

Region Map

Kern Water Bank Authority



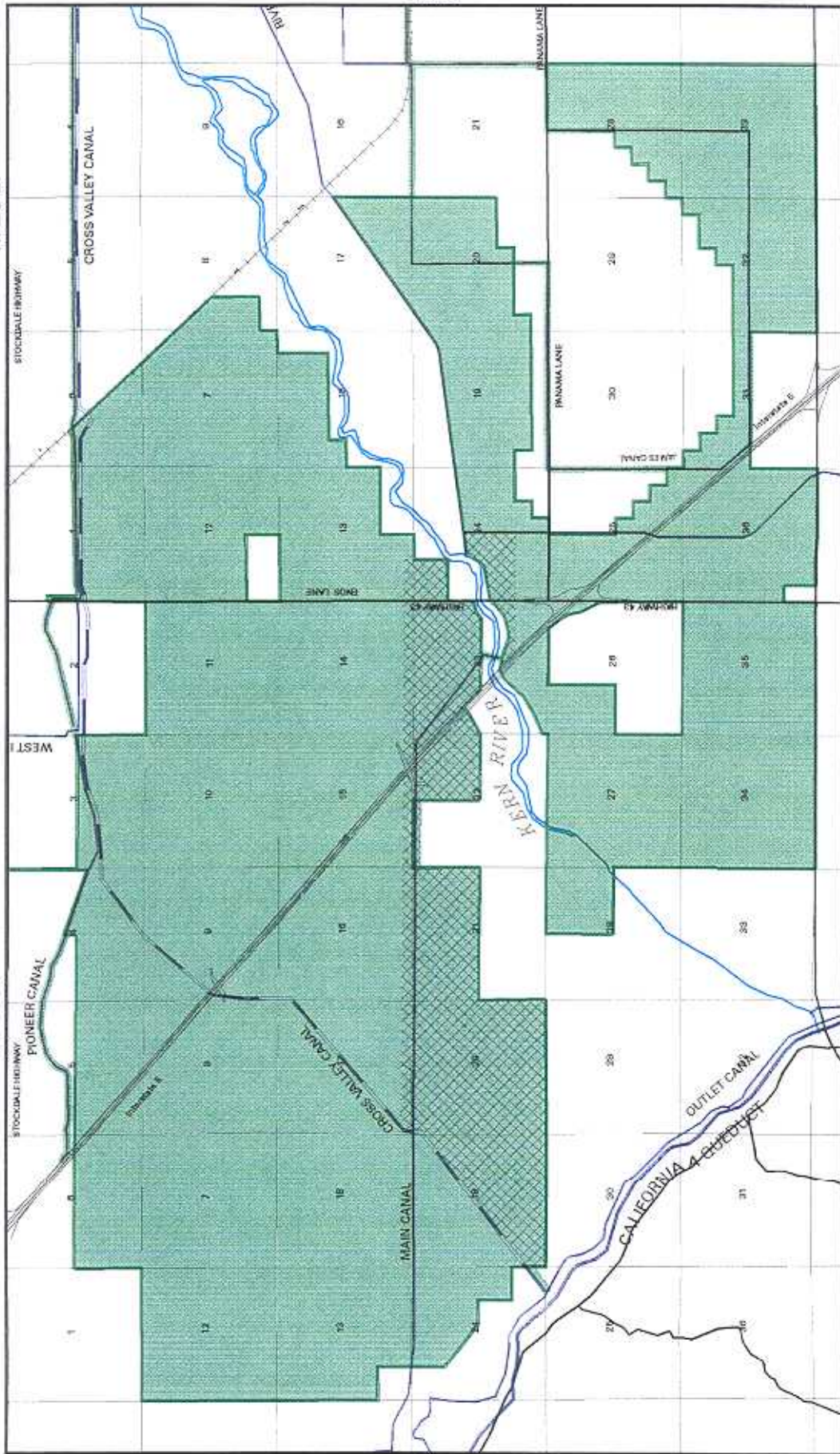
- Kern Water Bank Project
- Neighboring Water Banking Projects
- Designated Reserve/Preserve
- Urban Development

R. 26 E.

R. 25 E.

T. 30 S.

T. 30 S.



Permit Area

 KWB HCP Permitted Area
  Supply/Recovery Canal Zone

Kern Water Bank Authority



Map 2

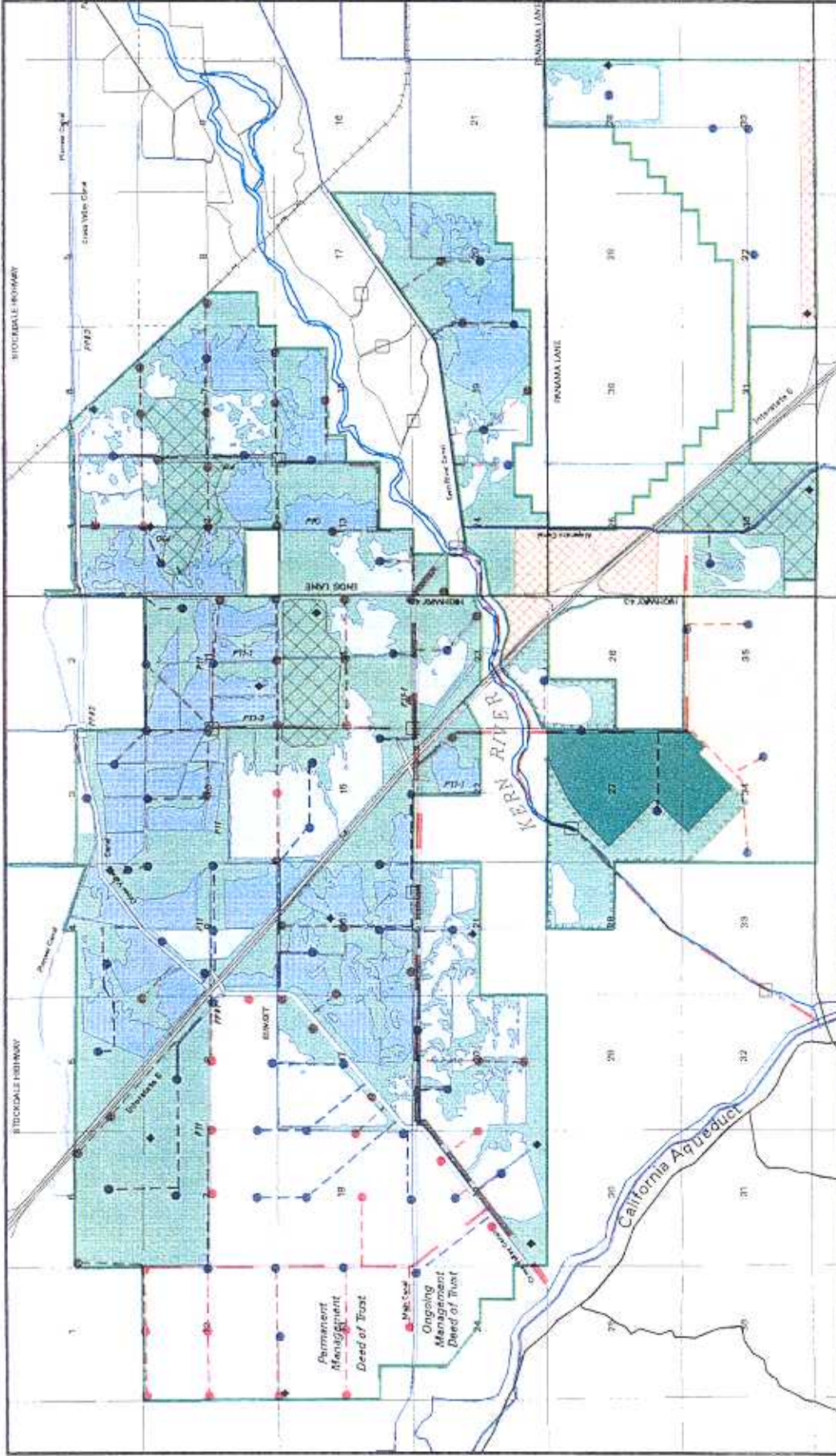
1" = 1 mile

R. 26 E.

R. 25 E.

T. 30 S.

T. 30 S.



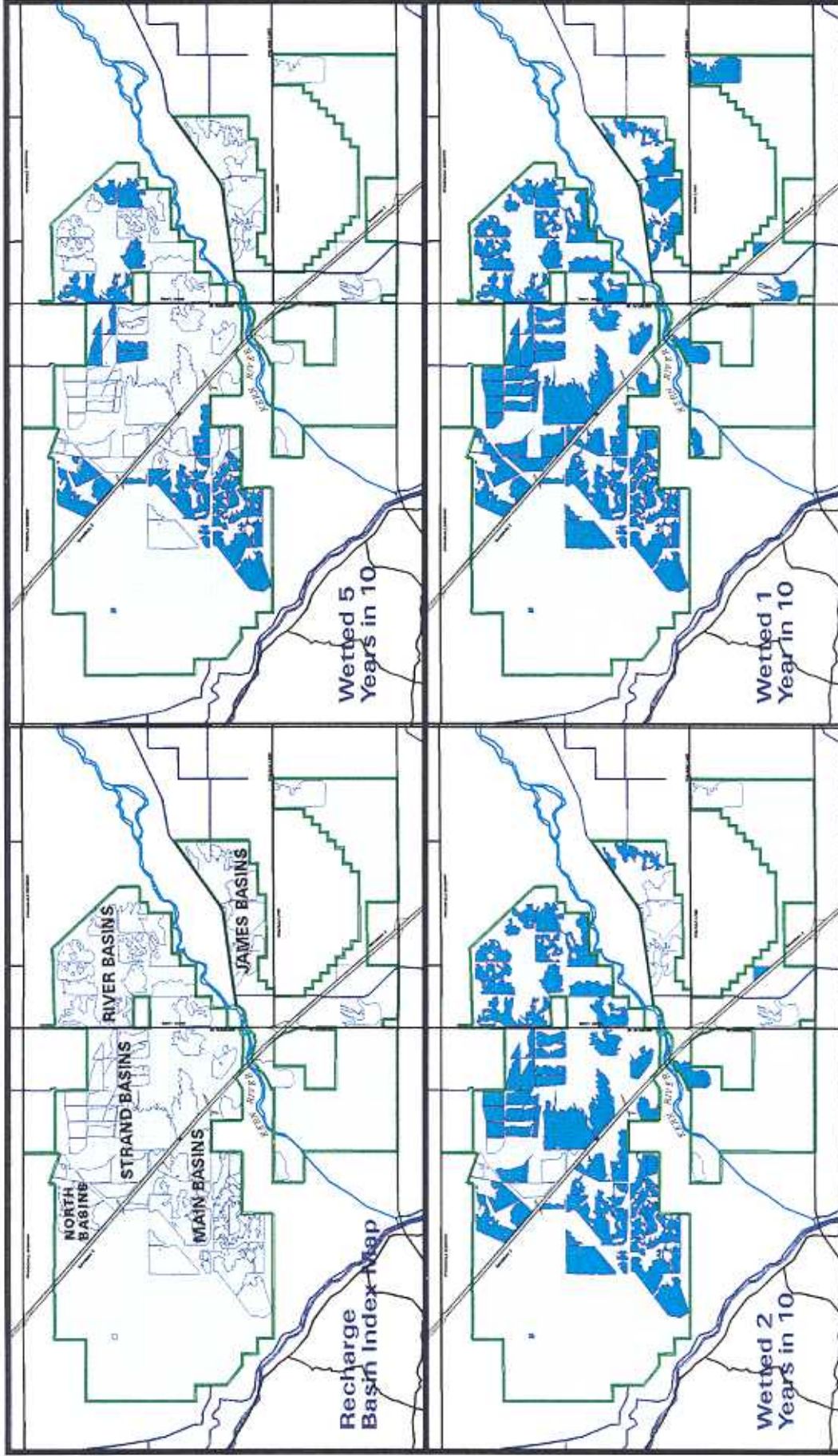
Kern Water Bank Land Use Plan

Kern Water Bank Authority

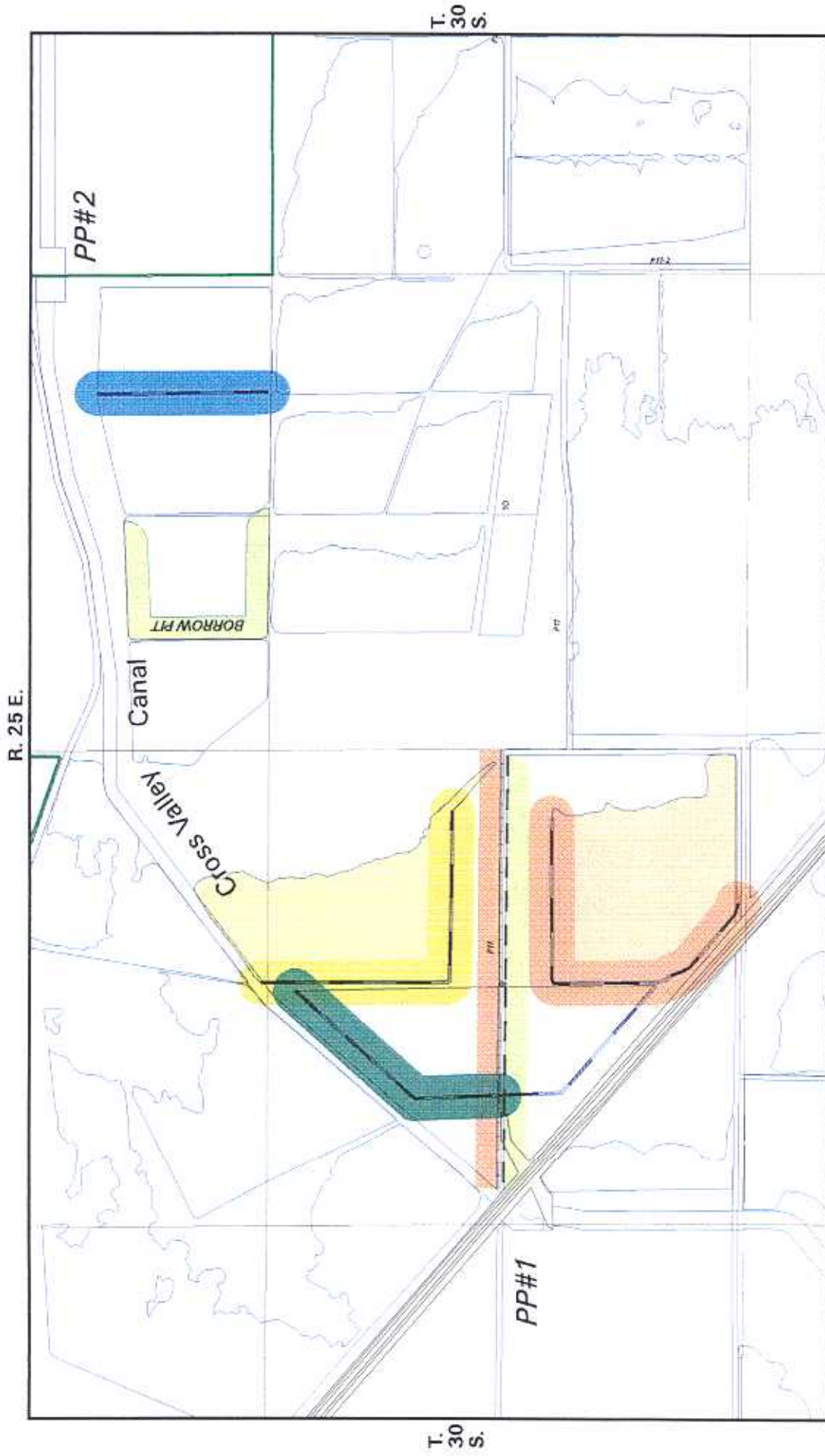


1" = 1 mile

- Compatible Habitat
- Existing Recharge Basin
- Proposed Recharge Basin
- Conservation Bank
- Farming
- DWR Mitigation Easement
- Sensitive Habitat
- Potential Commercial Development
- KWB Mitigation Easement
- Existing Water Well
- Existing Monitoring Well
- Existing Canal
- Existing Recovery Pipeline
- Existing Recovery Canal
- Proposed Water Well
- Proposed Underground Pipeline
- Proposed Canal
- Proposed Kern River Reverse Flow
- Proposed Pump Station



Recharge Frequency Plan



Vegetation Management Study Plan

- Burning
- Erosion Control - Seeding
- Grazing
- Mowing
- Revegetation - Seeding
- Pond Bottom Burning
- Pond Bottom Grazing
- Lateral
- Levee
- Dirt Road

Kern Water Bank
Authority



1" = 1500'

03/05/97 U:\klyger-panchajam\

**KERN WATER BANK
NATURAL COMMUNITY CONSERVATION PLAN / HABITAT CONSERVATION
PLAN**

SECURITY AGREEMENT

By And Among

**THE UNITED STATES FISH AND WILDLIFE SERVICE
("Service"),**

**THE CALIFORNIA DEPARTMENT OF FISH AND GAME
("Department"),**

and

**KERN WATER BANK AUTHORITY
("KWBA")**

October 2, 1997

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KERN WATER BANK
NATURAL COMMUNITY CONSERVATION PLAN / HABITAT CONSERVATION
PLAN

SECURITY AGREEMENT

This SECURITY AGREEMENT REGARDING THE KERN WATER BANK NATURAL COMMUNITY CONSERVATION PLAN / HABITAT CONSERVATION PLAN (“Agreement”) is entered into as of the last date subscribed below (the “Effective Date”) by and among the UNITED STATES FISH AND WILDLIFE SERVICE (“Service”), the CALIFORNIA DEPARTMENT OF FISH AND GAME (“Department”), and the KERN WATER BANK AUTHORITY (“KWBA”). These entities may be referred to collectively as “Parties” and each individually as a “Party.” The Department and the Service may be referred to collectively as the “Resource Agencies,” and each as a “Resource Agency.”

Recitals

A. KWBA is a joint powers authority formed pursuant to California Government Code section 6500 et seq. that owns approximately 19,900 acres in the County of Kern, California.

B. Under the California Endangered Species Act (“CESA”) and other State law, the Department has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. The Department is also the manager and trustee of fish and wildlife resources and their habitat pursuant to California Fish and Game Code section 1802.

C. The Service has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and habitat to the extent set forth in the federal Endangered Species Act of 1973 (“FESA”), the Fish and Wildlife Coordination Act (16 U.S.C. section 661 et seq.), the Fish and Wildlife Act of 1956 (16 U.S.C. section 742a et seq.), and other federal laws.

D. KWBA has prepared a habitat conservation plan and a natural community conservation plan for the Kern Water Bank (the “KWB HCP”). In order to implement the KWB HCP, the Parties will, concurrently with the execution of this Agreement, enter into the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Implementation Agreement (the “Implementation Agreement”). This Agreement describes two mechanisms by which KWBA is securing certain obligations under the Implementation Agreement during the term of the Implementation Agreement and thereafter.

Agreement

For good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement which are not defined herein shall have the meaning set forth in the Implementation Agreement.

2. APPRAISALS

The Department and the Service acknowledge receipt of appraisals in form and substance adequate to the Resource Agencies, which appraisal evidences that the market value of the

properties being secured by the deeds of trust made pursuant to this Agreement exceeds the original principal amount of the two promissory notes being issued to the Department pursuant to this Agreement.

3. SECURITY FOR ON-GOING MANAGEMENT

3.1. Grant of Security.

Concurrently with the execution of this Agreement, KWBA shall provide to Department a non-recourse demand note bearing interest at the rate of Implicit Price Deflator for State and Local Government Purchase of Goods and Services (the "Index"), as published by the U.S. Department of Commerce (the "Ongoing Management Note", the form of which is attached as **Exhibit 1**) in the original principal amount of Two Hundred Thousand Dollars (\$200,000). The Ongoing Management Note provides that if at any time the Index is no longer published, the Parties shall select that rate published by the United States Government which most closely resembles the Index as the successor Index. The Ongoing Management Note shall be secured by a deed of trust (the "Ongoing Management Deed of Trust", the form of which is attached as **Exhibit 2**) on 254.63 acres within Section 24, Township 30 South, Range 24 East, Mount Diablo Base and Meridian, as more particularly described in the Ongoing Management Deed of Trust, executed by KWBA and delivered to the Department concurrently with the Ongoing Management Note. The Department shall promptly record the executed Ongoing Management Deed of Trust, and provide a copy of the executed Ongoing Management Deed of Trust with evidence of recording thereon to the Service and KWBA within 30 days of the return of such document to the Department from the Kern County Recorder.

3.2. Demand and Foreclosure.

Once the Resource Agencies have determined to draw on the Ongoing Management Note in accordance with the terms of the Implementation Agreement, the Department shall send to KWBA a notice (the “Ongoing Management Note Draw Notice”) stating that the Department is making demand on the Ongoing Management Note. If KWBA does not pay all amounts due and payable under the Ongoing Management Note to the Department within 20 days of receipt such demand, the Department, only with the approval of the Service, may declare a breach of the Ongoing Management Note and foreclose on the Ongoing Management Deed of Trust.

KWBA is granting to the Department only one Ongoing Management Note and Ongoing Management Deed of Trust pursuant to this Agreement and the Implementation Agreement. In the event a further dispute arises regarding a subsequent Annual Management Plan after the Department has foreclosed on the Ongoing Management Deed of Trust, the Resource Agencies may look only to the funds available in the Excess Management Funds Account established by Section 3.3 of this Agreement, and shall not require, or seek to require, KWBA to fund the other activities in such Annual Management Plan that KWBA does not agree to undertake.

3.3. Use of Funds; Excess Proceeds.

The Department shall disburse the funds received from KWBA on the Ongoing Management Note or from the foreclosure of the Ongoing Management Deed of Trust (the “Ongoing Management Funds”) as determined jointly by the Department and the Service. The Resource Agencies shall direct disbursement of the Ongoing Management Funds in a manner which will address the concerns of the Resource Agencies regarding the Annual Management Plan in the most cost-effective way.

Ongoing Management Funds not spent at the direction of the Resource Agencies (“Excess Management Funds”) shall be placed in a separate account controlled by the Department (“Excess Management Funds Account”) for expenditure in accordance with the Implementation Agreement. Interest accruing on the Excess Management Funds shall accumulate in the Excess Management Funds Account.

3.4. Cancellation of Ongoing Management Note and Reconveyance of Ongoing Management Deed of Trust; Remittance of Excess Proceeds.

Upon the expiration, cancellation, revocation or termination of the Section 10(a) Permit and the Section 2081/2835 Management Authorization, if the Department has not foreclosed upon the Ongoing Management Deed of Trust, the Ongoing Management Note shall become void and the Department shall record a Reconveyance of the Ongoing Management Deed of Trust. If the Department has foreclosed upon the Ongoing Management Deed of Trust, the Department, upon KWBA’s request, shall remit the contents of the Excess Management Funds Account to KWBA.

4. SECURITY FOR MANAGEMENT IN PERPETUITY.

4.1. Grant of Security.

Concurrently with its execution of this Agreement, KWBA shall provide to the Department a non-recourse demand note bearing interest at the rate of the Index (the “Permanent Management Note”, the form of which is attached as **Exhibit 3**) in the original principal amount of Three Hundred Thousand Dollars (\$300,000). The Permanent Management Note shall provide that if at any time the Index is no longer published, the Parties shall select that rate published by the United States Government which most closely resembles the Index as the

successor Index. The Permanent Management Note shall be secured by a deed of trust (the “Permanent Management Deed of Trust”, the form of which is attached as **Exhibit 4**) on approximately 600 acres in Section 13, Township 30 South, Range 24 East, Mount Diablo Base and Meridian, as more particularly described in the Permanent Management Deed of Trust, executed by KWBA and delivered to the Department concurrently with the execution and delivery of the Ongoing Management Note. The Department shall promptly record the executed Permanent Management Deed of Trust, and provide a copy of the executed Ongoing Management Deed of Trust with evidence of recording thereon to the Service and KWBA within 30 days of the return of such document to the Department from the Kern County Recorder.

4.2. Demand and Foreclosure.

The purpose of the Permanent Management Note and Permanent Management Deed of Trust is to secure the funding of management activities in perpetuity on the approximately 1,165 acres comprising the DWR Mitigation Parcel and the KWBA Mitigation Parcel (collectively, the “Permanent Mitigation Land”) following the termination of the Section 10(a) Permit and the Section 2081/2835 Management Authorization. The intent of the Parties is to use these funds as a method of addressing Adaptive Management measures and other measures as set forth in the Permanent Management Plan that KWBA does not believe are necessary. Therefore, the Resource Agencies shall have no right or ability to make demand on the Permanent Management Note or foreclose or seek to foreclose on the Permanent Management Deed of Trust prior to the termination of the Section 10(a) Permit and the Section 2081/2835 Management Authorization. The circumstances under which the Resource Agencies shall be entitled to draw on the

Permanent Management Note and foreclose upon the Permanent Management Deed of Trust shall be set forth in the Permanent Management Plan.

Once the Resource Agencies have determined to draw on the Permanent Management Note, the Department shall send to KWBA a notice (the "Permanent Management Note Draw Notice") stating that the Department is making demand on the Permanent Management Note. If KWBA does not pay all amounts due and payable under the Permanent Management Note to the Department within 20 days of receipt of such demand, the Department, only with the approval of the Service, may declare a breach of the Permanent Management Note and foreclose on the Permanent Management Deed of Trust.

KWBA is granting to the Department only one Permanent Management Note and Permanent Management Deed of Trust pursuant to this Agreement and the Implementation Agreement. In the event a further dispute arises regarding the management of the Permanent Mitigation Land after the Department has foreclosed on the Permanent Management Deed of Trust, the Resource Agencies may look only to the funds available in the Excess Management Funds Account, and shall not otherwise require, or seek to require, KWBA to fund the disputed management activities with regard to the Permanent Mitigation Land.

4.3. Use of Funds; Excess Proceeds.

The Department shall disburse the funds received from KWBA on the Permanent Management Note or from the foreclosure of the Permanent Management Deed of Trust (the "Permanent Management Funds") as determined by the Department and the Service collectively. The Resource Agencies shall direct disbursement of the Permanent Management Funds in a

manner which will address the concerns of the Resource Agencies regarding the management of the Permanent Mitigation Land in the most cost-effective way.

Permanent Management Funds not spent at the direction of the Resource Agencies (“Excess Management Funds”) shall be placed in a separate account, either the account established pursuant to section 3.3 if such account still exists or in a newly-created account, controlled by the Department (“Excess Management Funds Account”) for expenditure in accordance with the Permanent Management Plan. Interest accruing on the Excess Management Funds shall accumulate in the Excess Management Funds Account. The Resource Agencies may order the disbursement of Excess Management Funds only in accordance with the Permanent Management Plan.

4.4. Cancellation of Permanent Management Note and Reconveyance of Permanent Management Deed of Trust; Remittance of Excess Proceeds.

Upon (i) the sale by KWBA of the Permanent Mitigation Land, and (ii) the assumption by the buyer or other qualified person of the Permanent Mitigation Land of the management responsibility thereof (including funding for perpetual management) and (iii) the consent by the Resource Agencies to such sale and assumption, which consent shall not be unreasonably withheld, if the Department has not previously foreclosed upon the Permanent Management Deed of Trust, the Permanent Management Note shall become void and the Department shall record a Reconveyance of the Permanent Management Deed of Trust. If the Department has foreclosed upon the Permanent Management Deed of Trust, the Department, upon KWBA’s request, shall remit the contents of the Excess Management Funds Account to KWBA.

5. MISCELLANEOUS

5.1. Term.

This Agreement shall terminate upon the occurrence of all of the following: (a) the foreclosure or reconveyance of the Ongoing Management Deed of Trust; (b) the foreclosure or reconveyance of the Permanent Management Deed of Trust; and (c) if applicable, the expenditure of all funds in the two Excess Management Funds Account.

5.2. Due Authorization.

The Service and the Department each represent and warrant for the benefit of KWBA and its successors and assigns that (i) the execution and delivery of this Agreement has been duly authorized and approved by all requisite action, (ii) no other authorization or approval, whether of governmental bodies or otherwise will be necessary in order to enable the Service and the Department, respectively, to enter into and comply with the terms of this Agreement, and (iii) the persons executing this Agreement on behalf of the Service and the Department have the authority to bind the Service and the Department, respectively.

5.3. Notices.

(a) All notices, demands, or requests from one Party to another shall be in writing and shall be either personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the addresses stated in this paragraph. Each such notice shall be deemed made upon receipt by the addressee unless delivery of a properly addressed and sent notice is not made because (i) acceptance of delivery was refused by the addressee; (ii) the addressee moved without providing proper notice of such move; or (iii) the addressee was not open for business on the date of attempted delivery (unless delivery

was attempted on a Saturday, Sunday, national holiday, or after normal business hours), in which case such notice shall be deemed given on the date of attempted delivery. The addresses of the Parties for notices are as follows:

If to KWBA:

William D. Phillimore, Chairman
Kern Water Bank Authority
33141 East Lerdo Highway
Bakersfield, CA 93308

With a copy to:

Robert D. Thornton, Esq.
Nossaman, Guthner, Knox & Elliott, LLP
Suite 1800
18101 Von Karman
Irvine, CA 92715-1007

If to the Department:

Director
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

and

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

with a copy to

General Counsel
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

If to the Service:

Regional Director
U.S. Fish and Wildlife Service
Portland Eastside Federal Complex
911 N.E. 11th Avenue
Portland, OR 97232-4181

and

Central Valley Branch Chief
U.S. Fish and Wildlife Service
3310 El Camino Avenue, Suite 130
Sacramento, CA 95821-6340

with a copy to:

Office of the Solicitor
Pacific Southwest Region Office
2800 Cottage Way
Sacramento, CA 95825

(b) Any Party may change the address to which such notices may be sent by giving the other Parties written notice of such change pursuant to subsection (a) above. The Parties agree to accept facsimile transmitted signed documents and agree to rely upon such documents as if they bore original signatures. The Parties agree to provide to the others copies of such facsimile documents bearing original signatures, transmitted by regular mail.

5.4. Entire Agreement.

This Agreement supersedes all prior and contemporaneous agreements, representations, negotiations or understandings of the Parties regarding these security interests, if any, whether

oral or written. Each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

5.5. Elected Officials Not to Benefit.

No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

5.6. Availability of Federal Funds.

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

5.7. Availability of State Funds.

Implementation of this Agreement and the KWB HCP by the Department is subject to the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge that the Department will not be required under this Agreement to expend any State of California agency's appropriated funds unless and until an

authorized officer of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

5.8. Governing Law.

Interpretation of this Agreement shall be governed by the laws of the State of California and applicable Federal law including the FESA.

5.9. No Third-Party Beneficiaries.

This Agreement is solely for the benefit of KWBA, the Service and the Department. The Parties intend that only the Parties to this Agreement and their approved assignees shall benefit from the Agreement. This Agreement shall not create in the public, any member of the public, any other person or entity, except a transferee or assignee of the Parties, any rights as a third-party beneficiary to this Agreement, nor shall it authorize anyone not a party to this Agreement to maintain a suit for injuries or damages under the provisions of this Agreement.

5.10. Signature in Counterparts.

This Agreement may be executed by the Parties in several counterparts, each of which shall be deemed to be an original copy.

5.11. Amendments.

This Agreement is not subject to amendment except in a writing signed by all the Parties.

5.12. Effective Date.

This Agreement shall be effective upon execution by all Parties.

5.13. Interpretation and Headings.

The subject headings of the sections of this Agreement are provided for convenience only and shall not affect the construction or interpretation of any of the provisions of the Agreement. This Agreement shall not be construed as if it had been prepared by any one Party, but rather as if all Parties had prepared the Agreement.

5.14. List of Exhibits.

- Exhibit 1 Ongoing Management Note
- Exhibit 2 Ongoing Management Deed of Trust
- Exhibit 3 Permanent Management Note
- Exhibit 4 Permanent Management Deed of Trust

Dated: _____

UNITED STATES FISH AND WILDLIFE SERVICE

By: _____

Michael J. Spear

Title: Regional Director

Approved as to form:
Office of the Regional Solicitor
U.S. Department of the Interior
(Service Counsel)

By: _____

Dana Jacobsen

Dated: _____

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____

Jacqueline E. Schafer

Title: Director

Approved as to form:
General Counsel
California Department of Fish and Game
(Department Counsel)

By: _____

Dated: _____

KERN WATER BANK AUTHORITY

By: _____

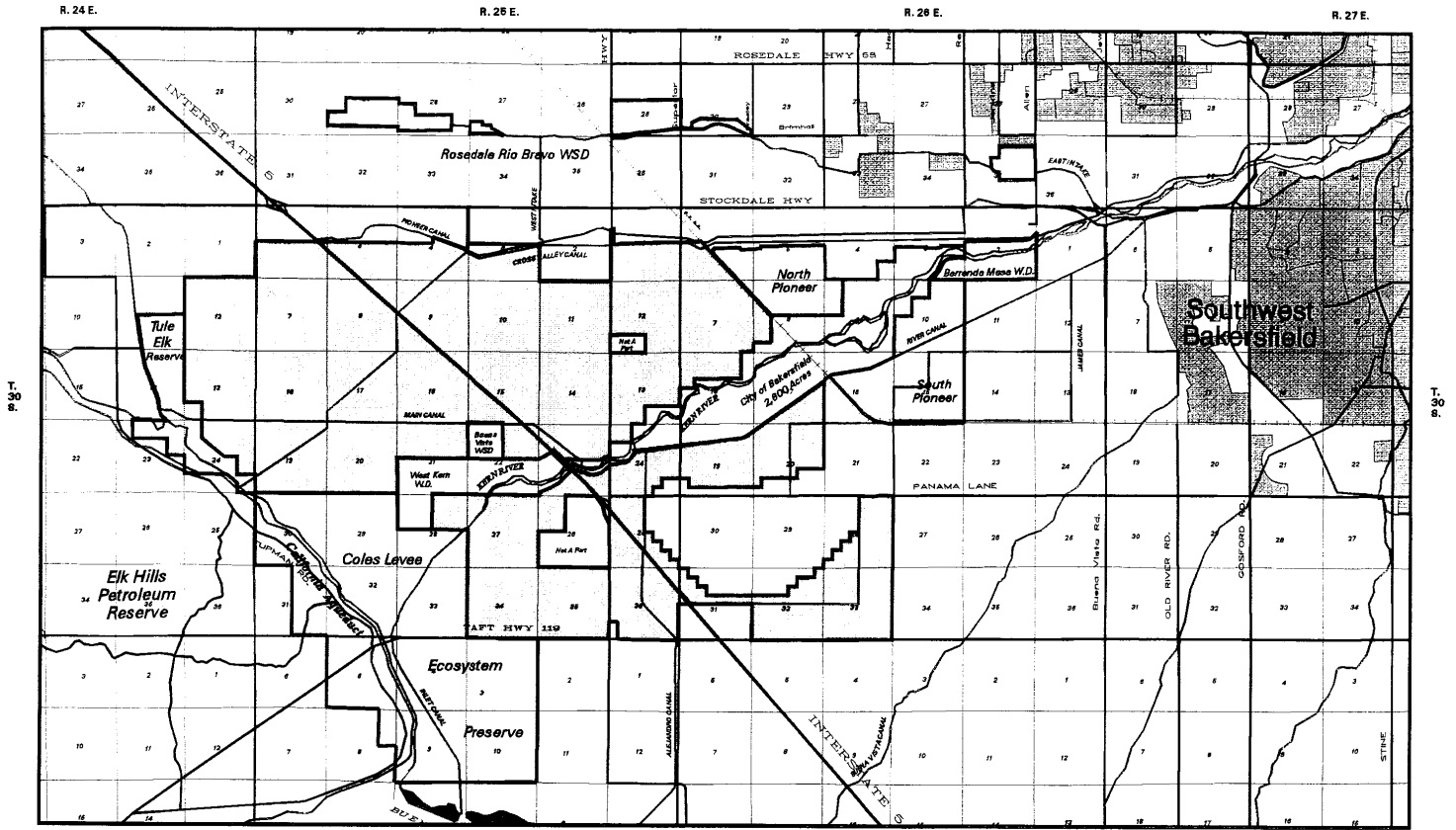
William D. Phillipore

Title: Chairman

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

By: _____

Robert D. Thornton



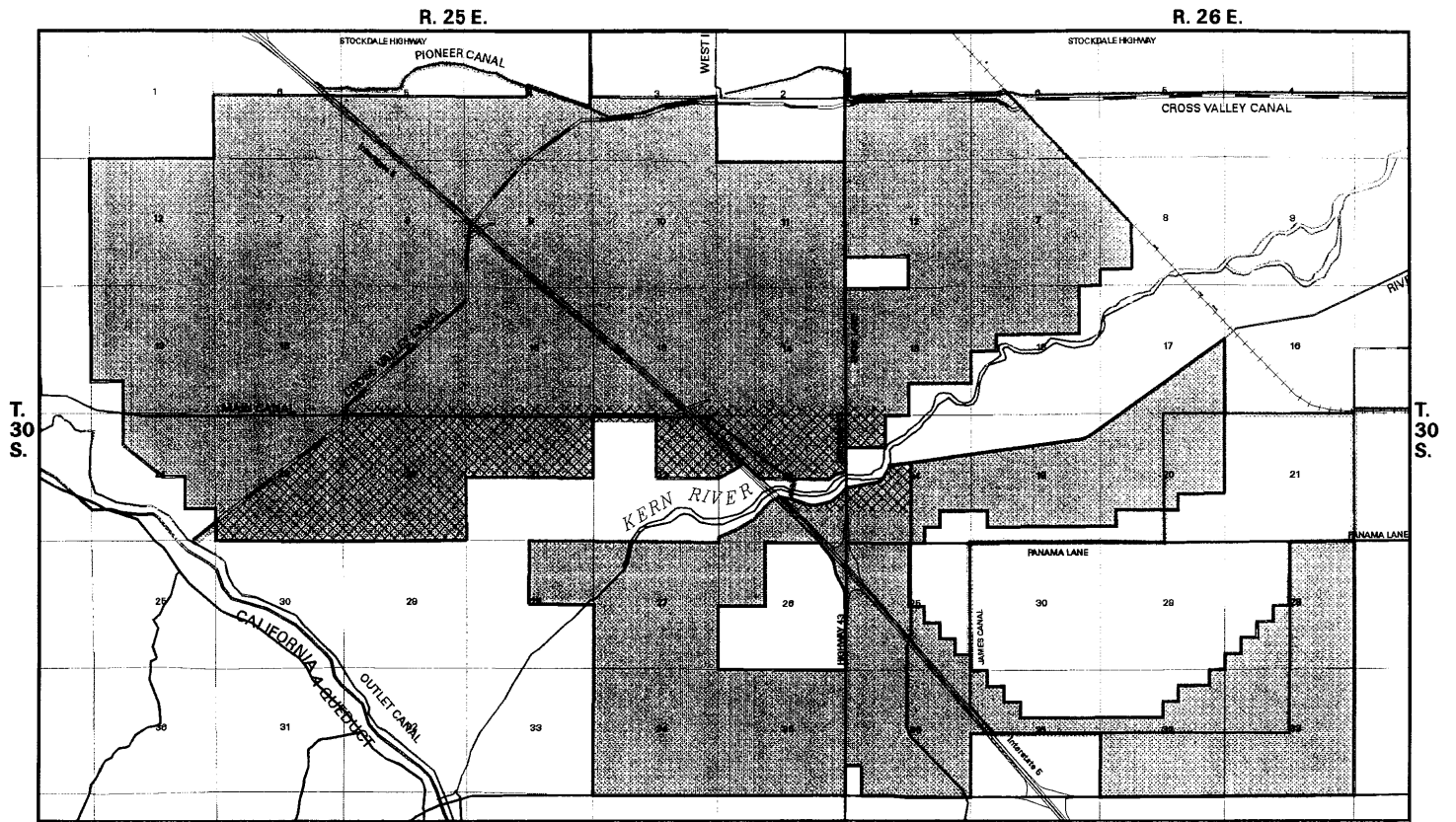
Region Map

- Kern Water Bank Project
- Designated Reserve/Preserve
- Neighboring Water Banking Projects
- Urban Development

Kern Water Bank Authority



Map 1



Permit Area

KWB HCP Permitted Area
 Supply/Recovery Canal Zone

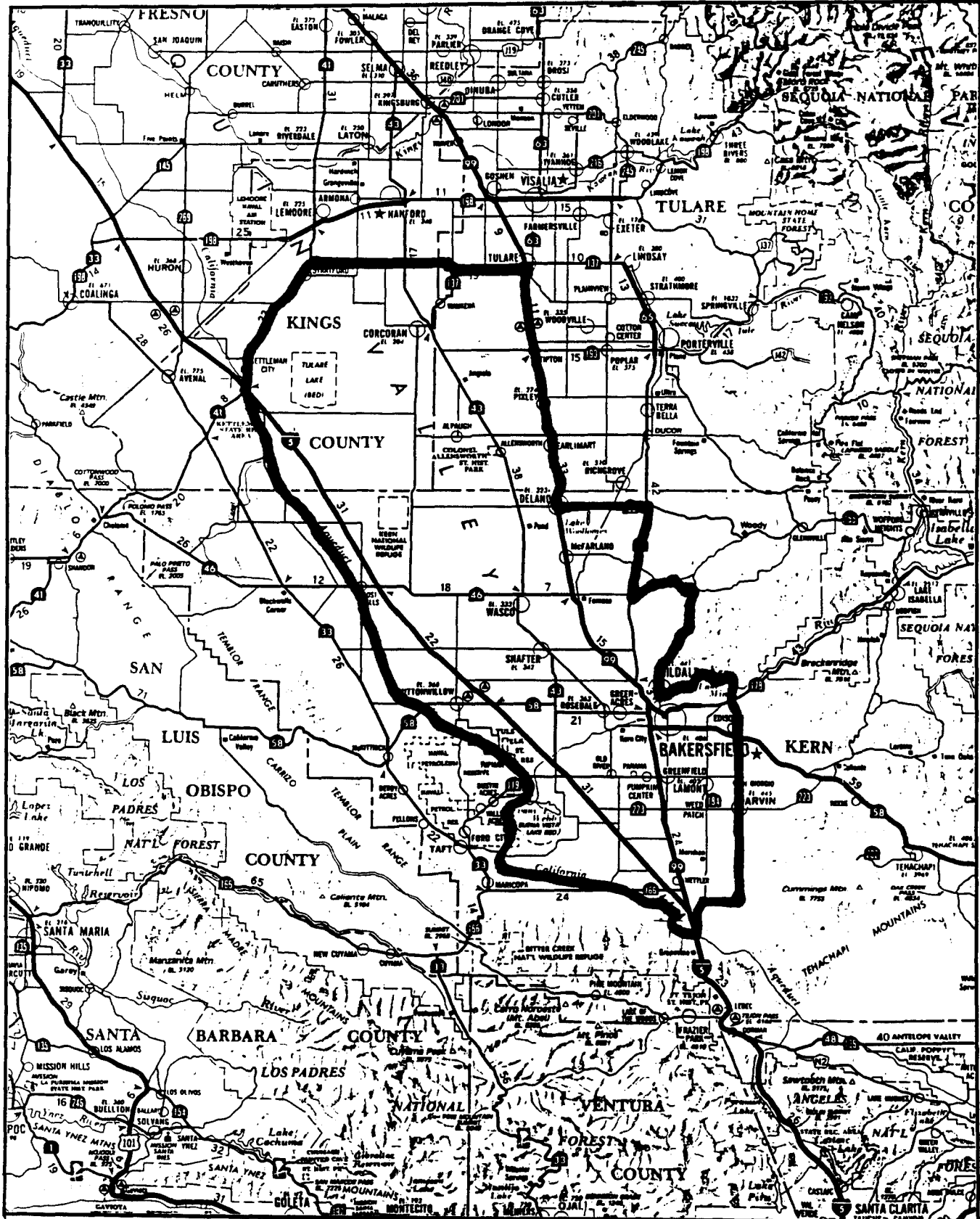
Kern Water Bank Authority



1" = 1 mile

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Map 2

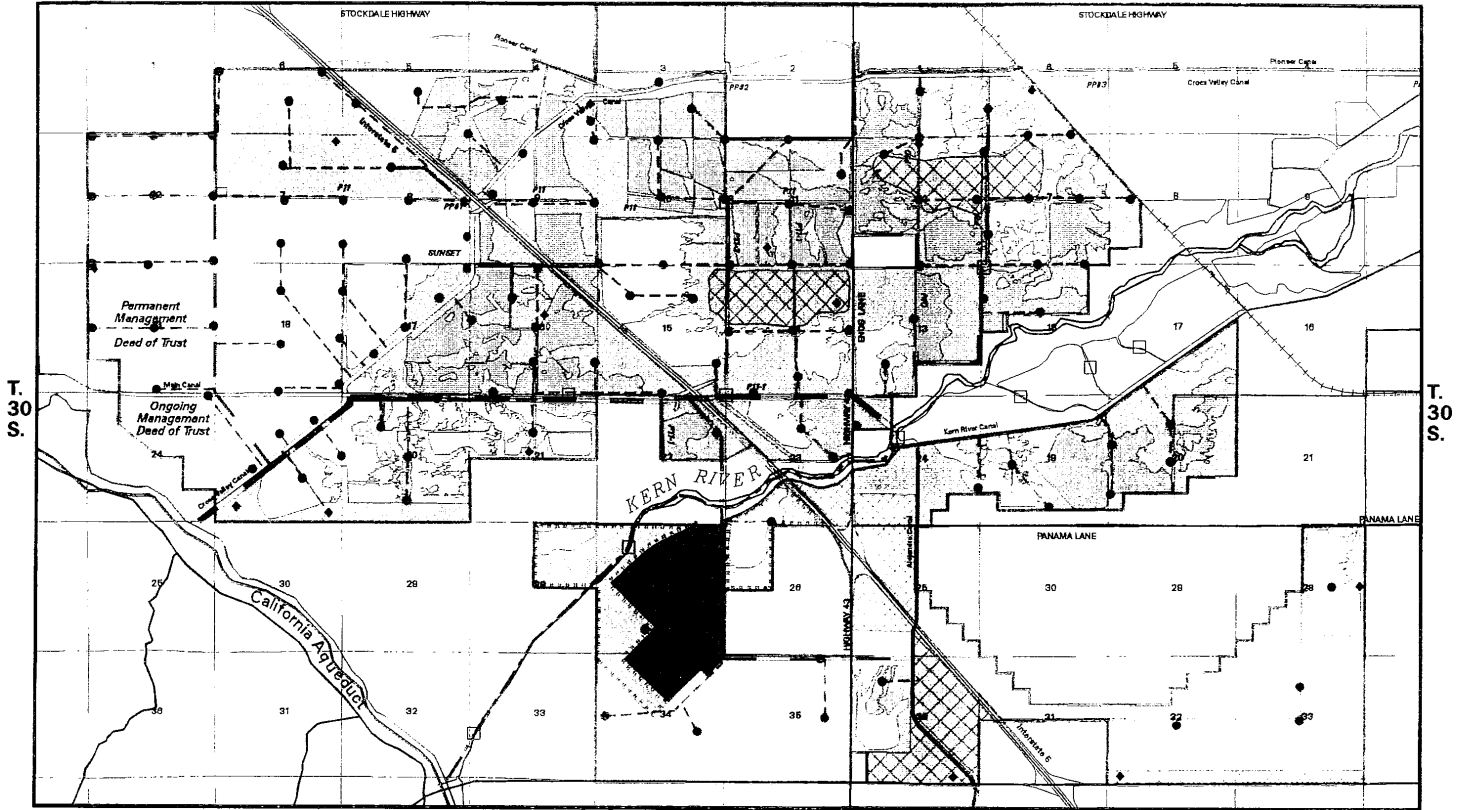


KERN WATER BANK MASTER PERMIT CREDIT AREA

May 5, 1997

R. 25 E.

R. 26 E.



Kern Water Bank Land Use Plan

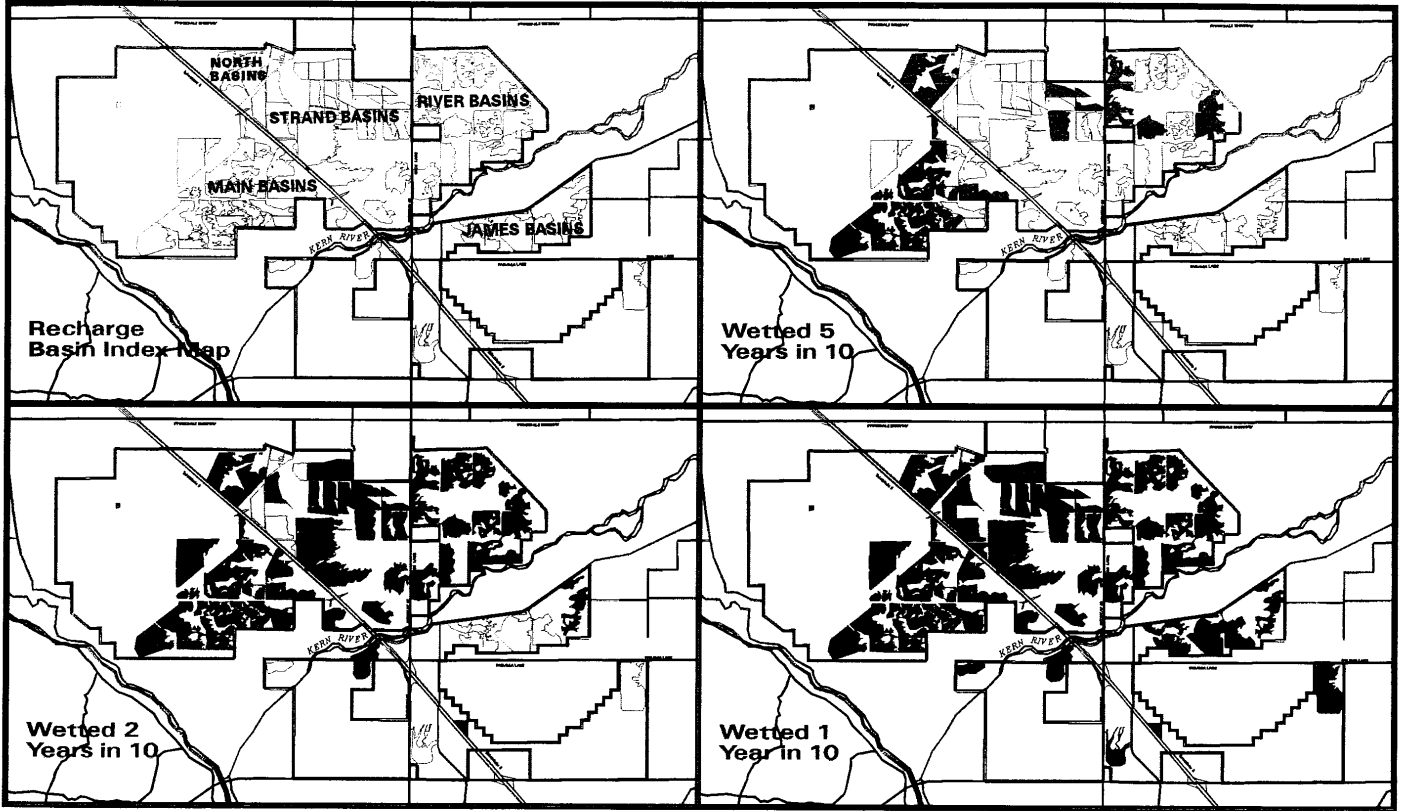
- | | | | |
|-------------------------|----------------------------------|----------------------------|----------------------------------|
| Compatible Habitat | DWR Mitigation Easement | Existing Monitoring Well | Proposed Underground Pipeline |
| Existing Recharge Basin | Sensitive Habitat | Existing Canal | Proposed Canal |
| Proposed Recharge Basin | Potential Commercial Development | Existing Recovery Pipeline | Proposed Kern River Reverse Flow |
| Conservation Bank | KWB Mitigation Easement | Existing Recovery Canal | Proposed Pump Station |
| Farming | Existing Water Well | Proposed Water Well | |

Kern Water Bank Authority



1" = 1 mile

Map 4

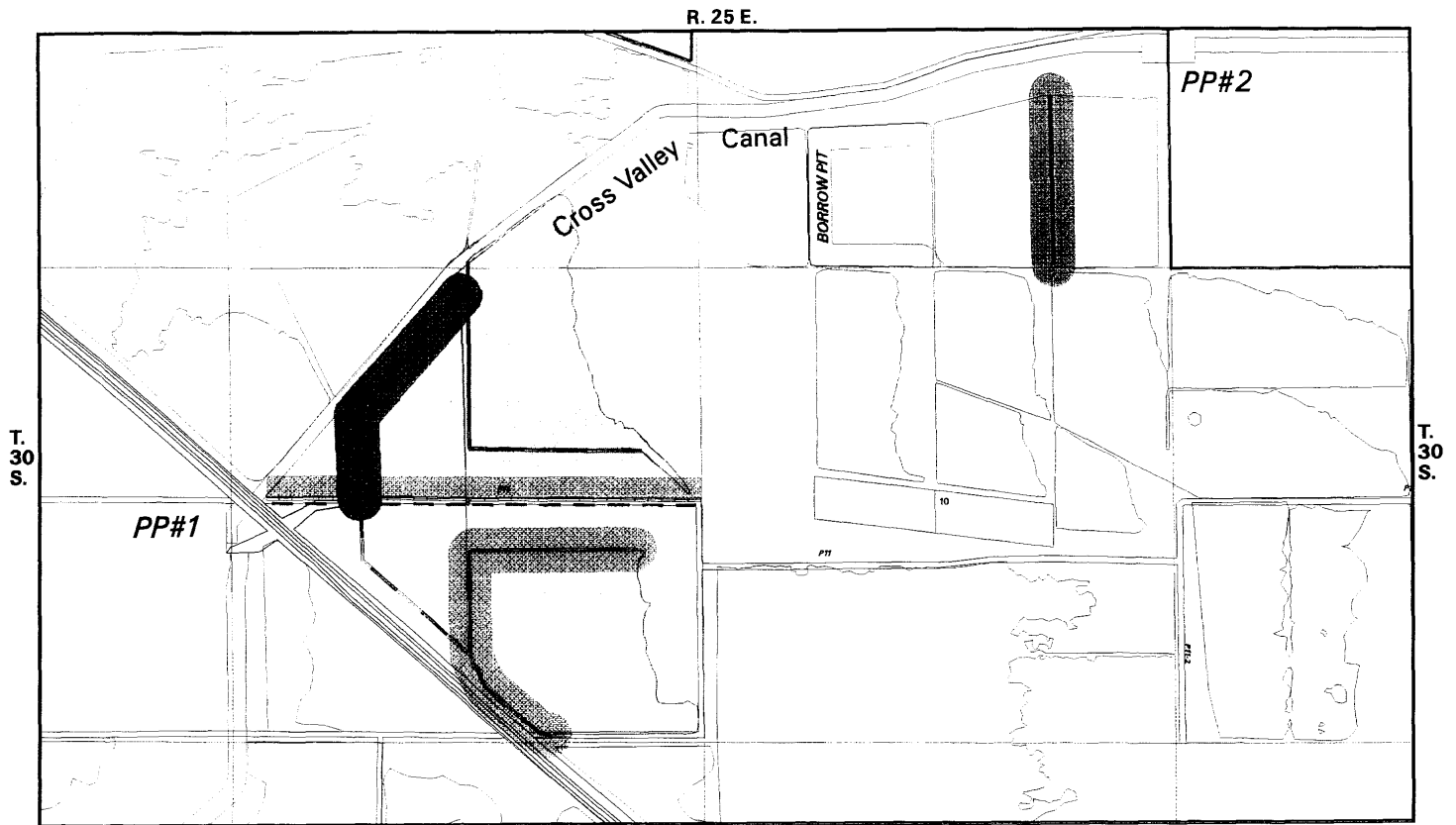


Recharge Frequency Plan

*Kern Water
Bank Authority*



Map 5



Vegetation Management Study Plan

- | | |
|--|--|
| <ul style="list-style-type: none"> Burning Erosion Control - Seeding Grazing Mowing Revegetation - Seeding | <ul style="list-style-type: none"> Pond Bottom Burning Pond Bottom Grazing Lateral Levee Dirt Road |
|--|--|

Kern Water Bank Authority



1" = 1500'

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Map 6

PROMISSORY NOTE
(254.63 acres in Kern Water Bank)

\$200,000.00

Bakersfield, California

October____, 1997

FOR VALUE RECEIVED, KERN WATER BANK AUTHORITY, a California joint powers authority ("KWBA"), promises to pay to the CALIFORNIA DEPARTMENT OF FISH AND GAME or its order or assign ("Department"), having a mailing address of 1416 Ninth Street, 12th Floor, Sacramento, CA 95814, the principal sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00) lawful money of the United States of America, together with interest thereon from the date hereof, at the rate(s) and on the terms set forth below, as follows:

1. Interest.

1.1 The rate of interest shall be the rate of the Implicit Price Deflator for State and Local Government Purchase of Goods and Services expressed as a percent change from the preceding year, published by the United States Department of Commerce (the "Index"). On an annual basis, on the anniversary of the date of this Promissory Note, the rate of interest shall be adjusted to reflect the new Index.

1.2 If at any time the United States government ceases publication of the Index, KWBA and the Department shall select that rate published by the United States government or other governmental entity which most closely resembles the Index. In that regard, the Parties agree that the Index expresses the annual rate of inflation experienced by federal, state and local governments, businesses and consumers, collectively.

2. Maturity of Note. The entire unpaid principal balance of this Note and all unpaid interest shall be due and payable on demand. Demand may be made only in accordance with (a) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Security Agreement of even date herewith ("**Security Agreement**") by and among the United States Fish and Wildlife Service ("**FWS**"), the Department and KWBA, and (b) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Implementation Agreement of even date herewith ("**Implementation Agreement**") by and among FWS, DFG and KWBA.

3. Place of Payment. The principal and interest shall be payable at the office of the Department at the address set forth in the introductory paragraph of this Note, or at such other place as the Department may from time to time designate in writing.

4. Prepayment. KWBA shall have the right upon giving at least thirty (30) days prior written notice to the Department to prepay any part of this Note.

5. Payments. All payments under this Note shall be in currently available funds and shall be applied first to any unpaid interest that has accrued with respect to this Note, second to any other due and unpaid sums under the Environmental Indemnity (as defined below), and third (i.e., the balance, if any) to principal.

6. Deed of Trust. Payment of this Note is secured by, among other security, that certain Deed of Trust and Subordination Agreement of even date herewith, intended to be recorded in the official records of Kern County, California forthwith, from KWBA to and for the benefit of the Department (the "**Deed of Trust**"), which Deed of Trust, among other things, encumbers certain farmland situated in the County of Kern, State of California, together with any buildings and other improvements thereon, more particularly described in the Deed of Trust (the "**Mortgaged Property**").

7. Environmental Indemnity. In addition to the Deed of Trust, KWBA has delivered to the Department an agreement pursuant to which KWBA shall save, protect, indemnify, defend and hold the Department free and harmless of, from and against certain claims, demands, losses, liabilities, damages, costs and expenses, all as more fully described in that certain Environmental Indemnity Agreement of even date herewith (the "**Environmental Indemnity**").

8. Successors and Assigns. Whenever reference is made herein to "KWBA" or "Department," such reference shall be deemed to refer to and include the legal representatives, successors and assigns, the same as if in each case expressed, it being expressly agreed that the rights and obligations of all parties named herein or liable hereunder shall inure to the benefit of and be binding upon such parties and their respective legal representatives, successors and assigns, provided that this shall not be construed as permitting any assignment or transfer by KWBA not otherwise specifically permitted in this Note or in the other Loan Documents.

9. Non-Waiver by the Department. The Department shall not be deemed by any act of omission or commission to have waived any of its rights or remedies under this Note unless such waiver is in writing and signed by the Department, and then only to the extent specifically set forth in the writing. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

10. Time of Essence/Governing Law. Time is strictly of the essence under this Note and any amendment, modification or revision this Note. This Note shall be governed by and construed and enforced in accordance with the laws of the State of California and applicable Federal laws.

11. Construction. Headings at the beginning of each paragraph are solely for the convenience of KWBA and the Department and are not a part of this Note. Unless otherwise indicated, all references in this Note to paragraphs, subparagraphs or

provisions are to those in this Note. Any reference to a paragraph in this Note includes all subparagraphs thereof.

12. Usury. The Department does not intend to contract for, charge, or receive any interest or other charge which is usurious and, by execution of this Note, KWBA acknowledges that the Department has no such intent. All agreements between KWBA and the Department, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, or otherwise, shall the amount paid, or agreed to be paid, to the Department for the use, forbearance, or detention of the money loaned or to be loaned under this Note or otherwise or for the payment of performance of any covenant or obligation contained in this Note or in any other document evidencing, securing, or pertaining to the indebtedness evidenced hereby (including without limitation the Loan Documents) exceed the maximum amount permissible under applicable law. Any other provision in this Note or in any other agreement between the Department and KWBA to the contrary notwithstanding, in no event shall the amount paid or agreed to be paid to the Department as interest exceed the highest lawful rate. If, from any circumstances whatsoever, fulfillment of any provision in this Note or of any other document or agreement between the Department and KWBA shall, at the time of such fulfillment, involve payment of interest or any other charge in excess of that authorized by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limits so authorized by law, and if from any circumstance the Department shall ever receive as interest or otherwise an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall not be deemed interest, but shall be applied to the reduction of unpaid principal or on account of any other indebtedness of KWBA to the Department and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of this Note and such other indebtedness, such excess shall be refunded to KWBA. All sums paid or agreed to be paid to the Department for the use, forbearance, or detention of the indebtedness of KWBA to the Department shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest on account of such indebtedness is uniform throughout the term hereof. The terms and provisions of this Paragraph 12 shall control and supersede every other provision of all agreements between KWBA and the Department.

13. Severability. If any term or provision of this instrument or its application to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this instrument, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected and it shall be valid and enforceable to the fullest extent permitted by law.

14. Enforceable Obligation. KWBA represents and warrants that this Note constitutes a binding obligation of KWBA, enforceable in accordance with its terms.

IN WITNESS WHEREOF, KWBA, intending to be legally bound hereby, has caused this Note to be executed and delivered on the day and year first above written.

Dated: _____

KERN WATER BANK AUTHORITY

By: _____

William D. Phillimore

Title: Chairman

STATE OF CALIFORNIA)
) ss.
COUNTY OF KERN)

On _____, 1997, 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.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**
General Counsel
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

The undersigned declares that this document is recorded for the benefit of the California Department of Fish and Game, an agency of the State of California, 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.

**DEED OF TRUST AND SUBORDINATION AGREEMENT
(\$200,000.00 Promissory Note)**

THIS DEED OF TRUST is made and entered into as of this ____ day of _____, 1997. It is by and between the KERN WATER BANK AUTHORITY, a public joint powers authority, formed pursuant to the Joint Exercise of Powers Act, California Government Code section 6500 et seq. ("Trustor"), whose address is P.O. Box 80607, Bakersfield, California, 93380-0607, Chicago Title Insurance Company, a California Corporation, ("Trustee") whose address is _____, _____, and the California Department of Fish and Game, a subdivision of the State of California ("Beneficiary"), whose address is 1416 Ninth Street, Sacramento, California, 95814.

WITNESSETH: That Trustor does hereby grant, transfer and assign to Trustee, in trust, with power of sale, all of Trustor's right, title and interest, now owned or hereafter acquired, in and to that certain real property located at Kern County, California and more particularly described as follows:

See Exhibit "A" which by this reference is incorporated herein (the "Property").

This Deed of Trust is for the purpose of securing the performance of the covenants, conditions, obligations and agreements herein contained as well as those contained in (a) the Promissory Note in the original principal amount of \$200,000.00 by Trustor to the order of Beneficiary, of even date herewith; (b) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Security Agreement by and among the United States Fish and Wildlife Service ("FWS"), Beneficiary and Trustor of even date herewith; and (c) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Implementation Agreement by and among the FWS, Beneficiary and Trustor of even date herewith.

Section 1: Trustor's Affirmative Covenants. Until its obligations hereunder are satisfied in full and to protect the security of this Deed of Trust, Trustor covenants and agrees with Beneficiary as follows:

(a) **Maintenance, Waste and Repair.** It will keep the Property in good condition and repair and permit no waste thereof; and it will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property.

(b) **Insurance.** It will, at its sole cost and expense, keep the Property and any improvements thereon insured for the mutual benefit of Trustor and Beneficiary. In addition, Trustor will, at its sole cost and expense, obtain and maintain public liability insurance covering the Property and the ownership, use, occupancy and maintenance of the Property.

(c) **Expenses.** It will pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligations secured hereby, excluding attorneys' fees.

(d) **Further Assurances.** It will, at any time on the reasonable request of Beneficiary, execute, acknowledge and deliver any additional documents, papers or instruments reasonably necessary to effectuate the interest and purpose of this Agreement.

(e) **Litigation.** It will promptly, but in no event later than ninety (90) days, give written notice to Beneficiary of any litigation commenced or threatened affecting the Property.

(f) **Inspection.** It will allow Beneficiary or its agents reasonable access, during normal business hours, upon 72 hours notice, to the Property to permit inspection and/or appraisal.

Section 2: Warranties and Representations. Trustor represents and warrants to Beneficiary that as of the date of this Deed of Trust:

(a) **Organization.** It is a public entity organized, validly existing, and in good standing under the laws of the State of California and properly qualified to do business in California.

(b) **Authorization.** It has the requisite power and authority to own, operate, develop and manage the Property and to carry on its business as now being conducted.

(c) **Title to Property.** It has good and merchantable fee simple title to the Property subject only to patent reservations, water right applications, and easements and restrictions of record.

(d) **Compliance with Law.** It is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it and the Property.

(e) **Litigation.** There is not now pending, nor to the best of Trustor's knowledge any threatened action, suit or proceeding at law or in equity or before any administrative agency that would materially affect or impair the Property.

Section 3: Beneficiary's Affirmative Agreements. Beneficiary agrees as follows:

(a) **Leasing of Property.** Trustor may lease all or any part of the Property to others.

(b) **Providing of Security Interest in Crops.** Beneficiary consents to the granting of a security interest in or a crop mortgage on crops growing or to be grown on the Property by Trustor or Trustor's tenant(s) or permittee(s). All crop mortgages, encumbrances or liens given or suffered shall be satisfied of record prior to the end of the term at the granting party's sole cost and expense. No crop mortgage or lien given or suffered shall affect or impair, in any manner, Trustee's and Beneficiary's interest in the Property.

(c) **Crop Waiver; Subordination.** The liens of Beneficiary and Trustee, to the extent applicable, shall be subordinate to a crop lender's lien or claim, if any, against any crops growing or to be grown on the Property. Should Beneficiary or any third party through a foreclosure sale or otherwise take possession of all or any part of the Property, or any crop or any lender's collateral thereon, prior to the complete production, harvesting and removal of said collateral and crops growing or to be grown thereon, the Beneficiary and third party agree to permit the complete production, harvesting and removal of such crops by the grower or his agents or assigns, unmolested, including the right to remove all such personalty serving as collateral for such a loan from the Property.

(d) **Further Assurance.** Beneficiary will, at any time on the reasonable request of Trustor, Trustor's tenant or permittee, execute, acknowledge and deliver any additional documents, papers or instruments reasonably necessary to effectuate the intent and purpose of this Agreement, including but not limited to a crop waiver, a non-disturbance agreement or a subordination disclaiming any interest in or to any crops growing or to be grown on the Property.

Section 4: Mutual Agreements. It is mutually agreed by and between the parties that:

(a) **Condemnation Proceeds.** In the event any portion of the Property is taken or damaged in an eminent domain or condemnation proceeding, the

entire amount of the award or such portion thereof including settlement proceeds shall be paid to Trustor.

(b) Reconveyance. The Trustee shall reconvey all or any part of the Property covered by this Deed of Trust to the person entitled thereto on the written request of the Trustor and Beneficiary, or upon satisfaction of the obligation secured with a written request for reconveyance made by the Beneficiary or the person entitled thereto.

(c) Power of Sale; Non-exclusive Remedy. The power of sale conferred by this Deed of Trust is not an exclusive remedy; the lien or encumbrance hereby created may be foreclosed either judicially or non-judicially.

Section 5: Miscellaneous Provisions.

(a) Severability of Provisions. The invalidity or unenforceability of any term or provision of this Deed of Trust shall not affect the validity or enforceability of the remaining terms and provisions hereof, and each provision of this Deed of Trust shall be valid and enforceable to the fullest extent of the law.

(b) Entire Agreement/Modification. This Agreement including any exhibits or other agreements referenced herein, constitutes the entire agreement between the parties. No provision of this Agreement may be amended, modified, supplemented or terminated unless the Trustor and Beneficiary both consent in writing.

(c) No Waiver. No waiver by Beneficiary of any default or breach by Trustor will be implied from any omission by Beneficiary to take action on account of that default if the default persists or is repeated. Also, no express waiver will affect any default other than the default waived and such waiver will only be operative for the time and to the extent stated. Waivers of any covenant, term, or condition in this Deed of Trust will not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by Beneficiary for any act by Trustor requiring further consent or approval will not be deemed a waiver or render unnecessary the consent or approval for any subsequent similar act.

(d) Substitute Trustee. Beneficiary may remove Trustee or any successor trustee at any time and appoint a successor trustee by recording a written substitution in the county where the Property is located, or in any other manner permitted by law. Upon that appointment, all of the powers, rights, and authority of Trustee will immediately become vested in the successor trustee.

(e) Binding on Heirs, Successors, and Assigns. The provisions of this Deed of Trust shall bind the respective heirs, executors, personal representatives, administrators, successors and assigns of the parties hereto.

(f) **Governing Law.** This Deed of Trust shall be governed by and construed in accordance with the laws of California and federal law, where applicable.

(g) **Notices.** All notices, advices, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmations, or denials that may be required or contemplated under this Deed of Trust for any party to serve on or give to another party will be in writing, and if not in writing, will not be deemed to have been given. Also, they must be either personally served or sent with return receipt requested by registered or certified mail with postage (including registration or certification charges) prepaid in a securely enclosed and sealed envelope to the appropriate party or parties at the addresses set forth above.

Dated: _____

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____

Jacqueline E. Schafer

Title: Director

Approved as to form:
General Counsel
California Department of Fish and Game
(Department Counsel)

By: _____

Dated: _____

KERN WATER BANK AUTHORITY

By: _____

William D. Phillimore

Title: Chairman

STATE OF CALIFORNIA)
) ss.
 COUNTY OF KERN)

On _____, 1997, 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 _____, 1997, 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.

PROMISSORY NOTE

(secured by approximately 600 acres in Kern Water Bank)

\$300,000.00

Bakersfield, California

October __, 1997

FOR VALUE RECEIVED, KERN WATER BANK AUTHORITY, a California joint powers authority ("KWBA"), promises to pay to THE CALIFORNIA DEPARTMENT OF FISH AND GAME or order or assign (the "**Department**"), having a mailing address of 1416 Ninth Street, 12th Floor, Sacramento, CA 95814, the principal sum of Three Hundred Thousand and No/100 Dollars (\$300,000.00) lawful money of the United States of America, together with interest thereon from the date hereof, at the rate(s) and on the terms set forth below, as follows:

1. Interest.

1.1 The rate of interest shall be the rate of the Implicit Price Deflator for State and Local Government Purchase of Goods and Services expressed as a percent change from the preceding year, published by the United States Department of Commerce (the "Index"). On an annual basis, on the anniversary of the date of this Promissory Note, the rate of interest shall be adjusted to reflect the new Index.

1.2 If at any time the Index is a negative number, this Note will accrue "negative interest". Upon payment of this Note, accrued and unpaid interest will be reduced by the amount of negative interest. If the amount of negative interest exceeds the total amount of accrued and unpaid interest, then the principal of this Note will be reduced by the difference between the amount of negative interest and the amount of accrued and unpaid interest.

1.3 If at any time the United States government ceases publication of the Index, KWBA and the Department shall select that rate published by the United States government or other governmental entity which most closely resembles the Index. In that regard, the Parties agree that the Index expresses the annual rate of inflation experienced by federal, state and local governments, businesses and consumers, collectively.

2. Maturity of Note. The entire unpaid principal balance of this Note and all unpaid interest shall be due and payable only in accordance with (a) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Security Agreement of even date herewith ("**Security Agreement**") by and among the United States Fish and Wildlife Service ("**FWS**"), the Department and KWBA, and (b) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Implementation Agreement of even date herewith ("**Implementation Agreement**") by and among FWS, DFG and KWBA. The Security Agreement and the Implementation Agreement are collectively referred to herein as the Loan Documents.

Exhibit 3

EXECUTION COPY
OC\970910010

3. Place of Payment. The principal and interest shall be payable at the office of the Department at the address set forth in the introductory paragraph of this Note, or at such other place as the Department may from time to time designate in a written notice sent to and received by KWBA.

4. Prepayment. KWBA shall have the right, upon giving at least thirty (30) days prior written notice to the Department, to prepay any part of this Note.

5. Payments. All payments under this Note shall be in currently available funds and shall be applied first to any unpaid interest that has accrued with respect to this Note and second (i.e., the balance, if any) to principal.

6. Deed of Trust. Payment of this Note is secured by, among other security, that certain Deed of Trust and Subordination Agreement of even date herewith, intended to be recorded in the official records of Kern County, California forthwith, from KWBA to and for the benefit of the Department (the "**Deed of Trust**"), which Deed of Trust encumbers certain farmland situated in the County of Kern, State of California, together with any buildings and other improvements thereon, as is more particularly described in the Deed of Trust (the "**Mortgaged Property**").

7. Successors and Assigns. Whenever reference is made herein to "KWBA" or "Department," such reference shall be deemed to refer to and include the legal representatives, successors and assigns, the same as if in each case expressed, it being expressly agreed that the rights and obligations of all parties named herein or liable hereunder shall inure to the benefit of and be binding upon such parties and their respective legal representatives, successors and assigns, provided that this shall not be construed as permitting any assignment or transfer by KWBA not otherwise specifically permitted in this Note, the Deed of Trust or in the Loan Documents.

8. Non-Waiver by the Department. The Department shall not be deemed by any act of omission or commission to have waived any of its rights or remedies under this Note, unless such waiver is in writing and signed by the Department, and then only to the extent specifically set forth in the writing. A waiver of one event shall not be construed as continuing or as a bar to or waiver of any right or remedy to a subsequent event.

9. Time of Essence/Governing Law. Time is strictly of the essence under this Note and any amendment, modification or revision this Note. This Note shall be governed by and construed and enforced in accordance with the laws of the State of California and applicable Federal laws.

10. Construction. Headings at the beginning of each paragraph are solely for the convenience of KWBA and the Department and are not a part of this Note. Unless otherwise indicated, all references in this Note to paragraphs, subparagraphs or

provisions are to those in this Note. Any reference to a paragraph in this Note includes all subparagraphs thereof.

11. Usury. The Department does not intend to contract for, charge, or receive any interest or other charge which is usurious and, by execution of this Note, KWBA acknowledges that the Department has no such intent. All agreements between KWBA and the Department, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity hereof, or otherwise, shall the amount paid, or agreed to be paid, to the Department for the use, forbearance, or detention of the money loaned or to be loaned under this Note or otherwise or for the payment of performance of any covenant or obligation contained in this Note or in any other document evidencing, securing, or pertaining to the indebtedness evidenced hereby (including without limitation the Loan Documents) exceed the maximum amount permissible under applicable law. Any other provision in this Note or in any other agreement between the Department and KWBA to the contrary notwithstanding, in no event shall the amount paid or agreed to be paid to the Department as interest exceed the highest lawful rate. If, from any circumstances whatsoever, fulfillment of any provision in this Note or of any other document or agreement between the Department and KWBA shall, at the time of such fulfillment, involve payment of interest or any other charge in excess of that authorized by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limits so authorized by law, and if from any circumstance the Department shall ever receive as interest or otherwise an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall not be deemed interest, but shall be applied to the reduction of unpaid principal or on account of any other indebtedness of KWBA to the Department and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of this Note and such other indebtedness, such excess shall be refunded to KWBA. All sums paid or agreed to be paid to the Department for the use, forbearance, or detention of the indebtedness of KWBA to the Department shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such indebtedness until payment in full so that the actual rate of interest on account of such indebtedness is uniform throughout the term hereof. The terms and provisions of this Paragraph 11 shall control and supersede every other provision of all agreements between KWBA and the Department.

12. Severability. If any term or provision of this instrument or its application to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this instrument, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected and it shall be valid and enforceable to the fullest extent permitted by law.

13. Enforceable Obligation. KWBA represents and warrants that this Note constitutes a binding obligation of KWBA, enforceable in accordance with its terms.

IN WITNESS WHEREOF, KWBA, intending to be legally bound hereby, has caused this Note to be executed and delivered as of the day and year first above written.

Dated: _____

KERN WATER BANK AUTHORITY

By: _____

William D. Phillimore

Title: Chairman

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**
General Counsel
California Department of Fish and Game
1416 Ninth Street, 12th Floor
Sacramento, CA 95814

The undersigned declares that this document is recorded for the benefit of the California Department of Fish and Game, an agency of the State of California, 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.

**DEED OF TRUST AND SUBORDINATION AGREEMENT
(\$300,000.00 Promissory Note)**

THIS DEED OF TRUST is made and entered into as of this ____ day of _____, 1997. It is by and between the KERN WATER BANK AUTHORITY, a public joint powers authority, formed pursuant to the Joint Exercise of Powers Act, California Government Code section 6500 et seq. ("Trustor"), whose address is P.O. Box 80607, Bakersfield, California, 93380-0607, Chicago Title Insurance Company, a California Corporation, ("Trustee") whose address is _____, _____, and the California Department of Fish and Game, a subdivision of the State of California ("Beneficiary"), whose address is 1416 Ninth Street, Sacramento, California, 95814.

WITNESSETH: That Trustor does hereby grant, transfer and assign to Trustee, in trust, with power of sale, all of Trustor's right, title and interest, now owned or hereafter acquired, in and to that certain real property located at Kern County, California and more particularly described as follows:

See Exhibit "A" which by this reference is incorporated herein (the "Property").

This Deed of Trust is for the purpose of securing the performance of the covenants, conditions, obligations and agreements herein contained as well as those contained in (a) the Promissory Note in the original principal amount of \$300,000.00 by Trustor to the order of Beneficiary, of even date herewith; (b) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Security Agreement by and among the United States Fish and Wildlife Service ("FWS"), Beneficiary and Trustor of even date herewith; and (c) the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Implementation Agreement by and among FWS, Beneficiary and Trustor of even date herewith.

Exhibit 4

Section 1: Trustor's Affirmative Covenants. Until its obligations hereunder are satisfied in full and to protect the security of this Deed of Trust, Trustor covenants and agrees with Beneficiary as follows:

(a) **Maintenance, Waste and Repair.** It will keep the Property in good condition and repair and permit no waste thereof; and it will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property.

(b) **Insurance.** It will, at its sole cost and expense, keep the Property and any improvements thereon insured for the mutual benefit of Trustor and Beneficiary. In addition, Trustor will, at its sole cost and expense, obtain and maintain public liability insurance covering the Property and the ownership, use, occupancy and maintenance of the Property.

(c) **Expenses.** It will pay all costs, fees and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligations secured hereby, excluding attorneys' fees.

(d) **Further Assurances.** It will, at any time on the reasonable request of Beneficiary, execute, acknowledge and deliver any additional documents, papers or instruments reasonably necessary to effectuate the interest and purpose of this Deed of Trust.

(e) **Litigation.** It will promptly, but in no event later than ninety (90) days, give written notice to Beneficiary of any litigation commenced or threatened affecting the Property.

(f) **Inspection.** Upon 72 hours prior written notice, it will allow Beneficiary or its agents reasonable access, during normal business hours, to the Property to permit inspection and/or appraisal.

Section 2: Warranties and Representations. Trustor represents and warrants to Beneficiary that as of the date of this Deed of Trust:

(a) **Organization.** It is a public entity organized, validly existing, and in good standing under the laws of the State of California and properly qualified to do business in California.

(b) **Authorization.** It has the requisite power and authority to own, operate, develop and manage the Property and to carry on its business as now being conducted.

(c) **Title to Property.** It has good and merchantable fee simple title to the Property subject only to patent reservations, water right applications, and easements and restrictions of record.

(d) **Compliance with Law.** It is in material compliance with all laws, regulations, ordinances and orders of public authorities applicable to it and the Property.

(e) **Litigation.** There is not now pending, nor to the best of Trustor's knowledge any threatened action, suit or proceeding at law or in equity or before any administrative agency that would materially affect or impair the Property.

Section 3: Beneficiary's Affirmative Agreements. Beneficiary agrees as follows:

(a) **Leasing of Property.** Trustor may lease all or any part of the Property to others.

(b) **Providing of Security Interest in Crops.** Beneficiary consents to the granting of a security interest in or a crop mortgage on crops growing or to be grown on the Property by Trustor or Trustor's tenant(s) or permittee(s). All crop mortgages, encumbrances or liens given or suffered shall be satisfied of record prior to the end of the term at the granting party's sole cost and expense. No crop mortgage or lien given or suffered shall affect or impair, in any manner, Trustee's and Beneficiary's interest in the Property.

(c) **Crop Waiver; Subordination.** The liens of Beneficiary and Trustee, to the extent applicable, shall be subordinate to a crop lender's lien or claim, if any, against any crops growing or to be grown on the Property. Should Beneficiary or any third party through a foreclosure sale or otherwise take possession of all or any part of the Property, or any crop or any lender's collateral thereon, prior to the complete production, harvesting and removal of said collateral and crops growing or to be grown thereon, the Beneficiary and third party agree to permit the complete production, harvesting and removal of such crops by the grower or his agents or assigns, unmolested, including the right to remove all such personalty serving as collateral for such a loan from the Property.

(d) **Further Assurance.** Beneficiary will, at any time on the reasonable request of Trustor, Trustor's tenant or permittee, execute, acknowledge and deliver any additional documents, papers or instruments reasonably necessary to effectuate the intent and purpose of this Deed of Trust, including but not limited to a crop waiver, a non-disturbance agreement or a subordination disclaiming any interest in or to any crops growing or to be grown on the Property.

Section 4: Mutual Agreements. It is mutually agreed by and between the parties that:

(a) **Condemnation Proceeds.** In the event any portion of the Property is taken or damaged in an eminent domain or condemnation proceeding, the

entire amount of the award or such portion thereof including settlement proceeds shall be paid to Trustor.

(b) Reconveyance. The Trustee shall reconvey all or any part of the Property covered by this Deed of Trust to the person entitled thereto on the written request of the Trustor and Beneficiary, or upon satisfaction of the obligation secured with a written request for reconveyance made by the Beneficiary or the person entitled thereto.

(c) Power of Sale; Non-exclusive Remedy. The power of sale conferred by this Deed of Trust is not an exclusive remedy; the lien or encumbrance hereby created may be foreclosed either judicially or non-judicially.

Section 5: Miscellaneous Provisions.

(a) Severability of Provisions. The invalidity or unenforceability of any term or provision of this Deed of Trust shall not affect the validity or enforceability of the remaining terms and provisions hereof, and each provision of this Deed of Trust shall be valid and enforceable to the fullest extent of the law.

(b) Modification. No provision of this Deed of Trust may be amended, modified, supplemented or terminated unless the Trustor and Beneficiary both consent in writing.

(c) No Waiver. No waiver by Beneficiary of any default or breach by Trustor will be implied from any omission by Beneficiary to take action on account of that default if the default persists or is repeated. Also, no express waiver will affect any default other than the default waived and such waiver will only be operative for the time and to the extent stated. Waivers of any covenant, term, or condition in this Deed of Trust will not be construed as a waiver of any subsequent breach of the same covenant, term, or condition. The consent or approval by Beneficiary for any act by Trustor requiring further consent or approval will not be deemed a waiver or render unnecessary the consent or approval for any subsequent similar act.

(d) Substitute Trustee. Beneficiary may remove Trustee or any successor trustee at any time and appoint a successor trustee by recording a written substitution in the county where the Property is located, or in any other manner permitted by law. Upon that appointment, all of the powers, rights, and authority of Trustee will immediately become vested in the successor trustee.

(e) Binding on Heirs, Successors, and Assigns. The provisions of this Deed of Trust shall bind the respective heirs, executors, personal representatives, administrators, successors and assigns of the parties hereto.

(f) Governing Law. This Deed of Trust shall be governed by and construed in accordance with the laws of California and federal law, where applicable.

(g) Notices. All notices, advices, demands, requests, consents, statements, satisfactions, waivers, designations, refusals, confirmations, or denials that may be required or contemplated under this Deed of Trust for any party to serve on or give to another party will be in writing, and if not in writing, will not be deemed to have been given. Also, they must be either personally served or sent with return receipt requested by registered or certified mail with postage (including registration or certification charges) prepaid in a securely enclosed and sealed envelope to the appropriate party or parties at the addresses set forth above. Any notification of a change of address must be made in the same manner.

Dated: _____

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____

Jacqueline E. Schafer

Title: Director

Approved as to form:
General Counsel
California Department of Fish and Game
(Department Counsel)

By: _____

Dated: _____

KERN WATER BANK AUTHORITY

By: _____

William D. Phillimore

Title: Chairman

STATE OF CALIFORNIA)
) ss.
COUNTY OF KERN)

On _____, 1997, 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.
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