



San Luis Rey Mitigation Bank

San Diego County, California

July 2014



SAN LUIS REY MITIGATION BANK

SAN DIEGO COUNTY, CALIFORNIA

BANK ENABLING INSTRUMENT

Interagency Review Team:

U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
California Department of Fish and Game

Bank Sponsor:

Wildlands SLR Holdings I, LLC
3855 Atherton Road
Rocklin, CA 95765
Contact: Cindy Tambini
ctambini@wildlandsinc.com
Tel: (916) 435-3555

July 2014

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*California multi-agency Project Delivery Team Bank Enabling Instrument
(Template Version Date: May 2008)
(Updated in some sections with info from Final Mitigation BEI
dated 16 April 2012 with RegBd)*

**BANK ENABLING INSTRUMENT
SAN LUIS REY MITIGATION BANK**

This Bank Enabling Instrument (“BEI”), dated this _____ day of _____, 20____, is made by and among Wildlands SLR Holdings I, LLC ("Bank Sponsor" and "Property Owner") and the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”) and, the California Department of Fish and Wildlife (“CDFW”). The IRT shall mean the USACE, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the CDFW, the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service , and the California Regional Water Quality Control Board, San Diego Region. The Bank Sponsor/Property Owner, CDFW, and the USACE are hereinafter referred to jointly as the “Parties.” The USACE and CDFW are hereinafter referred to jointly as “Signatory Agencies” or individually “Signatory Agency.” This BEI sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the San Luis Rey Mitigation Bank (the “Bank”).

RECITALS

- A. The Bank Sponsor is responsible for establishing and operating the Bank.
- B. The Property Owner is the owner of real property containing approximately 56.54 acres (the “Property”), located along the San Luis Rey River in San Diego County, City of Oceanside, State of California, designated Assessor’s Parcel No(s). 122-130-33, 122-130-35, 122-130-37, 122-130-39, and 122-130-41. The Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Real Estate Records and Assurances (**Exhibit E**) attached hereto.
- C. Bank Sponsor and Property Owner desire to create the Bank over a 53.84-acre portion of the Property (the “Bank Property”). The Bank Property is generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Conservation Easement (**Exhibit E-4**) attached hereto. The Bank Property is to be conserved in perpetuity by the Conservation Easement, which shall be recorded as provided in Section V.
- D. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code § 1802. CDFW also has jurisdiction over Waters of the State pursuant to §§ 1600-1616 of the Fish and Game Code and other provisions of state law.

- E. USACE has jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq.* Waters of the U.S. include jurisdictional wetlands.
- F. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Bank.
- G. The goals and objectives for the Bank are set forth in the Development Plan (**Exhibit C**) and the Bank Management and Operation Documents (**Exhibit D**).
- H. Initially-capitalized terms used and not defined elsewhere in this BEI are defined in Section II.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section I: Purpose and Authorities

A. Purpose

The purpose of this BEI is to set forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the Bank to compensate for unavoidable impacts to, and conserve and protect, Waters of the U.S and Waters of the State. The Bank Sponsor shall implement the Re-establishment and Rehabilitation and then manage and maintain Waters of the U.S., Waters of the State, and associated Buffers in accordance with this BEI, the Development Plan, and Long-term Management Plan.

B. Authorities

The establishment and use of the Bank for off-site compensatory mitigation or conservation is governed by one or more of the following statutes, regulations, policies, and guidelines:

1. Federal

- a. Clean Water Act (33 U.S.C. § 1251 *et seq.*);
- b. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*);
- c. National Historic Preservation Act (16 U.S.C. § 470);
- d. Regulatory Programs of the U.S. Army Corps of Engineers (33 C.F.R. Parts 320-332);
- e. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230);

- f. Executive Order 11990 – Protection of Wetlands;
 - g. Executive Order 11988 – Floodplain Management; and
 - h. Memorandum of Agreement between the U.S. Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, § 404(b)(1) Guidelines (February 6, 1990).
2. State
- a. California Environmental Quality Act (“CEQA”) (Public Resources Code § 21000 *et seq.*) and State CEQA Guidelines (Tit. 14 Cal. Code Regs., Ch. 3);
 - b. California Endangered Species Act (“CESA”) (Fish and Game Code § 2050 *et seq.*);
 - c. California State Office of Historical Preservation (“SHPO”) (Public Resources Code § 5020 *et seq.*) Archaeological, Paleontological and Historical Sites (Public Resources Code § 5097 *et seq.*) Native American Historical, Cultural and Sacred Sites (Public Resources Code § 5097.9); and Historical Resources (Public Resources Code § 21084.1);
 - d. Conservation of Wildlife Resources (Fish and Game Code § 1800 *et seq.*);
 - e. Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish and Game Code § 1600 *et seq.*); and
 - f. Official Policy on Conservation Banks, April 7, 1995, by California Resources Agency and California Environmental Protection Agency, jointly.

Section II: Definitions

The initially-capitalized terms used and not defined elsewhere in this BEI are defined as set forth below.

1. “Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the Signatory Agencies, in coordination with other members of the IRT, in discussion with the Bank Sponsor and Property Owner, as appropriate, based upon Bank annual report results and review of overall Bank performance and compliance.
2. “Bank Establishment Date” is the date determined pursuant to Section V, when the Bank is considered established and Transfer of Credits may begin.

3. “Buffer” means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.
4. “Catastrophic Event” shall mean an unforeseen event, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on the Bank Property, and over which neither the Bank Sponsor nor the Property Owner has control.
5. “Conservation Easement” means a perpetual conservation easement, as defined by California Civil Code § 815.1, in the form of **Exhibit E-4** attached hereto.
6. “Construction Security” means the financial assurance specified in Section VI.A. and **Exhibit C-2**, to be provided by the Bank Sponsor to guarantee the completion of construction and planting for the Re-establishment and Rehabilitation of Waters of the U.S. and Waters of the State and establish Buffers on the Bank Property in accordance with the Development Plan.
7. "Credits" are units of measure representing the accrual, attainment, or protection of aquatic functions on the Bank Property. One Credit is equivalent to one acre, or as otherwise defined in **Exhibit F-1**.
8. “Credit Release” means an action by the USACE and/or CDFW (in coordination with other members of the IRT), to make specified Credits available for Transfer pursuant to this BEI.
9. “Credit Release Fee” is a fee to pay for all or a portion of the CDFW’s Bank implementation and compliance costs. The fee will be adjusted annually.
10. “Development Plan” is the overall plan, attached as **Exhibit C-1**, governing aquatic resource/Buffer Re-establishment and Rehabilitation activities required to be conducted on the Bank Property to establish Credits, including, without limitation, Performance Standards, monitoring requirements, reporting requirements and Interim Management Activities.
11. “Endowment Agreement” means the agreement, including the mitigation agreement within the meaning of Government Code section 65965(f)(1), attached as **Exhibit D-3** that establishes the terms and conditions pursuant to which the Endowment Holder will accept custody of and manage the Endowment Amount in an Endowment Fund.
12. “Endowment Amount” is the amount, determined in **Exhibit D-2**, that is required to be provided, in accordance with Section VI.E, by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund.
13. “Endowment Deposit” is the deposit or series of deposits made or required to be made by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund. Endowment Deposits received by the Endowment Holder shall be deposited into the Endowment Fund.
14. “Endowment Fund” is a sum of money in a long-term stewardship account, held in trust in a fund designated in the Endowment Agreement. The Endowment Fund is to

be maintained and managed in perpetuity in strict accordance with Government Code sections 65965-69568, Probate Code sections 18501-18510, the BEI, and the Endowment Agreement to generate earnings and appreciation in value for use in funding perpetual management, maintenance, monitoring, and other activities as required by the Long-term Management Plan. The term “Endowment Fund” as used in this BEI shall comprise the Endowment Amount and all interest, dividends, gains, other earnings, additions and appreciation thereon, as well as any additions thereto

15. "Endowment Holder" means an entity qualified to hold the Endowment Fund pursuant to Government Code sections 65965-65968.
16. “Force Majeure” shall mean war, insurrection, riot or other civil disorder, flood, earthquake, fire, disease, governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction, which has a material and detrimental impact on the Bank or the Bank Property and over which the Bank Sponsor/Property Owner has no control; *provided, however*, that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the Bank Property and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood, where "flood" refers to a runoff event; (iii) an earthquake shall constitute an event of Force Majeure only if the ground motion it generates at the Bank Property is greater than that presently projected from an earthquake with a return period of 475 years; (iv) disease shall constitute an event of Force Majeure only if such event has broad regional impact and is not endemic to the Bank Property and its immediate locale; and (v) governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction shall not constitute an event of Force Majeure unless there is no other feasible means of Remedial Action.
17. “Grantee” means the entity, other than the Bank Sponsor or Property Owner, authorized to hold the conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65966 and 65967. Specifically, Grantee is (i) a tax-exempt nonprofit organization qualified under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a "qualified organization" as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.
18. “IRT” is the interagency group which oversees the establishment, use, operation, and maintenance of the Bank.
19. “Interim Management Activities” means the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Bank Sponsor

during the Interim Management Period. Interim Management Activities are included in **Exhibit C-1**.

20. “Interim Management Period” means the period from the Bank Establishment Date until the third anniversary of the full funding of the Endowment Fund has occurred and all the Performance Standards in the Development Plan have been met.
21. “Interim Management Security” is the financial assurance specified in Section VI.C. and **Exhibit D-1**, to be provided by the Bank Sponsor to guarantee the implementation of Interim Management Activities during the Interim Management Period.
22. “Long-term Management Period” means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which the Bank Property is to be managed, monitored and maintained by the Property Owner pursuant to the Long-term Management Plan.
23. “Long-term Management Plan” means the document attached as **Exhibit D-5** that is intended to ensure the Bank Property is managed, monitored and maintained in perpetuity to conserve and protect its Waters of the U.S., Waters of the State, and associated Buffers.
24. “Performance Security” means the financial assurance specified in Section VI.B. and **Exhibit C-3**, to be provided by the Bank Sponsor to guarantee that the Performance Standards are met and all Remedial Action required under Section VIII.F is completed.
25. “Performance Standards” means the minimum standards set forth in the Development Plan to define the successful development of Waters of the U.S., Waters of the State, and Buffers.
26. “Phase I Environmental Site Assessment” is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard which is active at the time of the assessment.
27. “Property Assessment and Warranty” means the written Property evaluation and assurance signed by the Property Owner and attached as **Exhibit E-2**.
28. “Property Owner” means the owner(s) of fee simple title to the Bank Property.
29. “Remedial Action” means any corrective measures which the Bank Sponsor or Property Owner is required to take to ameliorate any injury or adverse impact to the Bank Property as Re-established and/or Rehabilitated as a result of a failure to achieve the Performance Standards.
30. “Restoration” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a

former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

31. “Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a net gain in aquatic resource area.
32. “Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.
33. “RIBITS” means the Regulatory In-lieu Fee and Bank Information Tracking System.
34. “Service Area” means the geographic area(s) within which impacts to Waters of the U.S., Waters of the State, and Buffers that occur may be mitigated or compensated through Credits from the Bank.
35. “Signatory Agencies” means the USACE and CDFW.
36. “Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the Bank Property makes the lien or encumbrance subject to and of lower priority than the Conservation Easement, even though the lien or encumbrance was recorded before the Conservation Easement.
37. “Transfer” means the use, sale, or conveyance of Credits by the Bank Sponsor.
38. “Unlawful Act” shall mean the unlawful act of any person or entity other than the Bank Sponsor/Property Owner and shall include an event or series of events, such as the intentional release within the Bank Property, or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the Bank Property.
39. "Waters of the State" means all waters, wetlands, and associated riparian habitat over which CDFW is granted jurisdiction in the Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish, and Game Code § 1600 *et seq.*).
40. “Waters of the U.S.” means all waters and wetlands over which the USACE is granted jurisdiction in the Clean Water Act, 33 U.S.C. § 1251, *et seq.*,

Section III: Stipulations

A. Baseline Condition

The current condition of the Bank Property is described in the Development Plan (**Exhibit C-1**) and the Biological Resources Survey (**Exhibit H**).

B. Disclaimer

This BEI does not in any manner limit the legal authorities or responsibilities of the Signatory Agencies, but is, instead, an implementation of such authorities and responsibilities.

C. Exhibits

The following Exhibits are attached to and incorporated by this reference into this BEI:

1. “Exhibit A” - Bank Location Maps
 - A-1 General Vicinity Map
 - A-2 Map of Property, including Bank Property
2. “Exhibit B” - Service Area Map(s) and Description(s)
 - B-1 Map(s) of the Bank’s Service Area(s)
 - B-2 Narrative description(s) of the Bank’s Service Area(s)
3. “Exhibit C” - Development Plan
 - C-1 Development Plan
 - C-2 Construction Security Analysis and Schedule
 - C-3 Performance Security Analysis and Schedule
4. “Exhibit D” - Bank Management and Operation Documents
 - D-1 Interim Management Security Analysis and Schedule
 - D-2 Endowment Fund Analysis and Schedule
 - D-3 Endowment Agreement
 - D-4 Interim Management Plan (Not required in this BEI; see Exhibit C-1 for Interim Management Activities, which are included in the Development Plan)

- D-5 Long-Term Management Plan
- D-6 Bank Closure Plan
- 5. “Exhibit E” - Real Estate Records and Assurances
 - E-1 Preliminary Title Report, Legal Description, and Parcel Map(s)
 - E-2 Property Assessment and Warranty
 - E-3 Plat Map(s)
 - E-4 Approved-as-to-form Conservation Easement Deed
- 6. “Exhibit F” - Bank Crediting and Credit Transfers
 - F-1 Credit Evaluation and Credit Table
 - F-2 Credit Purchase Agreement and Payment Receipt Templates
 - F-3 Credit Transfer Ledger Template
- 7. “Exhibit G” - Phase I Environmental Site Assessment
- 8. “Exhibit H” - Biological Resources Survey
- 9. “Exhibit I” – Waters of U.S. Jurisdictional Determination and Delineation
- 10. “Exhibit J” – Cultural Resources
- 11. “Exhibit K” - Other Documentation, Permits, Amendments or Revisions

Section IV: Bank Evaluation and Development

- A. Bank Site Assessment by the Signatory Agencies, in coordination with other members of the IRT.

Representatives of the Signatory Agencies, in coordination with other members of the IRT, have inspected and evaluated the Bank’s Waters of the U.S., Waters of the State, and Buffers and have agreed upon the assignment of Credits set forth in **Exhibit F-1**.

- B. Bank Sponsor's Responsibilities for Bank Development

The Bank Sponsor agrees to perform all necessary work, in accordance with the provisions of this BEI, as described in the Development Plan, on the Bank Property until the Bank Sponsor has demonstrated to the satisfaction of the Signatory Agencies, in coordination with other members of the IRT, that the Bank complies in all respects with all requirements contained in this BEI pertaining to Bank development.

C. Phase I Environmental Site Assessment

The Property Owner has provided a current Phase I Environmental Site Assessment of the Bank Property, attached hereto as **Exhibit G**, showing that the Bank Property is not subject to any recognized environmental conditions as defined by the American Society for Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process” (i.e., the presence or likely presence of any Hazardous Substances or petroleum products). If the Phase I Environmental Site Assessment identified any recognized environmental conditions, the Property Owner represents and warrants to the IRT that all appropriate assessment, clean-up, remedial or removal action has been completed.

D. Permits

The Bank Sponsor will obtain all appropriate permits and other authorizations needed to construct and maintain the Bank. This BEI does not constitute or substitute for any such approval.

E. Construction Phases

If the Development Plan for the Bank is to be implemented in phases, the Bank Sponsor shall submit a written request to the Signatory Agencies, in coordination with other members of the IRT, for approval of each phase. Subsequent phases will need to comply with Signatory Agencies’ documentation requirements in effect on the date of submission of the complete documentation for the proposed phase. Establishment of each phase of the Development Plan must be approved by the Signatory Agencies, in coordination with other members of the IRT.

F. Modification of the Development Plan

In the event that after the BEI is signed by the Parties, the Bank Sponsor and the Signatory Agencies, in coordination with other members of the IRT, determine that modifications must be made in the Development Plan to ensure a successful Bank, or in order to comply with specific permits or other authorizations needed to establish the Bank, the Parties shall meet to discuss the required modifications, and the Bank Sponsor shall submit a written request for approval of such modifications to the IRT within 60 days of the meeting. Upon written approval from the Signatory Agencies, the Bank Sponsor shall then implement all approved modifications. The Bank Sponsor shall provide revised as-built drawings to the IRT within 90 days of completion of the modifications.

G. Property Assessment and Warranty

The Property Owner shall notify the IRT of any errors or discrepancies in the Property Assessment and Warranty (**Exhibit E-2**) discovered subsequent to the Property Owner’s signing of this BEI. The Signatory Agencies, in coordination with other members of the IRT, shall evaluate any impacts of the errors or discrepancies on the Bank Property and

the Conservation Easement, and may reduce the number of available Credits as a result of such impacts according to the policies of the Signatory Agencies in effect at the time of notice to the IRT.

Section V: Bank Establishment Date

The Bank Establishment Date will occur and Transfer of Credits may begin only when all of the following actions have occurred:

1. The BEI has been fully executed by all of the Parties,
2. The Conservation Easement has been accepted by a Grantee approved by the Signatory Agencies, in coordination with the other members of the IRT, and has been recorded in the Official Records of the county in which the Bank Property is located, and;
3. The Bank Sponsor has complied with its obligation to furnish financial assurances in accordance with Section VI.

Within 30 days of the Bank Establishment Date, the Bank Sponsor shall upload the final, signed BEI including all of its Exhibits, to RIBITS and provide an electronic copy to each member of the IRT.

Section VI: Financial Assurances

The Bank Sponsor is responsible for providing financial assurances for the performance and completion of Bank construction, management, monitoring, and Remedial Action in accordance with this BEI, as set forth in this Section VI. The financial assurances shall be held in accordance with Section VIII.E. The Bank Sponsor shall notify the IRT in accordance with Section XII.K. upon furnishing each of the following financial assurances:

A. Construction Security

Prior to the first Credit Release, the Bank Sponsor shall furnish to USACE Construction Security in the amount of 100% of a reasonable third party estimate or contract to implement the Re-establishment and Rehabilitation of Waters of the U.S., Waters of the State, and Buffers on the Bank Property in accordance with the Development Plan as specified in **Exhibit C-2**. The Construction Security shall be in the form of an irrevocable standby letter of credit. The Bank Sponsor shall ensure that the full amount of the Construction Security shall remain in effect throughout the performance of construction and planting for the Re-establishment and Rehabilitation of Waters of the U.S., Waters of the State, and Buffers on the Bank Property in accordance with the Development Plan. *Provided, however*, that if all such construction and planting is completed in accordance with the Development Plan prior to the date on which Bank Sponsor would otherwise be required to furnish the Construction Security then no Construction Security shall be required.

B. Performance Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish to USACE Performance Security in the amount of 20% of the Construction Security as specified in **Exhibit C-3**. The Performance Security shall be in the form of an irrevocable standby letter of credit. The Bank Sponsor shall ensure that the full amount of the Performance Security is available in accordance with Section VIII.E.1.b.2. until the Signatory Agencies determine that all of the Performance Standards, all Remedial Action(s), and any additional Performance Standards required by such Remedial Action(s) under Section VIII.F are met.

C. Interim Management Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish to USACE Interim Management Security in the amount specified in **Exhibit D-1**. The amount of the Interim Management Security shall be equal to the estimated cost to implement the Interim Management Activities during the first three years of the Interim Management Period, as set forth in the Interim Management Security Analysis and Schedule (**Exhibit D-1**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars. The Interim Management Security shall be in the form of an irrevocable standby letter of credit. The Bank Sponsor shall ensure that the full amount of the Interim Management Security remains available in accordance with Section VIII.E.1.c. until the end of the Interim Management Period.

D. Letters of Credit

Letters of credit, when selected, shall be submitted to and approved by the USACE before they satisfy any financial assurance requirement. The USACE shall be the beneficiary of the letter of credit. The letter of credit shall be in a form approved by the USACE. If the issuer fails to extend the expiration date of any letter of credit, Bank Sponsor shall provide the USACE with replacement security in the form of a letter of credit, as determined and approved by the USACE, within 60 days after receiving notice of the issuer's failure to extend. If Bank Sponsor does not provide such replacement security on or before the expiration of the 60-day period, then the USACE shall have the right to immediately draw upon the letter of credit for which the replacement security was required.

E. Endowment Fund

1. The Endowment Fund shall be in an amount sufficient to fully provide for the financial requirements of the long-term management of the Bank in accordance with the Long-term Management Plan and the Endowment Fund Analysis and Schedule (**Exhibit D-2**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars.

2. The Bank Sponsor shall fund the Endowment Fund through Endowment Deposits according to the following schedule:
 - a. A minimum of 15% of the Endowment Amount shall be deposited prior to the earliest of: 1) the second Waters of the U.S. or Buffer Credit Release; or 2) the second Waters of the State Credit Release;
 - b. A minimum of 40% of the Endowment Amount shall be deposited prior to the earliest of: 1) the third Waters of the U.S. or Buffer Credit Release; or 2) the third Waters of the State Credit Release;
 - c. A minimum of 70% of the Endowment Amount shall be deposited prior to the earliest of: 1) the fourth Waters of the U.S. or Buffer Credit Release; or 2) the fourth Waters of the State Credit Release;
 - d. 100% of the Endowment Amount shall be deposited prior to the earliest of: 1) the fifth Waters of the U.S. or Buffer Credit Release; or 2) the fifth Waters of the State Credit Release.
3. Each year the Endowment Fund is not 100% funded, the Endowment Amount must be adjusted for inflation. The Bank Sponsor must make this adjustment using annual Consumer Price Index (CPI) data that is published every February by the California Department of Industrial Relations, Division of Labor Statistics and Research. When completing the calculation, the Bank Sponsor shall use the CPI value for all urban consumers. The Bank Sponsor will report the adjustment, utilizing the prior year's annual versus quarterly CPI, to each Signatory Agency by March 1st each year, until the Endowment Fund is fully funded. The Bank Sponsor must apply the adjustment to the amount of the original Endowment Amount. If the annual CPI is less than or equal to zero, then no adjustment is made for that year.
4. The Bank Sponsor shall notify the IRT of each Endowment Deposit made, within 30 days of such deposit.

Section VII: Credit Release

Each Credit Release must be requested in writing by the Bank Sponsor and must be approved in writing by the USACE and/or CDFW, as applicable.

A. Waters of the U.S. and Buffer Credit Release

1. Upon Bank Sponsor's compliance with all applicable requirements set forth in this Section VII.A., Credits as described in the Credit Table (**Exhibit F-1**) may be released for Transfer, as described below. Monitoring for Performance Standards for Credit Releases is for a minimum of five years. The actual number of Credits released shall be determined in writing by the USACE based upon as-built conditions, extent of Waters of the U.S. delineated, attainment of the Performance

Standards, funding of the Endowment Fund in accordance with Section VI.E, and compliance with requirements of this BEI and any associated authorization. Upon each Credit Release, USACE shall enter the number of Credits released into RIBITS. No Credit Transfer shall occur until the applicable Credit Release has occurred. Credits may be released as follows:

- a. Release 1: 15% of the total anticipated Waters of the U.S. and Buffer Credits upon the Bank Establishment Date.
 - b. Release 2: Up to an additional 25% of the total anticipated Waters of the U.S. and Buffer Credits (40% cumulative total) when: i) Bank Sponsor has submitted as-built drawings pursuant to Section VII.A.2, ii) the USACE has approved the as-built condition in writing, and iii) the Bank Sponsor has funded a minimum of 15% of the Endowment Amount per Section VI.E.2.a. Release 1 is a prerequisite for release 2.
 - c. Release 3: Up to an additional 15% of the total anticipated Waters of the U.S. and Buffer Credits (55% cumulative total) when: i) the Bank Sponsor has submitted the Second Year Monitoring Report as required by the Development Plan, ii) Year 2 Performance Standards have been attained, and iii) the Bank Sponsor has funded a minimum of 40% of the Endowment Amount per Section VI.E.2.b. Release 2 is a prerequisite for release 3.
 - d. Release 4: Up to an additional 15% of the total anticipated Waters of the U.S. and Buffer Credits (70% cumulative total) when: i) the Bank Sponsor has submitted the Third Year Monitoring Report as required by the Development Plan, ii) Year 3 Performance Standards have been attained, and, and iv) the Bank Sponsor has funded a minimum of 70% of the Endowment Amount per Section VI.E.2.c. Release 3 is a prerequisite for release 4.
 - e. Release 5: Up to an additional 15% of the total anticipated Waters of the U.S. and Buffer Credits (85% cumulative total) when: i) the Bank Sponsor has submitted the Fourth Year Monitoring Report as required by the Development Plan, ii) Year 4 Performance Standards have been attained, and iii) the Bank Sponsor has funded 100% of the Endowment Amount per Section VI.E.2.d. Release 4 is a prerequisite for release 5.
 - f. Final Release: Up to an additional 15% of Waters of the U.S. and Buffer Credits (100% cumulative total) when i) the Bank Sponsor has submitted the Final Monitoring Report as required by the Development Plan, ii) final Performance Standards have been attained, iii) any required Remedial Actions are completed, and iv) any additional Performance Standards required as a result of required Remedial Actions have been attained, and v) submittal of a Waters of the U.S. jurisdictional determination and delineation by the Bank Sponsor. Release 5 is a prerequisite for the final release.
2. The Bank Sponsor shall submit as-built drawings, with accurate maps of the Re-establishment, Rehabilitation, and Buffer areas to the IRT no later than 90 calendar

days following completion of construction associated with the Re-establishment and Rehabilitation of Waters of the U.S. and Buffers on the Bank Property. The as-built drawings shall consist of full-size construction plans, with as-built conditions clearly shown. The as-built drawings and any attachments must describe in detail any deviation from the Development Plan.

3. Each Credit Release, with the exception of the first and the second, is also contingent upon the Bank Sponsor's submission of the annual report for the current reporting period in accordance with Section IX.B., and a site visit at the appropriate time of year, as determined by the USACE.
4. Any deviation from the Development Plan or failure to meet Performance Standards may reduce the number of Credits available for release as determined by the USACE, in coordination with the IRT. The Bank Sponsor shall revise the Credit Table in **Exhibit F-1** as directed by the USACE to reflect any revision in the available Credits.

B. Waters of the State Credit Release

1. Credits for Waters of the State shall be determined and released as described in this Section VII.B and the Credit Table (**Exhibit F-1**). Anticipated Waters of the State Credits have been assigned to the Bank based upon Credit methodologies developed by the IRT.
2. Upon the Bank Sponsor's submittal of all documentation required under this BEI, and approval by the CDFW, CDFW will release Credits for Waters of the State as described below. The actual number of Credits Released shall be determined by CDFW, in coordination with the IRT, based upon attainment of the Performance Standards (if applicable) and upon funding of the Endowment Amount in accordance with Section VI.E. No Credit Transfer shall occur until the applicable Credit Release has occurred.
 - a. Release 1: 15% of the total anticipated Waters of the State Credits upon the Bank Establishment Date.
 - b. Release 2: Up to an additional 25% of the total anticipated Waters of the State Credits (40% cumulative total) when: i) Bank Sponsor has submitted as-built drawings pursuant to Section VII.A.2, ii) the CDFW has approved the as-built condition in writing, and iii) the Bank Sponsor has deposited a minimum of 15% of the Endowment Amount per Section VI.E.2.a. Release 1 is a prerequisite for release 2.
 - c. Release 3: Up to an additional 15% of the total anticipated Waters of the State Credits (55% cumulative total) when: i) the Bank Sponsor has submitted the Second Year Monitoring Report as required by the Development Plan, ii)

- Year 2 Performance Standards have been attained, and iii) the Bank Sponsor has deposited a minimum of 40% of the Endowment Amount per Section VI.E.2.b. Release 2 is a prerequisite for release 3.
- d. Release 4: Up to an additional 15% of the total anticipated Waters of the State Credits (70% cumulative total) when: i) the Bank Sponsor has submitted the Third Year Monitoring Report as required by the Development Plan, ii) Year 3 Performance Standards have been attained, and, and iv) the Bank Sponsor has deposited a minimum of 70% of the Endowment Amount per Section VI.E.2.c. Release 3 is a prerequisite for release 4.
 - e. Release 5: Up to an additional 15% of the total anticipated Waters of the State Credits (85% cumulative total) when: i) the Bank Sponsor has submitted the Fourth Year Monitoring Report as required by the Development Plan, ii) Year 4 Performance Standards have been attained, and iii) the Bank Sponsor has deposited 100% of the Endowment Amount per Section VI.E.2.d. Release 4 is a prerequisite for release 5.
 - f. Final Release: Up to an additional 15% of the total anticipated Waters of the State Credits (100% cumulative total) when i) the Bank Sponsor has submitted the Final Monitoring Report as required by the Development Plan, ii) final Performance Standards have been attained, iii) any required Remedial Actions are completed, and iv) any additional Performance Standards required as a result of required Remedial Actions have been attained. Release 5 is a prerequisite for the final release.
3. Each Waters of the State Credit Release, with the exception of the first and the second, is also contingent upon the Bank Sponsor's submission of the annual report for the current reporting period in accordance with Section IX.B, and an IRT site visit at the appropriate time of year, as determined by the CDFW.
 4. Any deviation from the Development Plan or failure to meet Performance Standards may reduce the number of Waters of the State Credits available for release as determined by CDFW, in coordination with the IRT. The Bank Sponsor shall revise the Credit Table in **Exhibit F-1** as directed by CDFW, to reflect any reduction in the available Waters of the State Credits.
 5. Each CDFW approved Credit Release is also contingent upon the Bank Sponsor's payment of the Credit Release Fee to CDFW. Pursuant to Fish and Game Code 1799(e)(2), CDFW shall collect a Credit Release Fee per Bank, which may be apportioned by an amount that equals the ratio of the number of CDFW Credits released to the total number of CDFW Credits in the Bank. Payments shall be due following each CDFW Credit Release no later than the due date of the Bank's annual report. The payments shall be submitted following each CDFW Credit Release and no later than the time of the submission of the Bank's annual report. The CDFW may require the Bank Sponsor to cease selling CDFW Credits and may stop CDFW Credit Releases until these fees are paid in full. The Credit Release Fee shall be paid

in full by the Bank closure date. The CDFW shall assess a penalty of 10 percent of the amount of fees due if there is a failure to remit the amount payable when due.

Section VIII: Operation of the Bank

A. Service Area

The basis and description of the Service Area for each Signatory Agency is provided in **Exhibit B**.

B. Transfer of Credits

1. The Transfer of Credits may begin only upon the Bank Establishment Date. Bank Sponsor shall have the exclusive right to determine the price for any and all Bank Credits it offers for sale. The minimum Credit unit that may be transferred is 0.01 Credit.
2. In no case shall the number of Credits of any particular type Transferred or obligated exceed the total number of Credits of that type which have been released for Transfer, as evidenced by written approval of the Signatory Agencies, in coordination with the other members of the IRT.
3. Use of Credits at the Bank to mitigate or compensate impacts to Waters of the U.S. and Waters of the State must be authorized by the appropriate Signatory Agency on a case-by-case basis.
4. Bank Sponsor shall notify all members of the IRT upon any Credit Transfer in accordance with Section IX.C. of this BEI. Upon Transfer of Credits, the Bank Sponsor shall enter the Credit Transfer into RIBITS.
5. If the Bank Property is damaged after the Bank Establishment Date, and such damage materially impairs Waters of the U.S., Waters of the State, and/or Buffers on such damaged Bank Property, then the Signatory Agencies, in coordination with the other members of the IRT, may, at their discretion, direct Bank Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the Bank in proportion to such damaged area unless and until the Bank Sponsor has reasonably restored such damaged area pursuant to a Remedial Action plan approved by the Signatory Agencies, in coordination with the other members of the IRT.
6. Credit modifications due to expansion, restoration or other means that have been approved in writing by the Signatory Agencies shall be set forth in an amendment to this BEI according to Section XII.D.1.
7. Each Credit Transfer shall be made pursuant to a written purchase agreement in the form of **Exhibit F-2**.
8. The USACE and/or CDFW, as applicable, are responsible for determining the adequate amount of mitigation Credit needed for proposed projects. Advance

purchase of Credits without the USACE and/or CDFW approval, as applicable, is at the risk of the applicant and Bank Sponsor.

9. This BEI applies only to those Credits assigned by agencies that are signatory to this BEI and set forth in **Exhibit F-1**. Any proposed use of the Bank Property not specifically established by this BEI and not prohibited by the Conservation Easement shall be submitted to the Signatory Agencies, the other members of the IRT, and Grantee for review and may only proceed upon a written determination by the Signatory Agencies and Grantee that such proposed use would not conflict with the approved use of the Bank Property or terms and conditions of the Conservation Easement.

C. Interim and Long-term Management and Monitoring

1. Interim Management and Monitoring

Bank Sponsor shall be responsible for conducting Interim Management Activities according to the Development Plan (**Exhibit C-1**) until the end of the Interim Management Period.

2. Long-term Management and Monitoring

At the end of the Interim Management Period, the Property Owner shall implement long-term management and monitoring of the Bank Property according to the Long-term Management Plan (**Exhibit D-5**). Property Owner shall be obligated to manage and monitor the Bank Property in perpetuity to preserve its habitat and conservation values in accordance with this BEI, the Conservation Easement and the Long-term Management Plan. Such activities shall be funded through the Endowment Fund according to Section VIII.E.2.b. The Property Owner and the IRT members shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan which may be necessary or appropriate to better conserve the habitat and conservation values of the Bank Property. During the Long-term Management Period, Property Owner shall be responsible for submitting annual reports to the IRT in accordance with Section IX.B of this BEI. The Property Owner shall upload annual reports into RIBITS.

D. Bank Closure Plan

1. Upon Bank closure, no further Credit Transfer shall occur.
2. The Bank closure shall be deemed to take place upon occurrence of all of the following:
 - a. All Performance Standards have been met and all Remedial Action required under Section VIII.F has been completed as evidenced by 1) timely submission of all required annual reports in accordance with Section IX.B; 2) the third anniversary of the completion of all Remedial Action, if any, in accordance with the applicable Remedial Action plan(s); 3) an on-site

inspection by the Signatory Agencies, in coordination with the other members of the IRT; 4) written approval from the Signatory Agencies; and

- b. Either:
 - 1) The last authorized Credit has been Transferred; or
 - 2) The Bank Sponsor requests Bank closure by written notice to the IRT and the Signatory Agencies provide written approval of the closure; and
- c. All financial responsibilities of the Bank Sponsor have been met, including 100% funding of the Endowment Fund for not less than three years, and payment of all CDFW Credit Release Fees.

E. Financial Operations

All financial transactions shall be reported in accordance with Section IX.

1. Securities

a. Construction Security

- 1) The USACE, as holder of the security, in coordination with CDFW, shall be entitled to draw upon the Construction Security if:

- (i) any Transfer of Credits has been made; and
- (ii) either (i) at any time after the Bank Establishment Date, but no later than the first full growing season after the date of the first Credit Transfer, the USACE, in coordination with other members of the IRT, determines that the Bank Sponsor has not initiated construction and planting in accordance with the Development Plan, or (ii) two years has elapsed since the Bank Sponsor has initiated implementation of the Development Plan, and construction and planting in accordance with the Development Plan is not complete.

- 2) The Construction Security shall be cancelled by USACE, in coordination with CDFW, only after the Bank Sponsor completes the construction and planting activities in accordance with the Development Plan, as demonstrated by:

- 1. Bank Sponsor's submission of as-built drawings in accordance with Section VII.A.2 and Section VII.B.3;
- 2. An on-site inspection by the Signatory Agencies; and
- 3. Prior coordination with the IRT.

b. Performance Security

- 1) The USACE, as holder of the Performance Security, in coordination with IRT, shall be entitled to draw upon the Performance Security in accordance with Section VIII.F.1.
- 2) If any portion of the Performance Security is drawn upon pursuant to Section VIII.F.1, then the Bank Sponsor shall replenish the Performance Security to the amount specified in **Exhibit C-3** within 90 days after written notice from the USACE.
- 3) The Performance Security shall be cancelled by the USACE after all of the Performance Standards, all Remedial Action(s), and any additional Performance Standards required by such Remedial Action(s) under Section VIII.F are met.

c. Interim Management Security

- 1) The USACE, as holder of this security, shall be entitled to draw upon the Interim Management Security if any Transfer of Credits has been made and the USACE, in coordination with the IRT, determines that during any 12-month period the Bank Sponsor has not performed all tasks as required during the Interim Management Period.
- 2) In the event that the Interim Management Security is drawn upon pursuant to this section, the Bank Sponsor shall replenish the Interim Management Security to the amount specified in **Exhibit D-1** within 90 days after written notice from the USACE.
- 3) Provided that the Bank Property has been managed in accordance with the Interim Management Activities, as identified in **Exhibit C-1**, to the satisfaction of the USACE, the Interim Management Security shall be cancelled by the USACE at the end of the Interim Management Period.

2. Endowment Fund

a. Endowment Deposits

- 1) The Endowment Deposits the Endowment Holder receives are to be deposited into a fund and held in trust as designated in the Endowment Agreement (**Exhibit D-3**).

b. Endowment Fund Management

- 1) Notwithstanding Probate Code section 18501-18510, the Endowment Amount should not decrease in value through expenditure or investment strategy. The Endowment Fund is intended to increase in value to keep up with inflation. A portion of the interest and earnings on the Endowment Fund balance is expected to be reinvested by the Endowment Holder into the Endowment Fund in accordance with the Endowment Agreement. After the Endowment Fund is 100% funded, no additional Endowment Fund monies will be required from the Bank Sponsor.
- 2) The Parties anticipate that any Endowment Fund interest earnings beyond those necessary to provide for growth of the Endowment Fund commensurate with inflation may be made available by the Endowment Holder to the Property Owner to fund annual long-term management of the Bank Property in accordance with the Endowment Agreement.
- 3) In accordance with the Endowment Agreement, any Endowment Fund revenues (including earnings and interest) remaining after the Endowment Fund is adjusted for inflation that exceed the anticipated annual long-term management expenses of the Bank Property are to be retained in the Endowment Fund by the Endowment Holder and may be made available by the Endowment Holder to the Property Owner to fund unexpected expenses and Adaptive Management needs.
- 4) The Property Owner shall invoice the Endowment Holder for management activities following the invoicing instructions in **Exhibit D-3**.
- 5) Notwithstanding Probate Code section 18501-18510, in the event there is insufficient funding available from the Endowment Fund revenues to fund anticipated annual long-term management expenses, the Property Owner shall consult with the IRT to identify the most effective means to implement the management measures and tasks with the resources available. After consultation with the IRT, the Property Owner shall submit to the IRT a proposed temporary revised Long-term Management Plan and Endowment Fund Analysis in writing to the IRT within 60 days after completion of its consultation with the IRT. Upon written approval of the Signatory Agencies, in coordination with the other members of the IRT, and any required notification to the Endowment Holder, in accordance with the Endowment Agreement, the Property Owner shall implement the approved revised management measures and tasks. Should sufficient funding become available from the Endowment Fund revenues to fund originally anticipated annual

long-term management costs, the original Long-term Management Plan shall be restored in full force and effect.

3. Financial Records and Auditing

The Bank Sponsor and/or Property Owner, as appropriate, is required to maintain complete and accurate records relating to the financial operation of the Bank using generally accepted accounting principles (GAAP), developed by the Federal Accounting Standards Advisory Board. At the request of the Signatory Agencies, no more frequently than annually, the Bank Sponsor and/or Property Owner, as appropriate, shall have records relating to the financial operation of the Bank audited by an independent, licensed Certified Public Accountant and shall submit the auditor's report to the IRT upon completion.

The Signatory Agencies or their designated representatives shall also have the right to review and copy any records and supporting documentation pertaining to the performance of this BEI. The Bank Sponsor and Property Owner agree to maintain such records for possible audit for a minimum of three years after Bank closure, or three years after the date of performance, whichever is later. Bank Sponsor and Property Owner agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employee or representative who might reasonably have information related to such records. Further, Bank Sponsor and Property Owner agree to include a similar right of State and federal auditors to audit records and interview employees and representatives in any contract related to the performance of this BEI.

F. Remedial Action Plan

Prior to Bank closure, if any Party discovers any failure to achieve the Performance Standards or any injury or adverse impact to the Re-establishment, Rehabilitation, and/or Buffers areas on the Bank Property, the Party making the discovery shall notify the other Parties. The Signatory Agencies, in coordination with other members of the IRT, may require the Bank Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section IX.B. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

1. Within 60 days of the date of written notice from the Signatory Agencies, the Bank Sponsor shall develop a Remedial Action plan and submit it to the Signatory Agencies for written approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse impact to the Bank Property and set forth a schedule within which the Bank Sponsor will implement those actions. The Bank Sponsor shall, at Bank Sponsor's cost, implement the necessary and appropriate Remedial Action in accordance with

the Remedial Action plan approved by the Signatory Agencies. In the event the Bank Sponsor fails to submit a Remedial Action plan to the Signatory Agencies in accordance with this section, the Signatory Agencies will notify the Bank Sponsor that the Bank Sponsor is in default and may identify Remedial Action the Signatory Agencies deem necessary. If (a) the Bank Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the Signatory Agencies, in accordance with this section, or (b) conditions have not improved or continue to deteriorate two years after the date that the Signatory Agencies approved a Remedial Action plan or notified Bank Sponsor of Remedial Actions the Signatory Agencies deemed necessary, then the USACE, as holder of the Performance Security, may draw upon that security to undertake Remedial Action on the Bank Property.

2. If the Signatory Agencies, in coordination with the other members of the IRT, determine that the Bank is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this BEI), then the Signatory Agencies shall notify the Bank Sponsor. Upon the Signatory Agencies giving such notice, Bank Sponsor shall immediately cease Transfer of Credits. The Signatory Agencies will determine what Remedial Action is necessary to correct the Credit deficit, and Bank Sponsor shall implement such Remedial Action, in accordance with this Section VIII.F.

Section IX: Reporting

A. Annual Inflation Adjustments to Endowment Fund Report

By March 1st of each year following the Bank Establishment Date and until the Endowment Fund is 100% funded, the Bank Sponsor shall report to the Signatory Agencies and the Endowment Holder, in hard copy and in editable electronic format, the following values:

1. The adjusted Endowment Amount determined in accordance with Section VI.E.3;
and
2. The resulting adjusted Endowment Deposit.

B. Annual Report

Bank Sponsor or Property Owner, as appropriate, shall submit an annual report to the IRT, in hard copy and in editable electronic format, on or before September 1st of each year following the Bank Establishment Date. Each annual report shall cover the period from July 1st of the preceding year (or if earlier, the Bank Establishment Date for the first annual report) through June 30th of the current year (the "Reporting Period"). The Bank Sponsor shall be responsible for the reporting tasks described below until Bank closure. After Bank closure, the Property Owner shall be responsible for such reporting, annually, as per the Long-term Management Plan. The annual report shall address the following:

1. Bank Development

The annual report shall document the degree to which the Bank is meeting the Performance Standards. The annual report shall describe any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If Remedial Action has been completed, the annual report shall also evaluate the effectiveness of that action.

2. Interim Management and Long-term Management

The Development and Long-term Management Plans contain reporting requirements that are separate from, and in addition to, the requirements listed below for the annual report.

The annual report shall contain an itemized account of the management tasks and any Remedial Actions conducted during the Reporting Period in accordance with the Development Plan or Long-term Management Plan, including the following:

- a. The time period covered, i.e. the dates “from” and “to”;
- b. A description of each management task conducted, the dollar amount expended and time required;
- c. The total dollar amount expended for management tasks conducted during the Reporting Period;
- d. A description of the management and maintenance activities proposed for the next year; and
- e. A description of the overall condition of the Bank, including photos documenting the status of the Bank and a map documenting the location of the photo points.

3. Transfer of Credits

The annual report shall include an updated Credit Transfer Ledger (**Exhibit F-3**) showing all Credits transferred since the Bank Establishment Date and an accounting of remaining Credits.

4. Financial Operation

The annual report shall provide Endowment Fund data, including but not limited to deposits, annual long-term management expenses, and disbursements received.

C. Credit Transfer Reporting

Upon the Transfer of each and every Credit the Bank Sponsor shall enter the Credit Transfer into RIBITS and submit to each member of the IRT:

1. A copy of the fully executed Credit Purchase Agreement in the form provided at **Exhibit F-2**; and
2. An updated Credit Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit F-3**.

D. Reporting Compliance Measures

Failure to submit complete reports in a timely manner shall result in the Bank being subject to the Signatory Agencies, in coordination with the other members of the IRT, suspending all Credit Transfers or decreasing the number of available Credits.

1. Extension requests

Requests to extend report deadlines shall be submitted to the Signatory Agencies no later than 30 days prior to the original deadline. The Signatory Agencies, in coordination with the other members of the IRT, will have 15 calendar days to approve or deny the extension request. If not approved or denied within 15 days, the extension request will have been deemed “approved.”

2. Reports not received by the Signatory Agencies in a timely manner

Missing reports will result in automatic Credit Transfer suspension effective the 30th day that the report is past due, given that there has been no approved extension request. The suspension will be lifted within 5 days after the report has been received by the Signatory Agencies.

3. Incomplete reports

The Signatory Agencies will have 30 days to notify the Bank Sponsor that the report is incomplete, in which the Bank Sponsor will be given a new deadline for complying with the requirements set forth in this BEI. This deadline is at the discretion of the Signatory Agencies based on the amount of time it should reasonably take to complete the report.

If the Bank Sponsor has not been notified of incompleteness on or prior to the date that is 45 days after the report due date, the report shall be deemed complete.

Section X: Responsibilities of the Bank Sponsor and Property Owner

- A. Without limiting any of its other obligations, including without limitation, under the Conservation Easement, Bank Sponsor and Property Owner each hereby agrees and covenants that:

1. If the entity proposed to hold the Conservation Easement is not a Signatory Agency, Bank Sponsor and Property Owner shall, prior to the execution of the Conservation Easement at **Exhibit E-4** hereof, provide the Signatory Agencies with satisfactory evidence that the entity proposed to hold the Conservation Easement (Grantee) is

authorized to do so pursuant to California Civil Code § 815.3 and Government Code § 65966 and 65967, has a primary purpose of long-term land stewardship for conservation purposes, has agreed to hold said Conservation Easement, and has been approved by the Signatory Agencies.

2. Bank Sponsor shall be responsible for all activities and costs associated with the establishment and operation of the Bank, including but not limited to construction, planting, Remedial Action, documentation, maintenance, management, monitoring, and reporting, until completion of the Interim Management Period.
3. Bank Sponsor agrees to assume responsibility for compensatory mitigation requirements of permits issued by permitting agencies for which it Transfers Credits once a permittee has secured the appropriate number and type of Credits from the Bank Sponsor, and to provide Signatory Agencies with the written Credit Purchase Agreement (**Exhibit F-2**) that confirms that the Bank Sponsor has accepted the responsibility for providing the required compensatory mitigation.
4. It shall not discharge or release to or from the Bank Property, or permit others to discharge or release to or from the Bank Property, any material, waste or substance designated as hazardous or toxic or as a pollutant or contaminant under any federal, state, or local environmental law or regulation (each a “Hazardous Substance”).
5. Property Owner shall not create or suffer any lien or encumbrance upon the Bank Property other than as set forth in the Property Assessment and Warranty approved by the Signatory Agencies, and Property Owner shall not execute, renew, or extend any lien, lease, license, or similar recorded or unrecorded right or interest in the Bank Property without the prior written consent of the Signatory Agencies.
6. It shall not construct or install any structure or improvement on, or engage in any activity or use of, the Bank Property, including mineral exploration or development, excavation, draining, dredging, or other alteration of the Bank Property that is not consistent with and in accordance with this BEI and its Exhibits.
7. Bank Sponsor shall ensure that the Bank Property is managed and maintained in accordance with the Interim Management Activities set forth in the Development Plan, this BEI, and its Exhibits.
8. Property Owner shall allow, or otherwise provide for, access to the Bank Property by the Bank Sponsor, Grantee, and the IRT, as described in the Conservation Easement.
9. The Property Owner shall grant to Bank Sponsor all rights and authority necessary to carry out, and shall not limit the Bank Sponsor in performing, its responsibilities and obligations on and affecting the Bank Property in accordance with this BEI.
10. The Property Owner shall ensure that the Bank Property is managed and maintained in accordance with the Long-Term Management Plan, this BEI and its Exhibits.

- B. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this BEI, or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this BEI or extensions for the performance of the requirements of this BEI.
- C. An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates. The Bank Sponsor or Property Owner must show cause for any or every delayed step or requirement for which an extension is sought.

Section XI: Responsibilities of the Signatory Agencies

A. Signatory Agencies Oversight

The Signatory Agencies agree to provide appropriate oversight in carrying out provisions of this BEI.

B. Signatory Agency Review

The Signatory Agencies will make a good faith effort to provide comments on the annual reports and Remedial Action plans within 60 days from the date of complete submittal. If the Signatory Agencies are unable to review Remedial Action plans within the time specified, this fact will be reflected in any schedule established for performance of Remedial Action and any evaluation of timely performance of Remedial Action by Bank Sponsor.

C. Compliance Inspections

The Signatory Agencies shall conduct compliance inspections as necessary:

1. To verify the Credits currently available in the Bank; and/or
2. Recommend Remedial Action as needed; or
3. For any other purpose determined by the Signatory Agencies as necessary to assess compliance with this BEI.

Section XII: Other Provisions

A. Force Majeure

1. Neither the Bank Sponsor nor Property Owner shall be responsible for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for any provision of this Section XII to apply, the Bank Sponsor or Property Owner, as appropriate, shall bear the burden of demonstrating all of the following:

- a. That the damage or non-compliance was caused by circumstances beyond the control of the Bank Sponsor, Property Owner, and any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants;
 - b. That neither the Bank Sponsor, Property Owner, nor any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and
 - c. The period of damage or non-compliance was a direct result of such circumstances.
2. The Bank Sponsor or Property Owner shall notify the IRT within 24 hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Bank Sponsor/Property Owner and the IRT shall meet to discuss the course of action in response to such occurrence. In the meantime, Bank Sponsor/Property Owner shall continue to manage and maintain the Bank Property to the full extent practicable.

B. Dispute Resolution

1. The Parties agree to work together in good faith to resolve disputes concerning this BEI, but any of the Parties may seek any available remedy. Unless any of the Parties has initiated legal action, any Party may elect to employ an informal dispute resolution process whereby:
 - a. The electing Party shall notify the other Parties of the dispute, the position of the aggrieved Party (including, if applicable, the basis for contending that a violation has occurred), and the remedies the electing Party proposes;
 - b. The notified Parties shall have 30 days (or such other time as the Parties may mutually agree) to respond. During this time, any such other Parties may seek clarification of the initial notice;
 - c. Within 30 days after such notified Parties' response was provided or due, whichever is later, the Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution, or shall establish a specific process and timetable to seek such resolution; and
 - d. The dispute resolution process may be terminated by any Party upon written notice to all other Parties.

C. Conveyance of Bank Property or Other Interests

1. All transfers of any interest in the Bank Property are subject to the applicable provisions of the Conservation Easement.

2. The Property Owner shall have the right to sell, assign, transfer or convey (each a “transfer”) its interest in the Bank Property at any time; *provided, however*, that any such transfer on or after the execution date of this BEI must be made in accordance with this BEI and the Conservation Easement, and shall be subject to written concurrence by the Signatory Agencies, in coordination with the other members of the IRT. Such concurrence shall be subject to the requirement that the transferee assumes and agrees in writing to observe and perform all of the Property Owner’s obligations pursuant to this BEI and the Conservation Easement. From and after the date of any transfer by Property Owner of its interest in the Bank Property, the transferor shall have no further obligations hereunder and all references to Property Owner in this BEI shall thereafter refer to such transferee, except that the transferor’s liability for acts, omissions, or breaches occurring prior to the transfer shall survive the transfer. Any transfer of the Property Owner’s interest in the Bank Property made without the prior written concurrence of the Signatory Agencies may, at the discretion of the Signatory Agencies, result in the termination of this BEI according to Section XII.D.2.c.
3. The Bank Sponsor may sell or convey its interest in the Bank at any time, provided that Bank Sponsor is in full compliance with all requirements of this BEI (including all financial assurance requirements), and subject to the prior written approval of the Signatory Agencies. If any of the financial assurances required under this BEI are not completely funded at the time the Bank Sponsor requests Signatory Agencies’ approval of a sale or conveyance, then the Signatory Agencies shall not approve such sale or conveyance unless and until either the current Bank Sponsor, or the proposed replacement Bank Sponsor, shall have provided all required financial assurances. In addition, prior to sale or conveyance, the Bank Sponsor shall provide to each member of the IRT a written agreement signed by the replacement Bank Sponsor in which the Bank Sponsor assigns to the replacement Bank Sponsor, and the replacement Bank Sponsor assumes and agrees to perform, all of the responsibilities and obligations of the Bank Sponsor under the BEI. Any such sale or conveyance made without the prior written concurrence of the Signatory Agencies may, at the discretion of the Signatory Agencies, result in the termination of this BEI according to Section XII.D.2.c.

D. Modification and Termination of the BEI

1. Amendment and Modification

This BEI, including its Exhibits, may be amended or modified only with the written approval of the Parties. All amendments and modifications shall be fully set forth in a separate document signed by all Parties that shall be appended to this BEI.

For administrative purposes for CDFW, pursuant to Fish and Game Code 1798.6(a), any person seeking to amend any CDFW bank shall submit to the CDFW the appropriate review fee, a complete bank amendment package containing each of the

original bank agreement package documents, including any prior amendments, as well as any documents proposed to be amended or that would be affected by the proposed amendment.

2. Termination

- a. The Bank Sponsor and Property Owner may jointly withdraw the entire Bank Property and terminate this BEI at any time prior to any Credit Transfer, provided that Waters of the U.S., Waters of the State, and Buffers existing on the Bank Property prior to the initiation of any efforts to restore or enhance the Bank Property shall be preserved in a condition at least equal to that which existed prior to initiation of Bank establishment efforts, and as the Conservation Easement may require.
- b. In the event this BEI is terminated or the Bank is closed prior to the Transfer of all authorized Credits, any remaining Credits shall be extinguished and will no longer be available for Transfer.
- c. The Signatory Agencies may terminate this BEI if the Bank Sponsor or Property Owner sells or conveys the Bank or the Bank Property without the prior written concurrence of the Signatory Agencies, as required by Section XII.C.
- d. The USACE and CDFW may each terminate its participation in this BEI upon 30 days' notice to the other Parties, on the condition that each of the following has occurred:
 - 1) Bank Sponsor or Property Owner has breached one or more covenants, terms or conditions set forth herein;
 - 2) Bank Sponsor or Property Owner, as applicable, has received notice of such breach from the terminating Party in accordance with paragraph XII.B., if applicable, and XII.K.; and
 - 3) Bank Sponsor or Property Owner, as applicable, has failed to cure such breach within 30 days after such notice; provided that in the event such breach is curable in the judgment of the terminating Party, but cannot reasonably be cured within such 30 day period, the terminating Party shall not terminate this BEI so long as Bank Sponsor or Property Owner has commenced the cure of such breach and is diligently pursuing such cure to completion.
- e. If any Signatory Agency so requests, the Party proposing to

terminate participation in the BEI agrees to meet with the other Parties to discuss the reason(s) for such termination, prior to the termination taking effect. Notice of a request for such meeting shall be made by the requesting Signatory Agency not later than 15 calendar days from receipt of the notice of termination.

- f. Termination by one Signatory Agency shall not terminate or affect the other Signatory Agency under this BEI. Remaining Credits authorized under the authority of the withdrawing agency will no longer be available for Transfer.
- g. Nothing in this Section XII.D.2 is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the USACE and CDFW in the event of a threatened or actual breach of this BEI.

E. Default

The Bank Sponsor and/or Property Owner shall be in default if that Party fails to observe or perform any obligations or responsibilities required of it by this BEI. In the event the Bank Sponsor and/or Property Owner realize it is in default, it shall promptly notify the other Parties. Once the Parties receive notification or otherwise become aware that the Bank Sponsor and/or Property Owner is in default, the Parties may elect to either pursue informal dispute resolution consistent with Section XII.B or may cause the holder to draw upon and expend the appropriate financial security as necessary to continue Bank development, management, or operation, as provided in Section VI and VIII.E. In the event the informal dispute resolution process is invoked, the Signatory Agencies shall not draw upon financial securities until such time as the informal dispute resolution process has been terminated. This Section XII.E shall not be construed to modify or limit any specific right, remedy, or procedure in any Section of this BEI or any remedy available under applicable State and/or Federal Law.

F. Controlling Language

The Parties intend the provisions of this BEI and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this BEI conflicts with specific language in any document that is incorporated into this BEI by reference, the specific language within the BEI shall be controlling. The captions and headings of this BEI are for convenient reference only, and shall not define or limit any of its terms or provisions.

G. Entire Agreement

This BEI, and all exhibits, appendices, schedules and agreements referred to in this BEI, constitute the final, complete and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Bank, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this BEI or incorporated herein by reference, shall be binding or valid, with respect to the subject matter hereof. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section XII.D.1. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

H. Reasonableness and Good Faith

Except as specifically limited elsewhere in this BEI, whenever this BEI requires a Party to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If a Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

I. Successors and Assigns

This BEI and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this BEI.

J. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this BEI to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this BEI would be defeated by loss of the invalid or unenforceable provision.

K. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this BEI shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.

3. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section XII.K.

Bank Sponsor:

Wildlands SLR Holdings I, LLC
c/o Wildlands
3855 Atherton Road
Rocklin, CA 95765
Attn: General Counsel
Telephone: 916-435-3555
Fax: 916-435-3556

Property Owner:

Wildlands SLR Holdings I, LLC
c/o Wildlands
3855 Atherton Road
Rocklin, CA 95765
Attn: General Counsel
Telephone: 916- 435-3555
Fax: 916-435-3556

IRT Members:

U.S. Army Corps of Engineers (Signatory Agency)
Los Angeles District
South Coast Branch, Carlsbad Field Office
5900 La Place Court, Suite 100
Carlsbad, CA 92008
Attn: Branch Chief, SPL-2011-00694-SAS
Telephone: 760-602-4829
Fax: 760-602-4848

U.S. Fish and Wildlife Service
Carlsbad Office

2177 Salk Avenue
Carlsbad, CA 92008
Attn: Janet Stuckrath
Telephone: 760-431-9440
Fax: 760-431-5902

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105
Attn: Director, Water Division
Telephone: 415-947-8707
Fax: 415-947-3549

National Marine Fisheries Service
Southwest Regional Office
501 West Ocean Boulevard
Long Beach, CA 90802-4213
Attn: Area Office Supervisor
Telephone: 562-980-4041
Fax: 562-980-4092

California Department of Fish and Wildlife (Signatory Agency)
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
Attn: Regional Manager
Telephone: 858-467-4201
Fax: 858-467-4299

San Diego Regional Water Quality Control Board
2375 Northside Drive, Suite 100
San Diego, CA 92108
Attn: Alan Monji
Telephone: 619-521-3968

L. Counterparts

This BEI may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

M. No Third Party Beneficiaries

This BEI shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this BEI. The duties, obligations and responsibilities of the Parties to this BEI with respect to third parties shall remain as otherwise provided by law in the event this BEI had never been executed.

N. Availability of Funds

Implementation of this BEI by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this BEI may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this BEI to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

O. No Partnerships

This BEI shall not make or be deemed to make any Party to this BEI an agent for or the partner or joint venturer of any other Party.

P. Governing Law

This BEI shall be governed by and construed in accordance with the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the laws of the State of California, including but not limited to the Fish and Game Code, and other applicable federal and State of California laws and regulations.

Section XIII: Execution

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this BEI. This BEI shall be deemed executed on the date of the last signature by the Parties.

IN WITNESS WHEREOF, the Parties have executed this BEI as follows:

Bank Sponsor and Property Owner

By: _____

Name: _____

Title: _____

Date: _____

U.S. Army Corps of Engineers, Los Angeles District

By: _____

Name: _____

Title: _____

Date: _____

California Department of Fish and Wildlife, South Coast Region

By: _____

Name: _____

Title: _____

Date: _____