

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

General Counsel  
California Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 94814

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.

By: \_\_\_\_\_  
Authorized Representative for Agency

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

**GRANT OF KERN WATER BANK CONSERVATION EASEMENT**

**([to follow] Acre Parcel)**

THIS PERMANENT CONSERVATION EASEMENT (the "Grant") is made this \_\_\_ day of \_\_\_\_\_, \_\_\_\_ 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 \_\_\_\_ 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, and other sensitive species.

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

D. Under the California Endangered Species Act ("CESA") and other State law, Grantee 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. Grantee is also the manager and trustee of fish and wildlife resources and their habitat pursuant to California Fish and Game Code section 1802.

E. 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 Grant.

F. Grantor has prepared and Grantee, along with the United States Fish and Wildlife Service (the "FWS"), has approved a long-term habitat conservation plan ("Habitat Conservation Plan") dated \_\_\_\_\_, 1997, with regard to the Conservation Easement Property and other property. The Habitat Conservation Plan identifies uses of the Conservation Easement Property that are consistent with preserving the conservation values of the Conservation Easement Property. While the Habitat Conservation Plan is in effect (for an initial period of 75 years), Grantor shall have the right to use the Conservation Easement Property for the uses set forth in the Habitat Conservation Plan and accompanying Implementation Agreement. A memorandum of the

Habitat Conservation Plan was recorded in the Official Records of Kern County on \_\_\_\_\_, 1997, as Document No. \_\_\_\_\_.

G. Pursuant to the Implementation Agreement, Grantor is required to develop and have approved by Grantee and FWS a Permanent Management Plan for the Conservation Easement Property prior to the expiration of the Habitat Conservation Plan. After the Habitat Conservation Plan, related Implementation Agreement, and associated permits and authorizations have expired, the Conservation Easement Property shall be managed in accordance with this Grant and the Permanent Management Plan in perpetuity.

H. The Conservation Easement Property is adjacent to certain real property owned by Grantor on which Grantor has previously conveyed a conservation easement to Grantee.

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 Grant) 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 Grant, 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. Since the Easement is in perpetuity, nothing in the Habitat Conservation Plan shall be construed to impose a limit on the duration of the Easement. When the Permanent Mitigation Plan is put in place, the Conservation Easement Property may be subject to additional uses and/or limitations imposed by the Permanent Mitigation Plan.

**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 use and maintenance of Grantor's existing 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 Grant 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

while it is in effect, the Permanent Mitigation Plan while it is in effect 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, Grantee and FWS, or their respective successors in interest in the Conservation Easement Property, and Grantor, Grantee and FWS 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, Grantee or FWS or their 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 and FWS 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 and FWS for approval by Grantor and FWS, 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 California 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 by Grantor 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 by Grantor, or (c) assume responsibility by Grantor for, or incur liability by Grantor for, 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 for Grantor or a ground for liability against Grantor 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 Grant.

(f) Assignment by Grantee. Grantee may assign its rights and obligations under this Grant only to an organization that is (1) approved by the Grantor and FWS 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 1986, as amended (26 U.S.C. § 170(h), 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 Grant. In the event Grantee is unwilling or unable to carry out Grantee's obligations under this Grant, 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). Any transfer of the Easement shall be approved by FWS and Grantor.

### **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. Notwithstanding the foregoing, for so long as Grantee is the State of California, nothing herein shall be deemed to affect Grantor's obligation or duty to pay any claims for money or damages that are governed by the Tort Claims Act, Government Code section 810 et seq.

**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 Grant 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 Grant, subject to the prior written approval of Grantee and FWS, which approval shall not be unreasonably withheld, and compliance with all applicable laws and regulations.

(b) Water Storage and Extraction. Grantor shall have the right to install, construct, repair, maintain, and operate water recovery and water conveyance facilities, including, but not limited to, water wells, pipelines, recovery canals, pumps, and appurtenant facilities such as pump sheds, fences and access roads, as permitted under the Habitat Conservation Plan. 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, such as pump sheds, fences, access roads, pipelines and canals, 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 while it is in effect and in accordance with the Permanent Management Plan while it is in effect.

(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. Fencing shall be installed and maintained only in accordance with the Habitat Conservation Plan while it is in effect and in accordance with the Permanent Management Plan while it is in effect.



(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. The obligation to provide adequate funding to maintain the conservation values of the Conservation Easement Property shall be perpetual. Pursuant to the KWB HCP and related Implementation Agreement, Grantee has established a non-wasting Endowment Account to assure funding. The Implementation Agreement requires Grantor to commence preparing five years prior to the termination of the associated permits and authorizations, and have approved by Grantee and FWS, a Permanent Management Plan for the Conservation Easement Property and certain other property. After the Habitat Conservation Plan, Implementation Agreement and associated permits and authorizations have expired, the Conservation Easement Property will be managed in accordance with the terms of this Grant and the Permanent Management Plan.

**5. Sale of Fee Interest.**

Grantor may transfer the fee title interest or grant a security interest in the Conservation Easement Property provided it gives Grantee and FWS 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 Grant. Grantor agrees to incorporate the terms of this Grant 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 Grant or limit its enforceability in any way. Grantor may lease the Conservation Easement Property, or any portion thereof, for grazing purposes and may convey other interests in such lands only as expressly permitted by the Habitat Conservation Plan and related Implementation Agreement by and among FWS, Grantee and Grantor and related Conservation Bank Agreement by and among FWS, Grantee and Grantor.

**6. Insurance.**

(a) Requisite Coverages. For so long as Grantor is KWBA, 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 Grant. 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 Grant. 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 Grant.

(b) Self-Insurance. So long as Grantee is a subdivision of the State of California and the State of California self-insures, Grantee's liability shall be governed by the laws of the State of California relating to the payment of claims against the State and Grantee shall not be required to obtain insurance or furnish evidence of insurance. If at any time Grantee is not a subdivision of the State of California, 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.

(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 by Grantee on the Conservation Easement Property pursuant to this Grant, regardless of the cause of the damage or loss.

(d) Obligations. Nothing herein shall limit Grantee's obligations under the other provisions of this Grant. 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 a party to the other(s) 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

To FWS: U.S. Fish and Wildlife Service  
3310 El Camino, Suite 130  
Sacramento, CA 95821-6340

With a copy to: Regional Solicitor  
2800 Cottage Way  
Sacramento, CA 95825

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.**

Grantee shall promptly record this instrument in the official records of Kern County, California.

**10. Miscellaneous Provisions.**

(a) Controlling Law. This Grant shall be governed by and interpreted in accordance with the laws of the State of California and applicable Federal laws.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Grant shall be liberally construed in favor of the grant to effect the purpose of this Grant 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 Grant that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Grant, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Grant, 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 Grant 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 Grant 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 Grant 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 Grant have been inserted solely for convenience of reference and are not a part of this Grant and shall have no effect upon construction or interpretation.

(h) Counterparts. The parties may execute this Grant 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 Grant 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 or FWS determines that Grantor is in violation of the terms of this Grant or that a violation is threatened, Grantee or FWS shall give written notice to Grantor 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 Grant, 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 and/or FWS may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Grant, to enjoin the violation ex parte as necessary, by temporary or permanent injunction to recover any damages to which Grantee and/or FWS may be entitled for violation of the terms of this Grant, or injury to any conservation values protected by this Grant, including

adverse impacts to any threatened or endangered species, or sensitive species, and to require the restoration of the Easement to the condition that existed prior to any such injury. If Grantee and/or FWS determines that circumstances require immediate action to prevent or to mitigate significant damage to the conservation values of the Easement, Grantee and/or FWS may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. The rights of Grantee and FWS under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Grant, and Grantor agrees that Grantee's and FWS's remedies at law for any violation of the terms of this Grant are inadequate and that Grantee and/or FWS shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee and/or FWS may be entitled, including specific performance of the terms of this Grant, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's and FWS'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 Grant 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 and FWS each have standing as an interested party in any proceeding affecting this Grant. If Grantor or if Grantee and/or FWS fails to exercise any right or fails to enforce any obligation of this Grant, such failure shall not be deemed to waive any other right which Grantor or Grantee and/or FWS may hold, including subsequent exercise of the same right to subsequent enforcement of the same obligation. Nothing contained in this Grant shall be construed to entitle Grantee and/or FWS 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 Grant as of the day and year first above written.

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

By: \_\_\_\_\_  
William D. Phillimore  
Chairman

APPROVED AS TO FORM:  
Nossaman, Guthner, Knox & Elliott, LLP

By: \_\_\_\_\_  
Authority Counsel

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

By: \_\_\_\_\_  
[Name]  
[Title]

APPROVED AS TO FORM:

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

**AGREED:** UNITED STATES FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_  
[Name]  
[Title]



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.

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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  
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 ) ss.  
COUNTY OF KERN )

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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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EXHIBIT E

FORM OF CONSERVATION CREDIT CERTIFICATE

[\_\_\_\_ Acres]

This Conservation Credit Certificate certifies that the bearer hereof has acquired \_\_\_\_\_ Conservation Credits in the Kern Water Bank Conservation Bank (the "Conservation Bank"), established pursuant to the Conservation Bank Agreement (the "Conservation Bank Agreement") dated [March 31], 1997, by and among the United States Fish and Wildlife Service ("USFWS"), the California Department of Fish and Game ("DFG"), and Kern Water Bank Authority ("KWBA").

This Certificate may be used only in satisfaction of requirements identified by USFWS and/or DFG on [name of Included Party] (the "Included Party") pursuant to Project Requirements [Agreement/CESA MOU][Statement] No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_, by and between USFWS, DFG, and the Included Party, relating to a certain parcel of land located in \_\_\_\_\_ County, California, and more particularly described on Exhibit A hereto.

This Conservation Credit Certificate is not transferable except as explicitly set forth in the Conservation Bank Agreement.

KERN WATER BANK AUTHORITY

By: \_\_\_\_\_  
Authorized Representative of Authority

EXHIBIT F-1

FORM OF PROJECT REQUIREMENTS AGREEMENT/CESA MOU

[Both Resource Agencies version]

This Agreement No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_, is made and entered by and between the U.S. Fish and Wildlife Service (the "USFWS"), the California Department of Fish and Game ("DFG"; collectively referred to with USFWS as the "Resource Agencies") and \_\_\_\_\_ (the "Included Party"), (Included Party and Resources Agencies collectively referred to the "Parties"), with regard to a project on a parcel of land located in \_\_\_\_\_ County, California, and more particularly described on Exhibit A hereto (the "Permitted Land").

**Recitals**

- A. The Kern Water Bank Authority, a California joint powers authority ("KWBA") has prepared, and the Resource Agencies have approved, a habitat conservation plan/natural community conservation plan (the "KWB HCP") for 19,900 acres of land in Kern County, California commonly known as the "Kern Water Bank".
- B. Pursuant to its authority under section 10(a) of the federal Endangered Species Act of 1973, as amended ("ESA"), 16 U.S.C. § 1539(a), and the KWB HCP, USFWS has issued Permit No. \_\_\_\_\_ to the KWBA (the "Master Permit"). The Master Permit will expire on \_\_\_\_\_, 2071.
- C. Pursuant to its authority under section 2081 and 2835 of the California Fish and Game Code, the KWB HCP and the California Endangered Species Act ("CESA"), DFG has issued Management Authorization No. \_\_\_\_\_ to KWBA (the "Master Management Authorization;" collectively referred to with the Master Permit as the "Master Permit/Management Authorization"). The Master Management Authorization will expire on \_\_\_\_\_, 2071.
- D. The Master Permit/Management Authorization will allow qualifying third parties in identified areas outside the Kern Water Bank to obtain incidental take authority for certain threatened and endangered species and certain other species of concern upon issuance by the Resource Agencies of a Certificate of Inclusion.
- E. The Included Party is the owner of the Permitted Land and seeks to develop it.
- F. The Resource Agencies have agreed, subject to the terms and provisions of this Agreement and the Conservation Bank Agreement dated \_\_\_\_\_ to allow KWBA to issue a Certificate of Inclusion and thereby to provide

incidental take authority to the Included Party for development of a project on the Permitted Land.

### **Agreement**

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

I. The Included Party has prepared a biological assessment for the project proposed on the Permitted Land which identifies the presence of certain of the species listed as threatened or endangered under ESA or CESA ("listed species") and certain of those species identified as Covered Species under the Conservation Bank Agreement, and the impacts of the proposed project on the listed and Covered species and on-site measures the Included Party will adopt to minimize and mitigate the impacts of the proposed project on the listed and Covered species. The Included Party represents and warrants that a true, complete and correct copy of the biological assessment is attached hereto as Exhibit B.

II. The Resource Agencies have reviewed the biological assessment and determined that the Permitted Land and the activity proposed thereon is suitable for inclusion under the Master Permit/Management Authorization, subject to the Included Party completing following requirements:

- A. [On-Site Measures, including, but not limited to, appropriate avoidance, minimization and mitigation measures, habitat improvement, or required surveys for any listed or Covered species under the Conservation Bank Agreement, for which KWBA need not control and enforce the violation thereof.]
- B. [monetary contribution to Endowment Fund, if any]
- C. Acquisition of \_\_\_\_\_ Conservation Credits from the KWB Conservation Bank and dedication of such Conservation Credits to the Resource Agencies.
- D. Reporting Requirements: The Included Party shall [Explain in detail what report should contain]. The Annual Reports must be submitted to KWBA by February 28 of each year.
- E. Compliance with 50 C.F.R. Part 13.
- F. Compliance with NEPA, if appropriate

III. The Included Party shall undertake and maintain each of the foregoing requirements on the Permitted Land.

IV. Upon the issuance by KWBA, and the concurrence by the Resource Agencies, of a Certificate of Inclusion, the Included Party shall have the authority to take [identify Covered Species subject to permit, making sure that the species are in fact Covered species under the Master Permits] incidental to the activity described in the Biological Assessment on the Permitted Land.

V. The Included Party acknowledges that the incidental take authorization granted to Included Party will arise under KWBA's Master Permit/Management Authorization and is subject to the requirements and restrictions of the Master Permit/Management Authorization (Attached hereto as Exhibit C). Included Party assumes all liability and responsibility for the conduct of its activities conducted under the authority of the Master Permit/Management Authorization.

VI. The Included Party may sell or transfer all or any part of [his/her/its] interest in the Permitted Land at any time. see 50 C.F.R. § 13.24 for assumption by successors in interest.

VII. This agreement shall remain in effect until the expiration of the Master Permit/Management Authorization (INSERT DATE) unless terminated earlier by Included Party, USFWS, or CDFG. The Included Party may terminate this Agreement at any time upon 30 days' notice to the Resource Agencies in accordance with 50 C.F.R. § 13.26. Permit revocation by USFWS shall be governed by 50 C.F.R. § 13.28. Generally, the Resource Agencies may terminate this Agreement and revoke incidental take authority under the Master Permit/Management Authorization as it relates to the Included Party only after (i) giving the Included Party a notice that the Included Party is in default of its obligations under this Agreement, and (ii) the Included Party failing to cure or to commence diligently to cure the default within 60 days of the notice. In no event shall the revocation of a Certificate of Inclusion require KWBA to return, repay, or otherwise disgorge any consideration received from the Defaulting Included Party.

VIII. The Included Party represents and warrants: (a) [he/she/it] is the owner of the Permitted Land; (b) there are no outstanding rights or obligations which will interfere with the rights of the Resource Agencies under this Agreement; (c) none of the disqualifying factors listed in 50 C.F.R. § 13.21(c) apply to Included Party.

IX. If agreement on the sale of Conservation Credits cannot be reached between the Included Party and KWBA, the Included Party recognizes that it may not be able to get incidental take authority under the Master Permit/Management Authorization.

X. The Resource Agencies may collectively declare all or a portion of the dedicated Conservation Credits to be null and void if this Agreement is breached.



REQUEST FOR SALE OF CONSERVATION CREDITS

Included Party requests that:

\_\_\_\_\_ KWBA sell \_\_\_\_\_ Conservation Credits to Included Party and concurrently dedicate such Conservation Credits to the Resource Agencies.

\_\_\_\_\_ KWBA sell \_\_\_\_\_ Conservation Credits to Included Party and concurrently dedicate such Conservation Credits to the Resource Agencies pursuant to Included Party's exercise of the option/interest in the attached Conservation Credit Certificate.

[Signature blocks for Included Party and Resource Agencies]

[Surname by Law Enforcement that Included Party is not disqualified under 50 C.F.R. § 13.21(c).]

[Proof of compliance with NEPA, if appropriate.]

EXHIBIT F-2

FORM OF PROJECT REQUIREMENTS STATEMENT

[Both Resource Agencies version]

This Agreement No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_, is made and entered by and between the U.S. Fish and Wildlife Service (the "USFWS"), \_\_\_\_\_, a Federal Agency, and \_\_\_\_\_ (the "Project Proponent") (Federal Agency, Project Proponent and USFWS collectively referred to the "Parties"), with regard to a project on a parcel of land located in \_\_\_\_\_ County, California, and more particularly described on Exhibit A hereto.

Recitals

- A. The Kern Water Bank Authority, a California joint powers authority ("KWBA") has prepared, and the Resource Agencies have approved, a habitat conservation plan/natural community conservation plan (the "KWB HCP") for 19,900 acres of land in Kern County, California commonly known as the "Kern Water Bank". A Conservation Bank is a component part of the KWB HCP, and is available to Parties to provide mitigation for impacts to certain threatened and endangered species, and other species.
- B. Through \_\_\_\_\_ [name Federal Agency], Project Proponent is seeking authorization to develop a parcel of land and is consulting with the USFWS pursuant to section 7 of the Endangered Species Act.

Agreement

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

- I. The Project Proponent has prepared a biological assessment for the project which, among other things, identifies the presence of species listed as threatened or endangered.
- II. The USFWS has reviewed the biological assessment and determined that off-site mitigation can be provided for impacts to species occurring on the Permitted Land. A copy of the final biological opinion is attached hereto as Exhibit B.
- III. The USFWS has determined that off-site mitigation can occur at KWBA's Conservation Bank, and that \_\_\_\_\_ Conservation Credits can be purchased and dedicated to the Resource Agencies to mitigate impacts on the Permitted Land.
- IV. If agreement on the sale of Conservation Credits cannot be reached between the Project Proponent and KWBA, the Project Proponent should contact the Service since Project Proponent may not have incidental take authority until the Conservation Credits are dedicated.

## Request for Credit Dedication

Project Proponent requests that:

- \_\_\_\_\_ KWBA sell \_\_\_\_\_ Conservation Credits to Project Proponent and concurrently dedicate such Conservation Credits to the Resource Agencies.
  
- \_\_\_\_\_ KWBA sell \_\_\_\_\_ Conservation Credits to Project Proponent and concurrently dedicate such Conservation Credits to the Resource Agencies pursuant to the Project Proponent's exercise of the option/interest on \_\_\_\_\_ credits in the attached Conservation Credit Certificate.

[Signature blocks for Project Proponent, Federal Agency, and USFWS]

EXHIBIT G

FORM OF DISCLOSURE LETTER

[Name]  
[Title]  
[Company]  
[street address]  
[city, state zip]

[DATE]

RE: Use of Conservation Credits on the Kern Water Bank Authority's Multi-Species Conservation Bank

Dear \_\_\_\_\_:

You are contemplating acquiring credits ("Conservation Credits") or interests in Conservation Credits in the conservation bank (the "Conservation Bank") established by Kern Water Bank Authority ("KWBA") pursuant to the Conservation Bank Agreement (the "Agreement"), by and among the United States Fish and Wildlife Service ("USFWS"), the California Department of Fish and Game ("DFG"; collectively with USFWS, the "Resource Agencies") and KWBA, dated \_\_\_\_\_, 1996. This letter is to disclose to you the terms and conditions by which you may acquire Conservation Credits or interests therein.

1. Each Conservation Credit represents one acre of land in the Conservation Bank.
2. KWBA holds a master permit/management authorization issued by the Resource Agencies. If you can comply with the Resource Agencies' requirements as set forth below, you should be able to rely on this master permit/management authorization for the incidental take of certain threatened or endangered species and certain other species of concern, thereby relieving you of obtaining your own permit or management authorization for the incidental take of threatened or endangered species.
3. KWBA has prepared, and the Resource Agencies have approved, a habitat conservation plan/ natural community conservation plan (the "KWB HCP") for 19,900 acres in Kern County, known as the "Kern Water Bank." The Conservation Bank is part of the Kern Water Bank.
4. Pursuant to the KWB HCP, the Resource Agencies have issued a permit and a management authorization to KWBA to permit the incidental take by KWBA of certain species listed as threatened or endangered and certain other sensitive species ("covered species") on the Kern Water Bank.

5. Pursuant to the KWB HCP, the Resource Agencies have also issued a permit and a management authorization (the "Master Permit/Management Authorization") to KWBA to permit the incidental take of covered species by third parties.

6. The process by which a third party will be able to rely on the Master Permit/Management Authorization is expected to be as follows. However, KWBA has no ability whatsoever to control or direct the actions of the Resource Agencies. The following description is only a statement of what the Resource Agencies are expected to require from landowners or developers.

- a) The property for which the incidental take authority is sought must be located in specifically defined areas of Kern County, the Allensworth areas of Tulare County, or the Kettleman Hills area of Kings County. (A map of this Credit Area is attached hereto.) It is KWBA's understanding that the Resource Agencies have agreed to determine whether any property located in those areas may rely on the Master Permit/Management Authorization.
- b) The landowner/developer will prepare a biological assessment identifying: 1) the presence of covered species or their habitat, 2) the impacts of the proposed project on state and federal listed species and covered species, and 3) measures to minimize and mitigate the impacts.
- c) The biological assessment will be submitted to USFWS, if federal listed species are found, and CDFG, if state listed species are found, for review and comment.
- d) If USFWS and/or CDFG, as applicable, conclude, in their sole and absolute discretion, that the use of the Conservation Bank as compensation for project impacts is appropriate, the applicable agency will determine the amount of credits required to compensate for the project impacts and will specify any other appropriate mitigation or compensation measures in accordance with the resource agency's policies. The measures cannot include those that KWBA must control, have oversight over, or enforce (e.g. protection of a particular habitat feature). USFWS and/or CDFG may require surveys on the proposed compensation land to assure species presence and adequate habitat quality. The landowner/developer will be responsible for all costs associated with the surveys which must be coordinated with and approved by the KWBA.

- e) The landowner/developer and the Resource Agencies will execute an agreement (a "Project Requirements Agreement/CESA MOU") documenting that the landowner/developer is bound to comply with the measures specified in the Project Requirements Agreement/CESA MOU as it relates to the landowner, not the Conservation Bank.
- f) Upon receipt by KWBA of an executed Project Requirements Agreement/CESA MOU, KWBA will sell the Conservation Credits to the third party permittee.
- g) Upon sale of the credits, KWBA will provide a conservation credit certificate, attaching the Project Requirements Agreement/CESA MOU, to the Resource Agencies and a draft certificate of inclusion. The Resource Agencies shall then concur with the certificate of inclusion to the landowner/developer.
- h) If the landowner/developer fails to meet the obligations set forth in the landowner agreement, the Resource Agencies, in their sole and absolute discretion, may revoke the certificate of inclusion to the Master Permit/Management Authorization relating to that landowner agreement. It shall be the sole responsibility of the landowner/developer to assure compliance with the landowner agreement. KWBA may not take any action to try to prevent the Resource Agencies from revoking any amendment. Revocation of a Certificate of Inclusion will not impose any requirement on KWBA to return or repay any payment received from a landowner/developer for the conservation credits.

7. The Resource Agencies have committed in the Bank Agreement that their determination of the amount and type of off-site mitigation required from any landowner/developer will be made without consideration of whether the landowner will be acquiring Conservation Credits or satisfying the off-site mitigation obligation in some other way.

8. Nonetheless, KWBA cannot control or direct the Resource Agencies' discretion in determining whether any project may acquire Conservation Credits to satisfy any obligation imposed by any Resource Agency.

9. Interests in Conservation Credits are freely transferable. As KWBA is charged by the Resource Agencies with knowing the identity of the owners of interests in the Conservation Credits, no sale by you of your interests in Conservation Credits will be effective until you notify KWBA of the sale, including the date, and the name and address of the purchaser.

10. Conservation Credits are transferable only to your successor-in-interest to the property for which the Conservation Credit was expired. Any sale of Conservation Credits to a third party for use on a different project or different property will render those Conservation Credits void.

Very truly yours,

[Authorized employee]  
for KERN WATER BANK AUTHORITY

KB/fdl

EXHIBIT H

FORM OF CERTIFICATE OF INCLUSION

The USFWS and DFG hereby acknowledge that the Landowner/Developer has entered into Project Requirements Agreement/CESA MOU No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_ (the "Project Requirements Agreement/CESA MOU") by and between USFWS, DFG and the Landowner/Developer, relating to a certain parcel of land located in \_\_\_\_\_ County, California, and more particularly described on Exhibit A hereto. USFWS and CDFG further acknowledge that Landowner/Developer relinquished a Conservation Credit Certificate to USFWS and CDFG evidencing that Landowner/Developer has acquired an adequate number of Conservation Credits to satisfy the Off-Site Mitigation Obligation set forth in the Project Requirements Agreement/CESA MOU.

Landowner/Developer is therefore granted by KWBA the authority to engage in the Incidental Take of Covered Species pursuant to the Section 10(a) Permit and the Section 2081/2835 Management Authorization issued by the Resource Agencies to KWBA pursuant to the terms and conditions of the Project Requirements Agreement/CESA MOU, the Conservation Bank Agreement and the Implementation Agreement.

KERN WATER BANK AUTHORITY

By: \_\_\_\_\_  
Authorized Representative of Authority

CONCUR: UNITED STATES FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_  
Authorized Representative of Service



CONCUR:

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: \_\_\_\_\_  
Authorized Representative of Department

EXHIBIT I

FORM OF CERTIFICATE OF COMPLIANCE

The USFWS and DFG hereby acknowledge that the Kern Water Bank Authority (“KWBA”) has entered into Project Requirements Agreement/CESA MOU No. \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_ (the “Project Requirements Agreement/CESA MOU”) by and between USFWS, DFG and KWBA, relating to a certain parcel of land located in \_\_\_\_\_ County, California, and more particularly described on Exhibit A hereto (the “Property”). USFWS and CDFG further acknowledge that KWBA delivered a Conservation Credit Certificate to USFWS and CDFG evidencing that KWBA has relinquished an adequate number of Conservation Credits to satisfy the Off-Site Mitigation Obligation set forth in the Project Requirements Agreement/CESA MOU.

KWBA is therefore granted the authority to engage in the Incidental Take of Covered Species on the Property pursuant to the terms and conditions of the Project Requirements Agreement/CESA MOU, the Conservation Bank Agreement and the Implementation Agreement.

UNITED STATES FISH AND WILDLIFE SERVICE

By: \_\_\_\_\_  
Authorized Representative of Service

CALIFORNIA DEPARTMENT OF FISH AND GAME

By: \_\_\_\_\_  
Authorized Representative of Department

**EXHIBIT J**

AMENDMENT NO. \_\_\_ TO THE ENVIRONMENTAL INDEMNITY

This Amendment No. \_\_\_, dated \_\_\_\_\_, \_\_\_ to the Environmental Indemnity Agreement dated October \_\_, 1997 by Kern Water Bank Authority as indemnitor in favor of the California Department of Fish and Game (the "Environmental Indemnity") is made by Kern Water Bank Authority, a California joint powers authority as indemnitor ("Indemnitor") in favor of the California Department of Fish and Game ("Indemnitee").

**RECITALS**

A. It is the intent of Indemnitor and Indemnitee that the Environmental Indemnity apply to all land within the Kern Water Bank on which Indemnitor has granted a conservation easement to Indemnitee.

B. Pursuant to the Kern Water Bank Natural Community Conservation Plan / Habitat Conservation Plan Conservation Bank Agreement, Indemnitor is concurrently herewith granting a conservation easement to Indemnitee on approximately \_\_\_ acres of land ("Conservation Easement Land") within the Kern Water Bank.

**AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are acknowledged by Indemnitee, Indemnitor agrees, represents and warrants for the benefit of Indemnitee, its successors and assigns that the Environmental Indemnity is hereby

amended such that the obligations of Indemnitor under the Environmental Indemnity apply to the Conservation Easement Land.

KERN WATER BANK AUTHORITY

By: \_\_\_\_\_  
Authorized Representative of Authority