish and Game  
Regional Manager, Region 4  
1234 East Shaw Avenue  
Fresno, California 93710  
Attention: Director.

With a copy to: General Counsel  
California Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 94814

Any such notice shall be deemed to have been given upon delivery or forty-eight (48) hours after deposit in the mail as aforesaid. Either party may change the address at which it desires to receive notice upon giving written notice of such request to the other parties.

9. **Recordation.** Grantor shall promptly record this instrument in the official records of Kern County, California, and shall record it on its own, or at the request of Grantee, at any time as may be required to preserve Grantee's rights under this Easement Agreement.

10. **Miscellaneous Provisions.**

(a) **Controlling Law.** This Easement Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement Agreement shall be liberally construed in favor of the grant to effect the purpose of this Easement Agreement and the policy and purpose of Civil Code Section 815 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement Agreement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) No Rights in Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Conservation Easement Property to or for the general public, it being the intention of the parties hereto that this Easement Agreement shall be strictly limited to and for the purposes herein expressed.

(e) Waiver; Remedies. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(f) Successors. The covenants, terms, conditions and restrictions of this Easement Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Conservation Easement Property. This Easement Agreement shall be binding upon and shall inure to the benefit of Grantor and its successors and assigns and Grantee and its assigns.

(g) Captions. The captions in this Easement Agreement have been inserted solely for convenience of reference and are not a part of this Easement Agreement and shall have no effect upon construction or interpretation.

(h) Counterparts. The parties may execute this Easement Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original.

(i) No Other Obligations. This Easement Agreement imposes no other obligations or restrictions on Grantor and neither its successors nor any person or entity claiming under them shall be in any way restricted from using the Conservation Easement Property in a customary manner except as provided herein.

(j) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the grant of easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the grant.

**11. Remedies.** If Grantee determines that Grantor is in violation of the terms of this Easement Agreement or that a violation is threatened, Grantee shall give written notice to Grantor or its successors and assigns of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the easement resulting from any use or activity inconsistent with the purpose of this Easement Agreement, to restore the portion of the Easement so injured. If Grantor fails to cure the violation within 15 days, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement Agreement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction to recover any damages to which Grantee may be entitled for violation of the terms of this Easement Agreement, or injury to any conservation values protected by this Easement Agreement, including adverse impacts to any threatened or endangered species, and to require the restoration of the Easement to the condition that existed prior to any such injury. If Grantee determines that circumstances require immediate action to prevent or to mitigate significant damage to the conservation values of the Easement, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement Agreement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement Agreement,



without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provision of Civil Code Section 815 et seq. are incorporated herein by this reference and this Easement Agreement is made subject to all of the rights and remedies set forth therein. If at any time in the future, Grantor or its successors and assigns or any subsequent transferee uses or threatens to use such lands for purposes not in conformance with the stated conservation purposes contained herein, notwithstanding Civil Code Section 815 et seq., California Attorney General has standing as an interested party in any proceeding affecting this Easement Agreement. In the event that a dispute arises between Grantee and Grantor that results in litigation, the prevailing party shall be entitled to recover reasonable attorneys' fees and litigation costs from the losing party. If Grantor or if Grantee fails to exercise any right or fails to enforce any obligation of this Easement Agreement, such failure shall not be deemed to waive any other right which Grantor or Grantee may hold, including subsequent exercise of the same right to subsequent enforcement of the same obligation. Nothing contained in this Easement Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the easement resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Easement resulting from such causes.

IN WITNESS WHEREOF, Grantor and Grantee have entered into this Easement Agreement as of the day and year first above written.

**GRANTOR:** KERN WATER BANK AUTHORITY, a joint powers authority

By: \_\_\_\_\_

**GRANTEE:** CALIFORNIA DEPARTMENT OF FISH AND GAME

By: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Agency Counsel

**CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in real property conveyed by the within Conservation Easement to the California Department of Fish and Game is hereby accepted by the undersigned officer on behalf of the Grantee.

CALIFORNIA DEPARTMENT OF FISH AND  
GAME

By: \_\_\_\_\_

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF KERN)

On \_\_\_\_\_, 1996, before me \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_ personally known to me (or  
proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to  
the within instrument and acknowledged to me that he/she executed the same in his/her authorized  
capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of  
which the person acted, executed the instrument.

WITNESS my hand and official seal.

---

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF KERN)

On \_\_\_\_\_, 1996, before me \_\_\_\_\_,  
Notary Public, personally appeared \_\_\_\_\_ personally known to me (or  
proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to  
the within instrument and acknowledged to me that he/she executed the same in his/her authorized  
capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of  
which the person acted, executed the instrument.

WITNESS my hand and official seal.

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COMMENCING at the Northwest Corner of Section 26, Township 30 South, Range 25 East M.D.B. & M. in the County of Kern, State of California, as shown on Survey Investigation and Perpetuation Map No. 7-1, Book 7 Page 62, per map thereof recorded in the Office of the County Surveyor of Kern County; said point being also the TRUE POINT OF BEGINNING. Thence:

- 1) South  $01^{\circ} 12' 20''$  West along the West Line of said Section 26 a distance of 2632.17 feet, to the West Quarter Corner of said Section 26, thence;
- 2) South  $01^{\circ} 12' 02''$  West along the West Line of said Section 26 a distance of 2632.29 feet to the Southwest Corner of said Section 26, thence;
- 3) South  $01^{\circ} 03' 13''$  West along the West Line of Section 35, Township 30 South, Range 25 East M.D.B. & M. in the County of Kern, State of California, as shown on Survey Investigation and Perpetuation Map No. 7-1, Book 7 Page 62, per map thereof recorded in the Office of the County Surveyor of Kern County; a distance of 14.54 feet, thence;
- 4) South  $44^{\circ} 31' 19''$  West a distance of 1292.85 feet, thence;
- 5) North  $43^{\circ} 43' 26''$  West a distance of 308.17 feet, thence;
- 6) South  $46^{\circ} 25' 33''$  West a distance of 1788.76 feet, thence;
- 7) North  $43^{\circ} 53' 32''$  West a distance of 2586.09 feet, thence;
- 8) North  $45^{\circ} 56' 52''$  East a distance of 1796.39 feet, thence;
- 9) North  $43^{\circ} 43' 26''$  West a distance of 2661.46 feet, thence;
- 10) North  $51^{\circ} 34' 42''$  East a distance of 1839.92 feet, to a point on a tangent curve, concave Southeasterly, and having a radius of 5476.00 feet, a radial to which point bears North  $38^{\circ} 25' 18''$  West thence;
- 11) Northerly and Easterly along said tangent curve, through a central angle of  $26^{\circ} 10' 00''$ , an arc distance of 2500.87 feet, to a point on the North Line of Section 27, Township 30 South, Range 25 East M.D.B. & M. as shown on said Survey Investigation and Perpetuation Map No. 7-1, thence;
- 12) South  $88^{\circ} 31' 17''$  East along the North Line of said Section 27, a distance of 1185.87 feet to the Northwest Corner of said Section 26 and TRUE POINT OF BEGINNING.

Said easement contains 530.0 acres, more or less.

