

**AMENDMENT NO. 1  
TO SANTA PAULA CREEK MITIGATION BANK ENABLING INSTRUMENT**

THIS AMENDMENT NO. 1 to the Santa Paula Creek Bank Enabling Instrument ("Amendment") is made by and among Richard E. Lyons and Laurie Prange Lyons, husband and wife; SPC Environmental Holdings, Inc., a California corporation; the U.S. Army Corps of Engineers ("USACE"); the U.S. Environmental Protection Agency ("USEPA"); and the California Department of Fish and Wildlife ("CDFW") (formerly California Department of Fish and Game) (collectively, the "Parties").

**RECITALS**

A. Richard E. Lyons and Laurie Prange Lyons, USACE, USEPA, and CDFW entered into the Santa Paula Creek Mitigation Bank Enabling Instrument ("BEI") on November 11, 2011. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the BEI.

B. On March 20, 2014, Richard E. Lyons and Laurie Prange Lyons, as the "Property Owners" and "Bank Sponsors," as defined in the BEI, and SPC Environmental Holdings, Inc. entered into the Assignment and Assumption Agreement ("Agreement") attached hereto as Exhibit A, and incorporated herein by this reference.

C. Under the Agreement, the Lyons' conveyed their interest in the Bank Property and the Bank to SPC Environmental Holdings, Inc. with the written consent of USACE, USEPA, and CDFW (the "Agencies"). The Agreement provided in part that the Agencies would not approve this Amendment until they received a deed or other legal instrument from the Lyons that meets the requirements in Section 10(b) of the Conservation Easement attached to the BEI as Exhibit D-4 and a new Long-Term Land Management Funding Recipient Agreement executed by SPC Environmental Holdings, Inc., the National Fish and Wildlife Foundation, and CDFW. The Agencies have received these two documents, both of which are attached hereto as Exhibit "B" and "C," respectively, and incorporated herein by this reference.

D. USACE desires to amend Section VIII.B.3 of the BEI to allow the use of its mitigation ratio checklist to determine the amount of Waters of the U.S. Credits that need to be purchased from the Bank in lieu of Credit sales being limited to temporary impacts or permanent impacts only when in combination with other non-preservation compensatory mitigation.

E. The purpose of this Amendment is to modify the BEI to make it consistent with the conveyances described in paragraph C and the procedure described in paragraph D above.

F. Federal regulations at 33 CFR 332.8(g) and 40 CFR Part 230 set forth the procedures for the USACE and USEPA to formally modify and amend the BEI. In accordance with the regulations:

1. On March 10, 2014, USACE notified the Parties of its determination to use the streamlined review process described in the regulations and provided the

Parties copies of this Amendment for a 30-day review period. USACE did not receive any substantive comments during the review period.

2. On April 18, 2014, USACE notified the Parties that it intended to approve this Amendment. USEPA and CDFW did not object to this Amendment within 15 days of receipt of the notification.

3. On July 1, 2014, USACE notified the Bank Sponsors and SPC Environmental Holdings, Inc. of its final decision to approve this Amendment.

NOW, THEREFORE, in consideration of the foregoing facts and the terms, covenants, and conditions set forth below, the Parties hereby agree as follows:

### AGREEMENT

1. Notwithstanding language in the BEI to the contrary, "Bank Sponsors" and "Property Owners" in the BEI shall refer to "SPC Environmental Holdings, Inc." beginning on the effective date of this Amendment.

2. Section VIII.B.3 is amended in its entirety to read: "3. Use of Credits at the Bank to mitigate or compensate impacts to Waters of the U.S. or Covered Habitat must be authorized by the appropriate IRT agency or agencies on a case-by-case basis. The number of Credits required must be determined following the current USACE South Pacific Division Mitigation Ratio Checklist (or any successor methodology then applicable) in order to use Waters of the U.S. Preservation Credits at the Bank."

3. The "Conservation Easement" defined in the BEI and attached thereto as Exhibit D-4 shall be subject to the Quitclaim Deed attached hereto as Exhibit B.

4. The Long-Term Land Management Funding Recipient Agreement attached hereto as Exhibit C shall replace the "Recipient Agreement" defined in the BEI and attached thereto as Exhibit C-4.

5. Reference to this Amendment shall incorporate the exhibits incorporated herein by reference.

6. Except as specifically modified by this Amendment, the BEI remains unchanged and in full force and effect.

7. This Amendment shall take effect upon the date of last signature below

8. This Agreement may be executed in counterparts.

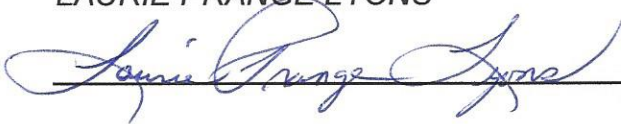
IN WITNESS WHEREOF, the Parties have executed this Amendment.

RICHARD E. LYONS




Date: 7/1/14

LAURIE PRANGE LYONS



Date: 7/1/14

SPC ENVIRONMENTAL HOLDINGS, INC.



Date: 7/1/14

Print Name: Richard E. Lyons

Title: President

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
SOUTH COAST REGION

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Amendment.

RICHARD E. LYONS

\_\_\_\_\_

Date: \_\_\_\_\_

LAURIE PRANGE LYONS

\_\_\_\_\_

Date: \_\_\_\_\_

SPC ENVIRONMENTAL HOLDINGS, INC.

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT



Date: 7-10-14

Print Name: David J. Castanon

Title: Chief, Regulatory Division

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
SOUTH COAST REGION

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



IN WITNESS WHEREOF, the Parties have executed this Amendment.

RICHARD E. LYONS

\_\_\_\_\_

Date: \_\_\_\_\_

LAURIE PRANGE LYONS

\_\_\_\_\_

Date: \_\_\_\_\_

SPC ENVIRONMENTAL HOLDINGS, INC.

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT


\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

\_\_\_\_\_

Date: 7/10/14

Print Name: JASON BRUSH

Title: SUPERVISOR, WETLANDS SECTION

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
SOUTH COAST REGION

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have executed this Amendment.

RICHARD E. LYONS

\_\_\_\_\_

Date: \_\_\_\_\_

LAURIE PRANGE LYONS

\_\_\_\_\_

Date: \_\_\_\_\_

SPC ENVIRONMENTAL HOLDINGS, INC.

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 9

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
SOUTH COAST REGION

\_\_\_\_\_

Date: 7-1-14

Print Name: Theresa A. Stewart

Title: Acting Regional Manager

## **EXHIBIT “A”**

### Assignment and Assumption Agreement

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
WITH RESPECT TO THE  
SANTA PAULA CREEK MITIGATION BANK  
BANK ENABLING INSTRUMENT**

*THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered by and between Richard E. Lyons and Laurie Prange Lyons, husband and wife ("Assignors"), and SPC Environmental Holdings, Inc., a California corporation ("Assignee") (collectively, the "Parties").*

**RECITALS**

A. Assignors, the U.S. Army Corps of Engineers ("USACE"), the U.S. Environmental Protection Agency ("USEPA"), and the California Department of Fish and Wildlife ("CDFW") (formerly California Department of Fish and Game) entered into the Santa Paula Creek Mitigation Bank Enabling Instrument ("BEI") on November 11, 2011. (USACE, USEPA, and CDFW are hereinafter referred to collectively as the "Agencies.") As defined in the BEI, Assignors are both the "Bank Sponsors" and the "Property Owners" of the Santa Paula Creek Mitigation Bank (the "Bank"). All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the BEI.

B. Pursuant to the BEI, Assignors and the Agencies established the Bank, which comprises approximately 200 acres in the County of Ventura, California (the "Bank Property"), to conserve the Bank Property in perpetuity; to use the Bank Property as mitigation for impacts to Waters of the U.S. and Covered Habitat; and to use, sell, or convey Credits by Assignor to third party purchasers.

C. Section XII.C.2 of the BEI permits Assignors as the "Property Owners" to convey their interest in the Bank Property at any time, provided the conveyance is made in accordance with the BEI and the Conservation Easement attached to the BEI as Exhibit D-4; the new property owner assumes and agrees in writing to observe and perform all of Assignors' obligations as the "Property Owners" pursuant to the BEI and Conservation Easement; and the Agencies consent to the conveyance.

D. Section XII.C.3 of the BEI permits Assignors as the "Bank Sponsors" to convey their interest in the Bank at any time, provided the Assignors are in full compliance with all requirements of the BEI; prior to the conveyance Assignors provide the Agencies a written agreement signed by the replacement Bank Sponsor in which Assignors assign to the replacement Bank Sponsor, and the replacement Bank Sponsor assumes and agrees to perform, all of the responsibilities and obligations of the Assignors under the BEI; and the Agencies consent to the conveyance.



E. The purpose of this Agreement is to convey Assignors' interest in the Bank Property as the "Property Owners" and the Bank as the "Bank Sponsors," and for Assignee to assume such interest in accordance with Section XII.C.2 and Section XII.C.3 of the BEI.

F. Each Agency has consented to the conveyance described in paragraph D by separate letter to Assignors, each attached hereto as Exhibits "A," "B," and "C" and incorporated herein by this reference. Consistent with Section XII.C.3 of the BEI, such consent is subject to Assignee's written assumption of all of Assignors' obligations as the "Bank Sponsors" pursuant to the BEI. This consent does not apply to the conveyance described paragraph C.

### AGREEMENT

NOW, THEREFORE, in consideration of the provisions contained in this Agreement, and other consideration, the receipt and adequacy of which are hereby acknowledged, the Assignors and Assignee agree as follows:

1. Assignors hereby assign, set over, and transfer to Assignee all of Assignors' legal and beneficial right, title, interest, and estate arising under or by virtue of the BEI, and any other right, title, interest, and estate now owned or hereafter acquired by Assignors with respect to the Bank Property and Bank, including, without limitation, all rights to any remaining Credits ("Assigned Interests").

2. Assignee hereby accepts the assignment of the Assigned Interests and from and after the date hereof, assumes and agrees to be bound by all of the terms, covenants, and conditions to be performed by the "Property Owners" and "Bank Sponsors," as defined in and in accordance with the BEI, and further assumes all costs, expenses (including reasonable attorneys' fees and expenses), claims, losses, commitments, liabilities, and obligations of any kind or nature, accrued or contingent, arising on or after the Bank Closure date and relating to the ownership, use, possession, enjoyment, or operation of any of the Assigned Interests ("Assumed Liabilities").

3. Assignee shall indemnify, defend, and hold harmless Assignors and their respective attorneys, directors, officers, employees, agents, shareholders, participants, partners, assigns, consultants, and affiliates (each an "Indemnified Party" and collectively the "Indemnified Parties") from and against any losses, causes of action, liabilities, claims, demands, obligations, damages, costs, and expenses, including accountant and attorney fees, to which the Indemnified Parties may become subject on account of, arising out of, or relating to the Assumed Liabilities.

4. It is a condition of this Agreement that it becomes effective only on the date the BEI is amended to replace Assignors as the "Property Owners" and "Bank Sponsors" with Assignee ("Amendment No. 1"). Further, the Agencies have informed Assignors that they will not amend the BEI until they receive: (a) a deed or other legal instrument from Assignors that meets the requirements in Section 10(b) of the Conservation Easement, as Grantors; and (b) a new Long-Term Management Funding Recipient Agreement executed by Assignee, as the new "Property Owner," the National Fish and Wildlife Foundation ("NFWF"), and CDFW that replaces the existing agreement. This Agreement and the two documents described in (a) and (b) above shall be attached to the Amendment No. 1 as exhibits.

5. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, this Agreement has been executed as of the date of last signature below.

ASSIGNORS

Richard E. Lyons

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Laurie Prange Lyons

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

ASSIGNEE

SPC Environmental Holdings, Inc.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "A"**

Consent – USACE



## DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT, CORPS OF ENGINEERS  
915 WILSHIRE BOULEVARD  
LOS ANGELES, CALIFORNIA 90053-2325

March 19, 2014

REPLY TO  
ATTENTION OF

Regulatory Division

Richard E. Lyons  
Laurie Prange Lyons  
P.O. Box 4  
Ojai, CA 93024

Dear Mr. and Mrs. Lyons:

This letter concerns your request to convey your interest in the Santa Paula Creek Mitigation Bank (the "Bank") to your company, SPC Environmental Holdings, Inc. The Santa Paula Creek Mitigation Bank Enabling Instrument (the "BEI") allows you to convey your interest in the Bank subject to the conditions described in Section XII.C.3 of the BEI. Among the conditions is the requirement that the U.S. Army Corps of Engineers ("USACE"), the U.S. Environmental Protection Agency ("USEPA"), and the California Department of Fish and Wildlife ("CDFW") (formerly the California Department of Fish and Game) consent to the conveyance.

USACE has determined that the conditions described in Section XII.C.3 of the BEI have been met. As a result, by this letter, USACE hereby consents to the conveyance described herein.

If you have questions regarding this letter, please contact the undersigned at (213) 452-3406.

Sincerely,

A handwritten signature in black ink, reading "David J. Castanon", is positioned above the printed name and title.

David J. Castanon  
Chief, Regulatory Division



**EXHIBIT "B"**

Consent - USEPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

MAR 18 2014

Richard E. Lyons  
Laurie Prange Lyons  
P.O. Box 4  
Ojai, CA 93024

Subject: U.S. Environmental Protection Agency Consent to Transfer Interest for the Santa Paula Creek Mitigation Bank, Ventura County, California

Dear Mr. and Mrs. Lyons:

This letter concerns your request to convey your interest in the Santa Paula Creek Mitigation Bank (Bank) to your company, SPC Environmental Holdings, Inc. The Santa Paula Creek Mitigation Bank Enabling Instrument (BEI) allows you to convey your interest in the Bank subject to the conditions described in Section XII.C.3 of the BEI. Among the conditions is the requirement that the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA), and the California Department of Fish and Wildlife consent to the conveyance.

The EPA has determined that the conditions described in Section XII.C.3 of the BEI have been met. As a result, by this letter, the EPA hereby consents to the conveyance described herein.

For questions related to this consent please contact Paul Amato of my staff at (415) 972-3847 or by email at [amato.paul@epa.gov](mailto:amato.paul@epa.gov).

Sincerely,

Jason Brush  
Supervisor  
Wetlands Office

Ec:

Ms. Tiffany Troxel, Corps  
Mr. Antal Szijj, Corps  
Mr. David Lawhead, CDFW  
Mr. Stephen Puccini, CDFW

**EXHIBIT “C”**

Consent - CDFW



State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
(858) 467-4201  
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



March 18, 2014

Richard E. Lyons  
Laurie Prange Lyons  
P.O. Box 4  
Ojai, CA 93024

Dear Mr. and Mrs. Lyons:

This letter concerns your request to convey your interest in the Santa Paula Creek Mitigation Bank (the "Bank") to your company, SPC Environmental Holdings, Inc. The Santa Paula Creek Mitigation Bank Enabling Instrument (the "BEI") allows you to convey your interest in the Bank subject to the conditions described in Section XII.C.3 of the BEI. Among the conditions is the requirement that the U.S. Army Corps of Engineers ("USACE"), the U.S. Environmental Protection Agency ("USEPA"), and the California Department of Fish and Wildlife ("CDFW") (formerly the California Department of Fish and Game) consent to the conveyance.

CDFW has determined that the conditions described in Section XII.C.3 of the BEI have been met. As a result, by this letter, CDFW hereby consents to the conveyance described herein.

If you have questions regarding this letter, please contact the undersigned at (858) 467-4210.

Sincerely,

Edmund Pert  
Regional Manager  
South Coast Region

ec: David Lawhead, CDFW-Region 5  
Gail Sevens, CDFW-Region  
Stephen Puccini, CDFW-Office of the General Counsel  
Tiffany Troxel, USACE (Tiffany.A.Troxel@usace.army.mil)

**EXHIBIT “B”**

Quitclaim Deed

Recording requested by (name):

Richard E. Lyons

And when recorded, mail this deed and tax statements to (name and address):

SPC Environmental Holdings, Inc.

P.O. Box 808

Santa Paula, CA 93061



20140415-00047296-0 1/3

Ventura County Clerk and Recorder

MARK A. LUNN

04/15/2014 11:31:56 AM

810365 \$31.00 CO

## QUITCLAIM DEED

APN: 040-0-020-085

DOCUMENTARY TRANSFER TAX \$ \$0  
EXEMPTION (R&T CODE) R+T 11925  
EXPLANATION \_\_\_\_\_

Signature of Declarant or Agent determining tax

For a valuable consideration, receipt of which is hereby acknowledged,

Richard E. and Laurie Prange Lyons

(Disclaiming Party(ies))

hereby quitclaim(s) to SPC Environmental Holdings, Inc.

(Property Owner(s))

the following real property in the City of \_\_\_\_\_, County of

Ventura

California: (insert legal description)

Attached Exhibit A and Exhibit B

Date: 4/14/14

(Signature of declarant)

Richard E. Lyons  
(Typed or written name of declarant)

Date: 4/14/14

(Signature of declarant)

Laurie Prange Lyons  
(Typed or written name of declarant)

State of California

County of VENTURA

NOTARY SEAL

On April 14, 2014, before me,

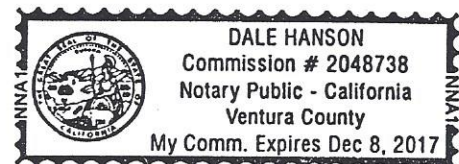
DALE HANSON

a notary public, personally appeared Richard E. and Laurie Prange Lyons who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Dale Hanson  
Signature of Notary



**LEGAL DESCRIPTION**  
**EXHIBIT "A"**

The North half of the Southwest quarter, the South half of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 10, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof.

EXCEPT all the oil, gas condensate, distillate and other minerals and all products and by products thereof, in and under and that may be produced from said land as granted to t40, Inc., a California corporation, in deed recorded September 14, 2010, as Document No. 20100914-138782 of Official Records.

EXCEPT all surface mineral interest to a depth of 500 feet in and to said land were Quitclaimed by t40 Inc., by Document recorded May 24, 2011 as Document No. 20110524-00078958 of Official Records.

APN: 040-0-020-085

Exhibit B

Subject to:

1. That certain Conservation Easement Deed between Richard E. Lyons, Jr. and Laurie Prange Lyons, in favor of the State of California, recorded December 28, 2011 as Document Number 20111228-00198259-0 in the Official Records of Ventura County, California, and the covenants, conditions and restrictions therein contained which are hereby expressly incorporated herein by reference.
2. That certain Mitigation Banking Enabling Instrument for the Santa Paula Creek Mitigation Bank dated November 11, 2011, entered into by and between Richard E. Lyons and Laurie Prange Lyons, the United States Army Corps of Engineers, California Department of Fish and Wildlife (formerly California Department of Fish and Game), and the United States Environmental Protection Agency, and any amendments thereto, and the covenants, conditions, restrictions, and management plans therein contained which are hereby expressly incorporated herein by reference.



## **EXHIBIT “C”**

### **Long-Term Land Management Funding Recipient Agreement**

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE AND  
NATIONAL FISH AND WILDLIFE FOUNDATION  
LONG-TERM LAND MANAGEMENT FUNDING  
RECIPIENT AGREEMENT**

This Long-Term Land Management Funding Recipient Agreement ("Recipient Agreement") is entered by and among the California Department of Fish and Wildlife, an agency of the State of California ("CDFW"), the National Fish and Wildlife Foundation ("Foundation"), and SPC Environmental Holdings, Inc., represented by its President, Richard E. Lyons ("Recipient") (together "Parties" and individually "Party"), as of the date of the signature of the last Party to sign ("Effective Date").

**WHEREAS**, 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 Section 1802, and other provisions of California law.

**WHEREAS**, the Foundation is a charitable non-profit corporation established by the United States Congress in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. Section 3701 *et seq.*, as amended, and is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code.

**WHEREAS**, Richard E. Lyons and Laurie Prange Lyons were the sole owners in fee simple of certain real property containing approximately 200 acres located in Ventura County, State of California, commonly known as Santa Paula Creek Mitigation Bank and generally shown on the map attached as **Exhibit A-1** and legally described in **Exhibit A-2** attached to this Recipient Agreement and incorporated herein by reference (the "Bank Property").

**WHEREAS**, on April 14, 2014, Richard E. Lyons and Laurie Prange Lyons conveyed fee title in the Bank Property to SPC Environmental Holdings, Inc., by quitclaim deed, which was recorded on April 15, 2014 at the Ventura County Recorder's Office.

**WHEREAS**, Richard E. Lyons and Laurie Prange Lyons are the Bank Sponsors ("Bank Sponsors") and are responsible to protect and manage for conservation purposes the Bank Property in accordance with the 1) Santa Paula Creek Mitigation Bank Enabling Instrument ("BEI"), by and among Richard E. Lyons and Laurie Prange Lyons, CDFW, Region 5, the Los Angeles District of the United States Army Corps of Engineers ("USACE"), and Region IX of the United States Environmental Protection Agency ("USEPA") entered into concurrently with a Recipient Agreement by and among Richard E. Lyons and Laurie Prange Lyons, CDFW, and the Foundation, dated December 8, 2011 ("Original Recipient Agreement"), and the Long-term Management Plan created under the BEI ("Management Plan"); and 2) a perpetual conservation that was executed and recorded over the Bank Property ("CE").

**WHEREAS**, the Management Plan identifies specific land management activities that are required to be performed on the Bank Property, including, but not necessarily limited to, biological monitoring, improvements to biological carrying capacity, enforcement measures, and other actions designed to protect or improve the habitat values of the

Bank Property (together, "Land Management Activities"). The Management Plan is attached to this Recipient Agreement as **Exhibit B-1** and incorporated herein by reference.

**WHEREAS**, the Property Analysis Record, or equivalent endowment assessment methodology for the Bank Property created by or on behalf of Bank Sponsors and approved by CDFW ("Endowment Assessment") calculated the amount of money necessary to provide a source of perpetual funding for the Land Management Activities ("Endowment Amount"). The Endowment Assessment is attached to this Recipient Agreement as **Exhibit B-2** and incorporated herein by reference.

**WHEREAS**, an Endowment Payment schedule created and/or approved by the Recipient and CDFW reflecting the total dollar value of Land Management Activities for each calendar year, including annual and applicable single or limited occurrence expenses, exclusive of any contingency amount, set forth in the Endowment Assessment, ("Endowment Payment Schedule") is attached to this Recipient Agreement as **Exhibit B-3** and incorporated herein by reference.

**WHEREAS**, the Bank Sponsors have deposited with the Foundation a portion of the Endowment Amount to be managed and administered in accordance with the Master Mitigation Account Memorandum of Agreement ("MOA") entered between CDFW and the Foundation as of November 23, 2010. The MOA is attached to this Recipient Agreement as **Exhibit C** for informational purposes.

**WHEREAS**, Richard E. Lyons and Laurie Prange Lyons, CDFW, USACE, and USEPA intend to amend the BEI after this Recipient Agreement is executed, at which time SPC Environmental Holdings, Inc. will assume or otherwise succeed to the rights and obligations of Richard E. Lyons and Laurie Prange Lyons for the Santa Paula Creek Mitigation Bank under the BEI, CE, and Management Plan, and the term of the Original Recipient Agreement will expire.

**WHEREAS**, the Parties intend that the Recipient will perform, either directly or by entering into a separate agreement with a land manager, the Land Management Activities on the Bank Property in accordance with the Management Plan and the Endowment Assessment; using funds provided by the Foundation from the Endowment Amount in accordance with the terms of this Recipient Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises made herein, and for other and further consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Performance of Land Management Activities.** The Recipient hereby agrees to perform the Land Management Activities on the Bank Property, upon the terms and conditions set forth below.

2. **Funding for Land Management Activities.** The Foundation hereby agrees to provide funds from the Endowment Amount to the Recipient for its performance of the Land Management Activities on the Bank Property, upon the terms and conditions set forth below.

3. **Scope of Services to be Performed.** The Recipient shall perform the Land Management Activities as set forth in the Management Plan and the Endowment Assessment with funds provided under this Recipient Agreement. The Parties agree and acknowledge that the Management Plan and the Endowment Assessment were created by or on behalf of the Bank Sponsors and approved by CDFW. The Foundation is expressly entitled to rely on the validity of the CDFW Approval and the accuracy of the Management Plan, the Endowment Assessment, the Endowment Payment Schedule, and any future amendments thereto without independent verification. The Foundation shall not be liable in any respect to CDFW or the Recipient, or to any other party, for errors, omissions, inaccuracies, or other elements of the Management Plan, the Endowment Assessment, or the Endowment Payment Schedule, whether contained therein or omitted therefrom, or any future amendments thereto. The Parties agree and acknowledge that the scope of services the Recipient is required to perform under this Recipient Agreement is limited to the Land Management Activities on the Bank Property to the extent funds are made available under this Recipient Agreement to pay for such Land Management Activities.

The Management Plan, Endowment Assessment, and Endowment Payment Schedule may be amended with the written approval of CDFW, USACE, and USEPA, and any approved amendments to the Management Plan, Endowment Assessment, and Endowment Payment Schedule shall be deemed incorporated into this Recipient Agreement automatically, without the need for an amendment to this Recipient Agreement.

4. **Term.** Unless terminated earlier pursuant to Section 11 herein, this Recipient Agreement shall be effective from the Effective Date until the date (if any) that a successor Recipient approved by CDFW becomes obligated to perform the Land Management Activities.

5. **General Financial Provisions.** The Endowment Amount shall be invested and otherwise managed financially by the Foundation in accordance with the terms of the MOA. The Recipient shall have no right or responsibility with respect to the investment or financial management of the Endowment Amount under this Recipient Agreement or otherwise. The Land Management Activities addressed under this Recipient Agreement shall be considered "Endowment Measures" for purposes of the MOA unless specified otherwise by CDFW in a written notice delivered to the Foundation.

6. **Payment.**

a. **Payment in the Ordinary Course.** In consideration of the Land Management Activities to be performed by the Recipient, the Foundation shall disburse

to the Recipient from the Endowment Amount annual, advance payments (each such payment, an "Endowment Payment") which the Recipient shall use to pay the costs of Land Management Activities to be performed by the Recipient throughout the forthcoming calendar year. Unless the Foundation is directed otherwise in writing by CDFW, each Endowment Payment will be made in the amount requested by the Recipient in a written payment request ("Payment Request") submitted to the Foundation pursuant to this section. Each Payment Request is subject to a maximum annual dollar limit calculated as the total dollar value of Land Management Activities, exclusive of any contingency amount set forth in the Endowment Assessment, for the applicable calendar year as set forth in the Endowment Assessment. Endowment Payments shall be adjusted by a measure of inflation over the period of time since the Endowment Assessment was completed. The measure of inflation shall be calculated using the United States Department of Labor's Bureau of Labor Statistics' Consumer Price Index, West Region (1982-84=100), or the successor of such index over the same period of time.

The Recipient must submit to the Foundation a Payment Request between July 1 and November 15 in order to receive an Endowment Payment to fund Land Management Activities in the next calendar year. The Foundation will disburse Endowment Payments in December for Payment Requests properly submitted to the Foundation in the period from the immediately prior July 1 through November 15.

If and only if the Effective Date of this Recipient Agreement is in a year in which the Recipient has first assumed responsibility for performing Land Management Activities on the Bank Property, to be funded out of the Endowment Amount (the "Initial Year"), then the Recipient may submit a Payment Request as soon as is practicable after the Recipient has assumed responsibility for performing Land Management Activities on the Bank Property, and in no event after November 1 of the Initial Year. The maximum amount of funds that may be requested in such Payment Request shall be the pro rata portion (on an annual basis) of the annual costs for the Initial Year as specified for the Bank Property in the corresponding Endowment Assessment. The Foundation will disburse an Endowment Payment within thirty (30) days of receipt of a properly submitted Payment Request. For Endowment Payments in all calendar years thereafter, the Recipient is required to submit Payment Requests between July 1 and November 15 in accordance with the paragraph above of this subsection.

Requests by the Recipient for non-annualized funds (i.e. funds for single or limited-occurrence expenses as set forth in the Endowment Assessment) from the Endowment Amount shall be included with the Payment Request submitted prior to the calendar year in which use of such funds is scheduled in the Endowment Assessment. The Foundation will disburse non-annualized funds as a part of any December Endowment Payment for Payment Requests made between July 1 and November 15. If use of non-annualized funds is scheduled in the Endowment Assessment for the Initial Year, then the request for such funds shall be included in the Payment Request of the Initial Year. The Foundation will disburse non-annualized funds within thirty (30) days after submission of a Payment Request properly made in the Initial Year.

Payment Requests and Endowment Payments shall be made in accordance with the Endowment Payment Schedule in effect as of July 1 of that year, except as otherwise provided in this Recipient Agreement.

The Recipient shall submit all Payment Requests via email, fax, or mail to the Foundation. In the event an alternate method of requesting payment becomes available in the future, such as an online payment request system, the Foundation will notify the Recipient and provide appropriate instructions. All Payment Requests shall include a written statement by the Recipient that (i) the Endowment Payment will be used exclusively for payment of expenses of Recipient for Land Management Activities and (ii) the Recipient reasonably expects the Land Management Activities specified in the Endowment Assessment for the applicable calendar year to be actually necessary in that year.

b. CDFW Suspension or Reduction of Payments for Financial Reasons.

From time to time the Foundation or its financial advisors may determine that the Endowment Amount has decreased to levels that threaten its continued existence as a source of perpetual funding for Land Management Activities, whether due to unexpected investment performance or otherwise. In such event the Foundation shall notify CDFW of such determination. Upon receipt of such notice, CDFW will consult with the Foundation and the Recipient as to appropriate modifications to continued Endowment Payments and associated Land Management Activities in order to protect the long-term viability of the Endowment Amount. After such consultation, CDFW will promptly notify the Foundation and the Recipient of any measures, including but not necessarily limited to suspension or reduction of specified Land Management Activities and corresponding reduction or suspension of Endowment Payments, which must be implemented by the Foundation or the Recipient, as the case may be, to address the pertinent circumstances. The Foundation and the Recipient shall be entitled to rely on any such notice received from CDFW and shall be obligated to follow the directions contained therein. Neither the Foundation nor the Recipient shall be liable in any manner to CDFW or any other person by virtue of following the direction of CDFW contained in any notice issued under this subsection.

c. Other Payments. Either on its own initiative or at the request of the Recipient, CDFW, in consultation with the USACE and USEPA, may elect to authorize payments to be made from the Endowment Amount other than those payments made in the ordinary course pursuant to Section 6(a). If CDFW, in accordance with the MOA, elects to exercise this authority, it shall direct the Foundation in writing to disburse a specific amount of funding from the Endowment Amount to the Recipient, whether requested by the Recipient or not, so that the Recipient may perform an activity, or activities, which CDFW, in consultation with the USACE and USEPA, determines to be appropriate with respect to the Bank Property. Upon receipt of such written direction, the Foundation shall, as soon as practicable, make the disbursement as directed by CDFW. Upon receipt of such a payment the Recipient shall, as soon as practicable, perform whatever activity, or activities, the payment is intended to fund as directed by CDFW.

If the Recipient submits a payment request pursuant to this subsection to address an emergency or catastrophic event affecting the Bank Property, and if the request clearly and expressly identifies the nature of the emergency, CDFW shall inform the Recipient whether the request is granted, granted in part, or denied within five (5) days after receiving the written request. For all requests from the Recipient for a payment pursuant to this subsection other than those to address an emergency or catastrophic event affecting the Bank Property, CDFW shall respond to such payment request (indicating that it is granted, granted in part, or denied) within sixty (60) days after receiving the written request.

CDFW hereby acknowledges that any direction by CDFW under this subsection for the disbursement of a payment not contemplated by the Management Plan or Endowment Assessment may impair or preclude the continuing existence of the Endowment Amount as a source of perpetual funding for the Land Management Activities on the Bank Property. Neither the Foundation nor the Recipient shall be liable to CDFW or to any other party for any adverse impacts to the continuing existence of the Endowment Amount caused by a decision of CDFW to direct a one-time payment under this subsection.

d. Overages in Payments. Any portion of an Endowment Payment that remains unspent by the Recipient as of the end of the period in which such amount was paid shall be deemed an “overage” for purposes of this subsection. Overages in payments resulting from discrepancies identified by the Recipient between the Land Management Activities and associated costs expected during the Reporting Period and those that were actually performed and incurred during the Reporting Period shall be retained and accounted for on an ongoing basis by the Recipient. All such overages shall be used by the Recipient exclusively for payment of the following year’s Land Management Activities on the Bank Property, and shall be reflected as a deduction from the invoice request and disbursement for the following year’s Land Management Activities.

7. Review and Reporting Requirements. The Recipient shall submit to the Foundation an annual report (“Annual Report”) for each calendar year this Recipient Agreement is in effect. Each Annual Report shall be submitted by the Recipient to the Foundation between January 1 and January 31, or at least thirty (30) days prior to the effective date of termination of this Recipient Agreement. The Annual Report shall (a) describe in reasonable detail the Land Management Activities performed by the Recipient during the immediately preceding calendar year or in the event of termination the current calendar year (collectively the “Reporting Period”); (b) detail all expenses incurred by or on behalf of the Recipient for Land Management Activities performed during the Reporting Period (c) describe any discrepancy between the Land Management Activities expected to be performed during the Reporting Period in accordance with the Management Plan and the Endowment Assessment and the Land Management Activities actually performed during the Reporting Period; and (d) describe any discrepancy between the costs of Land Management Activities as modeled in the

Endowment Assessment and the costs of Land Management Activities actually performed during the Reporting Period.

The Foundation will provide the Annual Report and a corresponding summary of its contents to CDFW by March 15 of the year received by the Foundation, or within thirty (30) days of receipt in the event of termination of this Recipient Agreement, which summary will include a notation of any discrepancies identified by the Recipient between the Land Management Activities and associated costs expected during the Reporting Period and those that were actually performed and incurred during the Reporting Period. The Parties expressly agree and acknowledge that the Foundation is entitled to rely on the accuracy and validity of the Annual Reports submitted by the Recipient and shall have no duty to independently verify the information set forth therein. The Parties further agree and acknowledge that the Foundation shall have neither the right nor the obligation to reduce, suspend, or otherwise modify Endowment Payments based on the contents of any Annual Report, and that any remedial action under this Recipient Agreement or otherwise with respect to Endowment Payments based on the contents of any Annual Report shall be the exclusive right and/or obligation of CDFW.

8. **Contact Information**

Foundation Primary:	Shawn Marchand National Fish and Wildlife Foundation Senior Manager, Impact-Directed Environmental Accounts (IDEA) 90 New Montgomery Street, Suite 1010 San Francisco, CA 94105 Telephone: (415) 243-3102 Fax: (415) 778-0998 E-mail: shawn.marchand@nfwf.org
------------------------	--

Foundation Alternate:	Michelle Olson National Fish and Wildlife Foundation Manager, Impact-Directed Environmental Accounts (IDEA) 1133 15 <sup>th</sup> Street, NW, Suite 1100 Washington, D.C. 20005 Telephone: (202) 595-2437 Fax: (202) 857-0162 E-mail: michelle.olson@nfwf.org
--------------------------	--



Recipient: Richard E. Lyons  
President, SPC Environmental Holdings, Inc.  
P.O. Box 808  
Santa Paula, CA 93061  
Telephone: (805) 525-2508  
Fax: (805) 525-2556  
E-mail: rl@spcmb.com

CDFW David Lawhead  
Senior Environmental Scientist (Specialist), South Coast Region  
California Department of Fish and Wildlife  
3883 Ruffin Road  
San Diego, CA 92123  
Telephone: (858) 627-3997  
Fax: (858) 467-4299  
E-mail: david.lawhead@wildlife.ca.gov

Each Party agrees to notify the other promptly, and in any event no later than thirty (30) days after any change in named representative, address, telephone, or other contact information.

9. **Transfer and Assignment.** The Recipient may not transfer or assign this Recipient Agreement, in whole or in part, to any other individual or legal entity without the prior written consent of CDFW, which consent may be withheld. The Foundation may not assign this Recipient Agreement, in whole or in part, to any other individual or entity.

10. **Amendments.** This Recipient Agreement may be amended only by a written amendment, signed by the Parties and the Landowner. Counterpart originals, facsimile copies, and/or portable document format (pdf) versions of signed amendments are acceptable and will be treated as binding originals, but this Recipient Agreement may not be amended via electronic mail.

11. **Default and Termination.**

a. If any Party ("Notifying Party") determines that any other Party ("Defaulting Party") has failed to satisfy any obligation under the Recipient Agreement or applicable federal, state, or local law, the Notifying Party may pursue the remedies set forth below:

(1) **Minor Default.** In the event of a non-material default ("Minor Default"), the Notifying Party may issue to the Defaulting Party a written notice of default ("Notice of Default"), which shall clearly explain the nature of the default and outline recommended actions, if any, to cure the default. The Defaulting Party shall have ninety (90) days to cure the Minor Default, unless the Notice of Default indicates there is an

urgent need to cure and expressly provides for a shorter cure period. If the Defaulting Party determines the Minor Default cannot be cured within ninety (90) days or the stated cure period, the Defaulting Party shall provide the Notifying Party with written notice requesting additional time, which request the Notifying Party shall not unreasonably deny. The Defaulting Party shall provide the Notifying Party with written notice once the Minor Default has been cured. If the Notifying Party determines the Defaulting Party has not cured the Minor Default to the Notifying Party's reasonable satisfaction, the Notifying Party may either provide a second Notice of Default pursuant to this subsection or terminate the Recipient Agreement for cause pursuant to Section 11(c).

(2) Major Default. In the event of a default of a material term of the Recipient Agreement or a significant violation of federal, state, or local law ("Major Default"), the Notifying Party may issue a Notice of Default and follow the procedure outlined in Section 11(a)(1). In the alternative, if the Notifying Party determines the Major Default cannot be cured to the Notifying Party's reasonable satisfaction, the Notifying Party may terminate the Recipient Agreement for cause pursuant to Section 11(c).

b. Stop-Payment Notice. In the event the Recipient has committed a Major Default or failed to cure a Minor Default to CDFW's reasonable satisfaction after receiving a Notice of Default, in addition to any other remedies CDFW may issue a written stop-payment notice ("Stop Payment Notice") to the Foundation. A Stop Payment Notice will instruct the Foundation either to suspend or reduce Endowment Payments to the Recipient until the Foundation is otherwise notified in writing by CDFW. The Foundation shall be entitled to rely on any Stop Payment Notice received from CDFW and shall be obligated to follow the directions contained therein. The Foundation shall not be liable in any manner to the Recipient or to any other person by virtue of following the direction of CDFW contained in any Stop Payment Notice.

Prior to issuing a Stop Payment Notice, CDFW shall provide the Recipient and the Foundation with written notice of its intent to stop payment. Within ten (10) days of receipt of such notice, either the Recipient or the Foundation may request, in writing, a meeting to resolve the dispute prior to issuance of the Stop Payment Notice. In the event it receives a request for a meeting pursuant to this subsection, CDFW shall not issue a Stop Payment Notice except as provided below. The dispute resolution meeting shall include CDFW's Director or a Deputy Director, the Foundation's Impact-Directed Environmental Accounts Vice-President or Director, and Richard E. Lyons, President of SPC Environmental Holdings, Inc., and shall take place, either in person or by telephone conference, within ten (10) days of CDFW's receipt of the request for the meeting. If the meeting does not result in resolution of the dispute or if Richard E. Lyons, President of SPC Environmental Holdings, Inc., fails to make himself/herself available for a meeting within the ten-day period, CDFW shall be entitled to issue the Stop Payment Notice.

c. Termination.

(1) Termination for Cause. Any Party may terminate this Recipient Agreement for cause if any other Party has committed a Major Default or failed to cure a Minor Default to the Notifying Party's reasonable satisfaction after receiving a Notice of Default. The Notifying Party shall provide all other Parties written notice of its intent to terminate the Recipient Agreement for cause. Within ten (10) days of receipt of such notice, any Party may request, in writing to all other Parties, a meeting to resolve the dispute prior to termination. The dispute resolution meeting shall include CDFW's Director or a Deputy Director, the Foundation's Impact-Directed Environmental Accounts Vice-President or Director, and Richard E. Lyons, President of SPC Environmental Holdings, Inc., and shall take place, either in person or by telephone conference, within ten (10) days of the Notifying Party's receipt of the request for the meeting. If the meeting does not result in resolution of the dispute or if the representative of the Defaulting Party fails to make himself/herself available for a meeting within the ten-day period, the Notifying Party shall be entitled to terminate the Recipient Agreement thirty (30) days from the date of the dispute resolution meeting or the end of the ten-day period to meet, whichever is later.

(2) Termination without Cause. Any Party seeking to terminate this Recipient Agreement without cause shall provide written notice of its intent to terminate and shall offer to meet and confer with any other Parties within sixty (60) days of receipt of such notice. If no other Parties respond to the offer to meet and confer, the Recipient Agreement shall automatically terminate, subject to Section 11(d), one hundred twenty (120) days after the date of the notice of intent to terminate. If one or more Parties request to meet and confer, the Party seeking to terminate shall meet with all other interested Parties to explain the reason for the termination and discuss alternatives, if any, to terminating the Recipient Agreement. If the Parties are unable to resolve the matter, the Recipient Agreement shall automatically terminate one hundred twenty (120) days after the date of the meeting.

(3) Termination of the MOA. This Recipient Agreement shall terminate concurrently with termination of the MOA. The Party terminating the MOA (i.e. CDFW or the Foundation) shall provide all other Parties with a copy of the notice terminating the MOA and notice of the termination of this Recipient Agreement at the time it issues the notice of termination of the MOA.

d. Transfer of Duties upon Termination.

(1) Unless otherwise specified in writing by CDFW, upon issuance of any termination that will terminate the Recipient's stewardship over the Bank Property, the Recipient shall: (i) stop performance of all Land Management Activities; (ii) promptly return to the Foundation any unspent and unobligated portion of any Endowment Payment; and (iii) in an orderly fashion, transfer custody, control, or other power necessary for stewardship of the Bank Property to an entity identified by CDFW. Such

transfer shall occur no later than thirty (30) days after the Recipient is informed by CDFW in writing of the entity that should receive custody, control, or other power necessary for stewardship of the Bank Property.

(2) With respect to any termination that will terminate the Foundation's participation in the management of the Endowment Amount, the termination is not effective unless and until the Foundation has transferred in an orderly fashion the custody, control, or other power necessary for the investment, management, and administration of the Endowment Amount to an entity identified in writing by CDFW.

12. **Additional Support.** By entering into this Recipient Agreement, neither CDFW nor the Foundation assumes any obligation to provide funding or support (whether financial or otherwise) to the Recipient beyond Endowment Payments in accordance with this Recipient Agreement.

13. **Choice of Law.** This Recipient Agreement shall be subject to and interpreted by the laws of the State of California, without regard to choice of law principles. By entering into this Recipient Agreement, the Recipient and the Foundation agree to submit to the jurisdiction of the courts of the State of California.

14. **Compliance with Laws; Indemnification.**

a. In conducting the Land Management Activities and performing its obligations under this Recipient Agreement, the Recipient agrees to conduct all such activities in compliance with all applicable Federal, State, and local laws, regulations, and ordinances; and to secure all appropriate and necessary public or private permits, approvals, and consents.

b. The Foundation and Recipient shall indemnify and hold harmless each other, CDFW, and their respective officers, directors, agents, representatives, and employees in respect of any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses (including without limitation, settlement costs and any legal or other expenses for investigating or defending any actions or threatened actions) arising from or in connection with any default by the indemnifying Party of its obligations under this Recipient Agreement (including, in the case of the Recipient, of its obligation to perform the Land Management Activities).

c. CDFW shall be free of liability to the Recipient for any default or non-performance of this Recipient Agreement by the Foundation. CDFW shall also be free of liability to the Foundation for any default or non-performance of this Recipient Agreement or Land Management Activities by the Recipient. The Foundation shall be free of liability to CDFW for any default or non-performance of this Recipient Agreement by the Recipient, and the Foundation shall also be free of liability to the Recipient for any default or non-performance of this Recipient Agreement by CDFW.

d. The terms of this section will survive termination of this Recipient Agreement.

15. **Disclaimers.** Payments made to the Recipient under this Recipient Agreement do not by direct reference or implication convey the Foundation's or CDFW's endorsement of the Land Management Activities or any deliverables provided pursuant to this Recipient Agreement.

16. **Access to Recipient Records.** CDFW and the Foundation, or any of their duly authorized representatives, shall, upon three days prior notice, have access to any books, documents, papers and records of the Recipient that are directly pertinent to this Recipient Agreement for purposes of making audits, examinations, excerpts or transcription. The Recipient shall keep all books, documents, papers, or records for at least five years after their preparation.

17. **No Third-Party Rights.** This Recipient Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a party to this Recipient Agreement.

18. **Severability.** Each provision of this Recipient Agreement is distinct and severable from the others. If one or more provisions is or becomes invalid, unlawful, or unenforceable in whole or in part, the validity, lawfulness and enforceability of the remaining provisions (and of the same provision to the extent enforceable) will not be impaired, and the Parties agree to substitute a provision as similar to the offending provision as possible without its being invalid, unlawful or unenforceable.

19. **MOA Conflicts.** In the event a conflict arises between the terms of this Recipient Agreement and the MOA, the Parties will meet and confer to resolve the issue to the mutual satisfaction of the Parties.

20. **Conflict with BEI or CE.** In the event a conflict arises between the terms of this Recipient Agreement and the BEI or the CE, CDFW, Foundation, USACE, and USEPA will meet and confer to resolve the issue to the mutual satisfaction of the CDFW, Foundation, USACE, and USEPA.

21. **Counterparts.** This Recipient Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have signed this Recipient Agreement, intending to be bound legally.

**RECIPIENT**



Richard E. Lyons  
President, SPC Environmental Holdings, Inc.  
Federal Tax Identification No: 46-3116953  
State Tax Identification No: 023-9556-4

6/25/14  
Date

**NATIONAL FISH AND WILDLIFE FOUNDATION**

Timothy J. DiCintio  
Senior Vice-President, Impact-Directed Environmental  
Accounts

Date

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

Edmund Pert  
Regional Manager, South Coast Region

Date

**IN WITNESS WHEREOF**, the Parties have signed this Recipient Agreement, intending to be bound legally.

**RECIPIENT**

\_\_\_\_\_  
Richard E. Lyons  
President, SPC Environmental Holdings, Inc.  
Federal Tax Identification No: 46-3116953  
State Tax Identification No: 023-9556-4

\_\_\_\_\_  
Date

**NATIONAL FISH AND WILDLIFE FOUNDATION**

*Shawn Neekampf on behalf of*

\_\_\_\_\_  
Timothy J. DiCintio  
Senior Vice-President, Impact-Directed Environmental  
Accounts

*6/26/2014*

\_\_\_\_\_  
Date

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

\_\_\_\_\_  
Edmund Pert  
Regional Manager, South Coast Region

\_\_\_\_\_  
Date

**IN WITNESS WHEREOF**, the Parties have signed this Recipient Agreement, intending to be bound legally.

**RECIPIENT**

\_\_\_\_\_  
Richard E. Lyons  
President, SPC Environmental Holdings, Inc.  
Federal Tax Identification No: 46-3116953  
State Tax Identification No: 023-9556-4


\_\_\_\_\_  
Date

**NATIONAL FISH AND WILDLIFE FOUNDATION**

\_\_\_\_\_  
Timothy J. DiCintio  
Senior Vice-President, Impact-Directed Environmental  
Accounts

\_\_\_\_\_  
Date

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**

  
\_\_\_\_\_  
Edmund Pert  
Regional Manager, South Coast Region

  
\_\_\_\_\_  
Date



EXHIBIT A-1  
Map of Mitigation Property

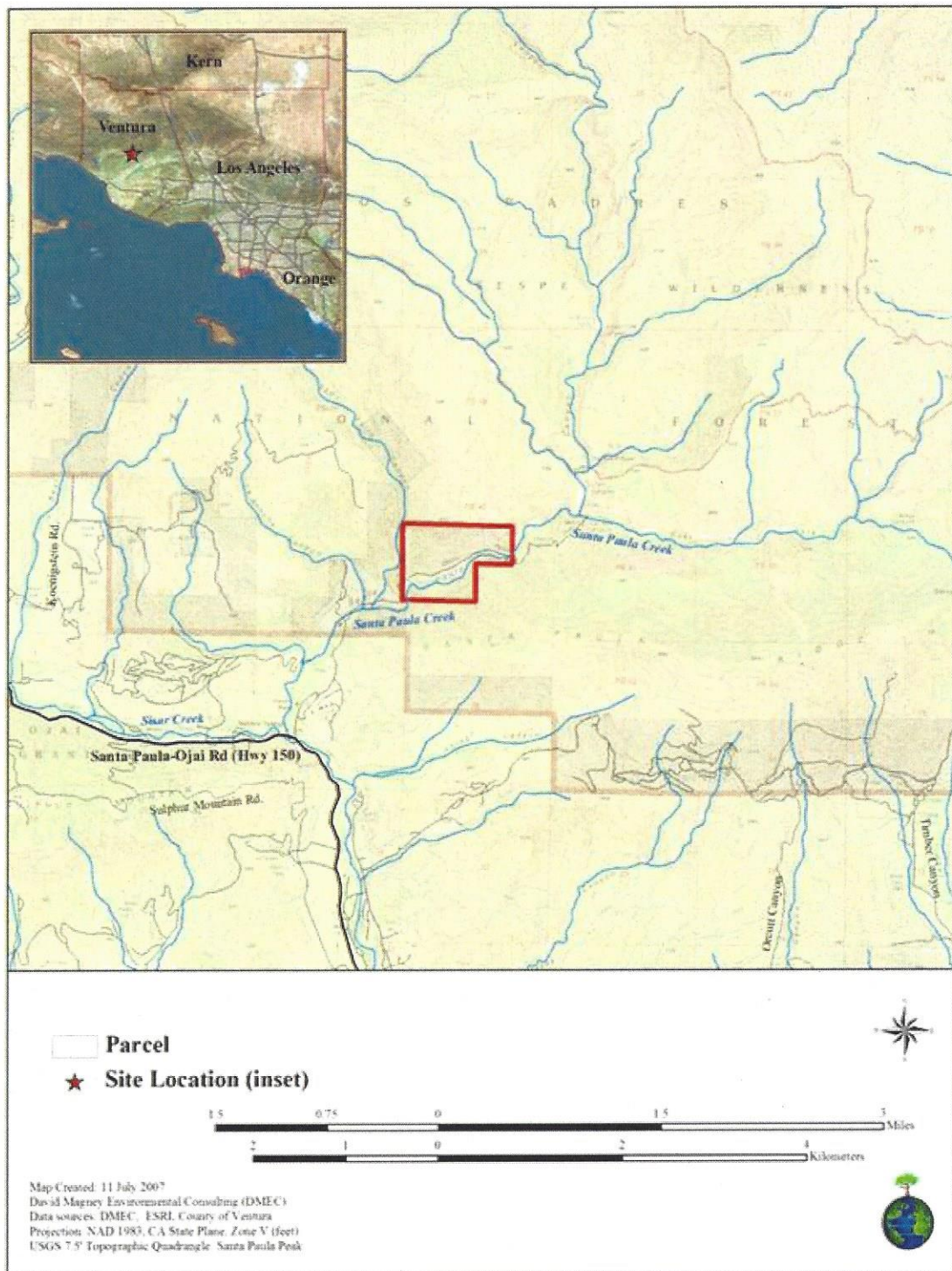


Figure 1

EXHIBIT A-2  
Legal Description of Mitigation Property

## **EXHIBIT A**

The North half of the Southwest quarter, South half of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 10, Township 4 North, Range 21 West, San Bernardino Meridian, in the County of Ventura, State of California, according to the official plat thereof.

EXHIBIT B-1  
Management Plan for Mitigation Property

EXHIBIT C-6

LONG-TERM MANAGEMENT PLAN

# **Long-term Management Plan**

## **Santa Paula Creek Mitigation Bank**

I	Introduction.....	3
A	Goals and Objectives .....	3
B	Purpose of this Long-term Management Plan .....	3
C	Land Manager and Responsibilities.....	1
II	Property Description .....	1
A	Setting and Location .....	2
B	History and Land Use .....	2
C	Hydrology, Topography, and Soils.....	2
D	Existing Easements .....	6
E	Adjacent Land Uses .....	6
III	Habitat and Species Descriptions.....	6
A	Biological Resources Survey of Bank .....	6
B	Special-status Species Habitat and Occurrence .....	8
IV	Management and Monitoring.....	8
A	Biological Resources .....	9
Element A.1	Waters of the U.S., including wetlands .....	9
Element A.2.	Covered Habitat .....	10
Element A.3	Threatened/Endangered Animal Species Monitoring .....	10
Element A.4	Non-native Invasive Species.....	10
B	Security, Safety, and Public Access.....	11
Element B.1 –	Trash and trespass .....	11
C	Reporting and Administration.....	11
Element C.1 –	Annual Report.....	11
V	Transfer, Replacement, Amendments, and Notices.....	12
A	Transfer .....	15
B	Replacement.....	15
C	Amendments .....	12
D	Notices .....	12
VI	Funding and Task Prioritization.....	13
A	Funding .....	15
B	Task Prioritization.....	16
Table 1. Bank Management and Monitoring Activities, Level of Effort, Frequency and Cost.....		



# **Santa Paula Creek Mitigation Bank Long-Term Management Plan**

## **I. Introduction**

### **A . Goals and Objectives**

The Santa Paula Creek Mitigation Bank ("Bank") is intended to compensate for unavoidable impacts to, and to conserve and to protect, Waters of the U.S. and Covered Habitat. Richard E. Lyons and Laurie Prange Lyons ("Property Owners") are the owners of real property containing approximately 200 acres (the "Property"), located near Santa Paula, Ventura County, California. The Bank Property covers the entire Property and includes 124.29 Waters of the U.S. and CDFG Covered Habitat Preservation Credits, plus an additional 73.93 CDFG Covered Habitat Preservation Credits only for 14 special-status plant species (see Exhibit G-2), California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub, and southwestern pond turtle. Terms used in this Long-term Management Plan have the same meaning as defined in the Bank Enabling Instrument ("BEI") or Conservation Easement. Exhibit G describes the biological resources of the Bank property. Additionally, several related technical reports are available on a CD provided with this submittal.

### **B Purpose of this Long-term Management Plan**

The purpose of this Long-term Management Plan is to ensure the Bank Property is managed, monitored, and maintained in perpetuity. This Long-term Management Plan establishes objectives, priorities and tasks to monitor, manage, maintain and report on the Waters of the U.S. and Covered Habitat on the Bank Property.

### **C. Property Owners Responsibilities**

Property Owners, their successors and assigns, shall implement this Long-term Management Plan, managing and monitoring the Bank Property in perpetuity to preserve its habitat and Conservation Values in accordance with the BEI, the Conservation Easement, and this Long-term Management Plan. Long-term management tasks shall be funded through the Endowment Fund, held in trust by the National Fish and Wildlife Foundation (the "Endowment Holder") in accordance with the Memorandum of Agreement entered into between the Endowment Holder and California Department of Fish and Game ("CDFG"), effective November 23, 2010. The Property Owners shall be responsible for providing an annual report to the IRT detailing the time



period covered, an itemized account of the management tasks and total amount expended.

## **II. Bank Property Description**

### **A. Setting and Location**

The Bank Property is located north of Santa Paula, Ventura County, State of California, designated Assessor's Parcel No. 040-0-020-085. The Bank Property is shown on the general vicinity map (Figure 1) and the Bank Property map (Figure 2). The general vicinity map shows the Bank Property location in relation to cities, towns, or major roads, and other distinguishable landmarks. The Bank Property map shows the Bank Property boundaries on a topographic map.

### **B History and Land Use**

In the 1890s the property was reportedly homesteaded by local pioneers who lived there until the early 1930s. At that time, Santa Paula Water Works, the former private water company serving the City of Santa Paula, purchased the property from the homesteaders. Due to the topography of the canyon, the Water Works explored the option of building a water storage dam along Santa Paula Creek at the western boundary of the property. For whatever technical or financial reasons, this option was never implemented and the creek and the canyon remained largely undeveloped and pristine. In 2005, the Bank Sponsors purchased the property from Santa Paula Water Works with the intent of possibly developing it as a residence and/or a commercial vineyard.

The majority of the lands adjoining the proposed Bank are currently managed as recreational open space by the USFS. Other adjacent land uses include commercial agriculture, mainly citrus and avocado production, and oil/natural gas production.

### **C. Hydrology, Topography, and Soils**

The Bank Property is located on what might be described as the bottom of the Santa Paula Creek headwaters. Approximately 0.7 miles upstream lies the confluence of the east and north forks.

The entire watershed tributary to the Bank Property is undeveloped, consisting of steep to very steep topography dominated by coastal sage-chaparral on most aspects except on north-facing slopes, where some conifers can be found. In contrast to the lower watershed below the Sisar Creek confluence, the upper watershed is composed primarily of well-indurated sandstone of

Eocene age (Juncal/Matilija formations). These materials are resistant to abrasion in transport.

Most of the lower watershed is composed of soft shales, and are quickly eroded into fine sediments. As a result, the Bank Property lies within that portion of the Santa Paula Creek watershed which provides the source material for most of the coarse sediment comprising the streambed for the mainstem of Santa Paula Creek.

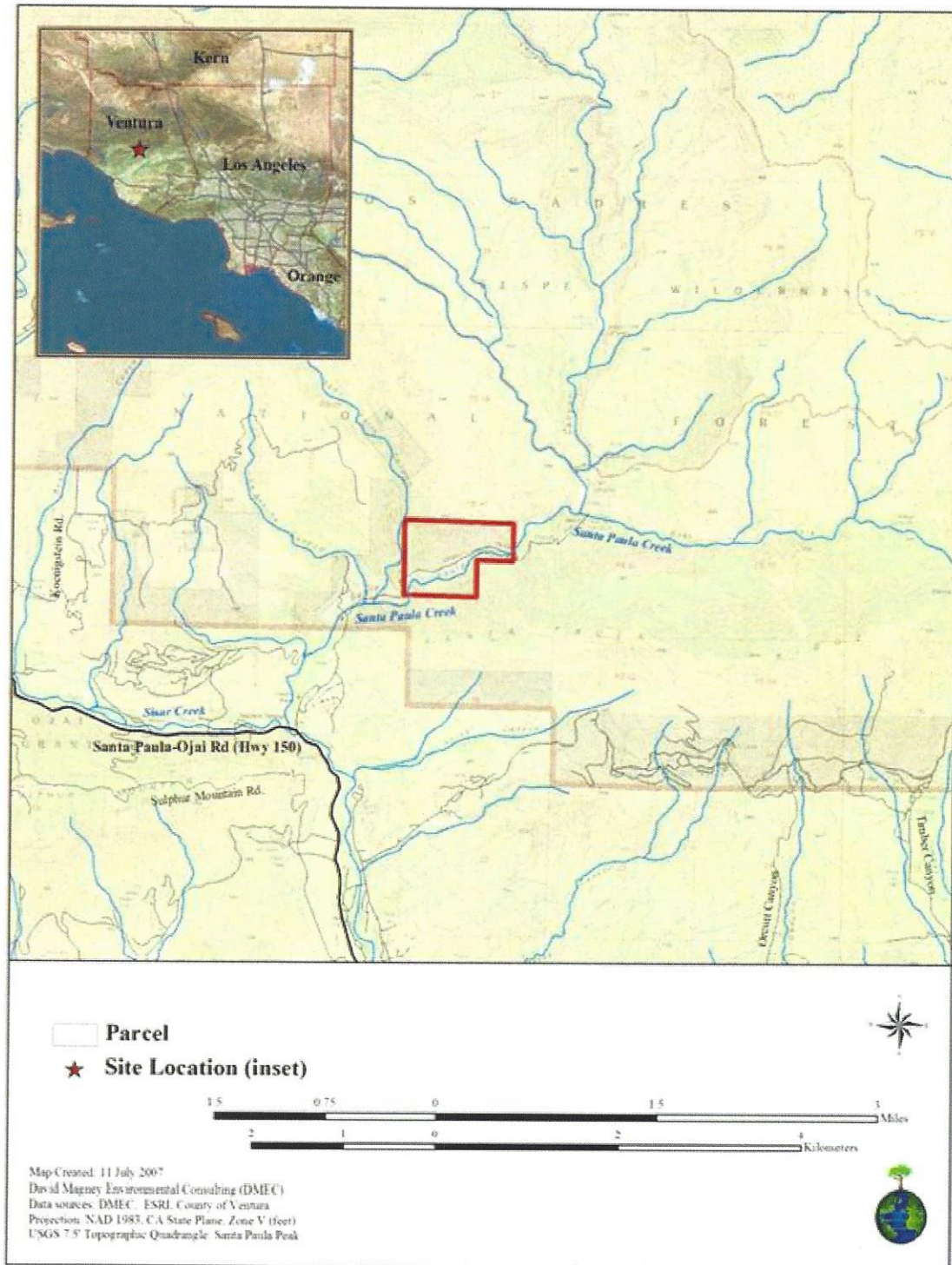


Figure 1





Figure 2

The nearest streamflow gauge is 2.6 miles downstream of the Bank (U.S. Geological Survey Station 11113500, "Santa Paula Creek near Santa Paula"). The approximate drainage area at the downstream Bank Property boundary is 18.5 square miles. The peak flow of record at the gauge is 27,500 cubic feet/second (cfs) which occurred on January 10, 2005 (Stillwater Sciences 2007). The stream within the parcel is apparently perennial. The approximate discharge was one cfs during a field visit on September 25, 2008 by HydroScience (T. Hanes, pers. comm.), which was a dry year. The streamflow, except for a small baseflow component, is flashy and responds quickly to rainfall once the soils are recharged after the typical summer drought. During the winter baseflows increase as more water moves laterally toward channels and less are intercepted in route to support transpiration. At the gauge, approximately 70% of the mean daily discharges were at or below 10 cfs (Stillwater Sciences 2007). The value at the Bank Property would be expected to be less, probably 6-8 cfs.

The Bank Property is unique in that it supports the widest floodplain/valley width of the entire creek. This feature results from a constriction in the valley bottom and a 90-degree turn in the channel, which may be fault related. The north fork appears to be largely dominated by bedrock, as evidenced by the waterfalls on that fork, which is in contrast to the east fork, where the stream is eroding into the severely constricted valley sides which are composed of relatively more fractured rock. Based on this limited evidence it appears that the east fork is the dominant source of coarse sediment transported by the stream when it enters the Bank Property.

The morphology of the stream is a reflection of the watershed characteristics and the flood dominated hydrology. Floods do the vast majority of sediment transport and this flood dominated regime renders the typical interpretation of a floodplain as a tenuous concept here. Rather than the stream slowly migrating across the valley floor, the fluvial transport occurs essentially only during flood events, at which time there are large quantities of bedload in transport, and random events such as a tree falling into the stream can cause local deposition and stream avulsion. The stream retains the pattern it had on the recession of the previous flood, until a similar or larger event is again capable of mobilizing the bed.



While the majority of the channel within the parcel can be described as depositional, it is highly dynamic on decadal time scales. As riparian vegetation becomes increasingly dense, this reach will tend to become more depositional outside of the active channel during most events; however, as the event of January 10, 2005 demonstrated, rare events can remove much of the existing riparian vegetation, setting the stage for robust rejuvenation that was evident during the September, 2008 site visit.

The current channel alignment is composed primarily of gravels and cobbles, with frequent boulders and some exposures of bedrock which gives rise to pool formation. These features tend to persist since they exhibit such low hydraulic roughness that bed material in transport tends to move through them, rather than filling them.

#### **D. Existing Easements**

The Bank Property is encumbered with a 16-foot wide trail access for U.S. Forest Service (USFS) recreational use.

#### **E . Adjacent Land Uses**

The Bank Property is bounded on three sides (north, south, and east) by USFS lands administered under the Forest Management Plan for Los Padres National Forest. Lands to the west are under avocado and citrus cultivation.

### **III. Habitat and Species Descriptions**

#### **A. Biological Resources Survey of Bank Property**

Some 209 vascular plant taxa are documented to occur on the Bank Property. Of the 209 vascular plant taxa, 178 (85.2%) are native and the remaining 31 (14.8%) are introduced naturalized species. The vascular plant flora of the property appears to be in better condition than what would normally be expected at similarly sized areas elsewhere in the region and in California. The pristine nature of the property has resulted in a slightly higher ratio of native plant species than typically found for the flora of California (~70% native) or Ventura County (80% native) as a whole (Exhibit G-2).

Palustrine and Riverine habitats provide numerous important wildlife resources for a number of wildlife, including invertebrates (aquatic and terrestrial), fish, amphibians, reptiles, birds, and

mammals. This is particularly true when intact upland plant communities occur adjacent to them. The structure of the riparian community, in addition to the relatively high plant structural diversity, provides habitat necessary for foraging, nesting, and cover for many species. In addition, streams such as Santa Paula Creek are important sources of water for a variety of upland wildlife species.

Riparian zones along rivers and streams are also used as migration corridors by various species of wildlife including small and large mammals, birds, and reptiles. These migration corridors often connect habitat patches, and allow for physical and genetic exchange between animal populations. Wildlife can use riparian zones for cover while traveling across otherwise open areas. Numerous species of wildlife are known to occur within Santa Paula Creek, frequenting the Palustrine and Riverine System habitats on a seasonal basis and regularly using resources provided by the creek.

Searches of the CDFG's California Natural Diversity Data Base RareFind3 for the Santa Paula Peak Quadrangle and the surround eight quadrangles (Ojai, Saticoy, Santa Paula, Lion Canyon, Topa Topa Mountain, Devils Heart Peak, Fillmore and Moorpark) revealed 20 special-status wildlife species that are known to occur and are tracked within the vicinity of these quadrangles and the Bank Property.

Eighty-nine (89) wildlife species have been observed or detected onsite, including 2 fish, 4 amphibians, 3 (total expected is 9) reptiles, 33 birds, 9 mammals, and 37 invertebrates. An additional 49 species are reported or expected to occur on the property for a total of 141 species.

Recent (2007-08) streamside surveys and electro-shocking efforts conducted by Stillwater Sciences (Exhibit G-4) indicate that larger than expected numbers of steelhead trout (*Oncorhynchus mykiss*) occur on the Bank Property and elsewhere in upper Santa Paula (and Sisar) Creek.

In addition to the endangered steelhead trout documented to occur, Santa Paula Creek and associated watershed has provided habitat for or has the potential to provide suitable habitat for a number of other threatened, endangered or sensitive species. Included in these are the California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub and southwestern pond turtle.

It is believed that the existing stream gradient (2-3%+) is a little too steep to provide optimal breeding habitat for the arroyo toad (*Bufo californicus*) within the parcel, although there may be an opportunity to establish this endangered species should an appropriate segment of the system re-establish a gradient less than 2%. This species historically occurred along Santa Paula Creek.



Suitable habitat is present to justify the Bank as a possible future reintroduction site for California red-legged frogs.

The Bank Property contains upland, riparian, and wetland habitats on steep slopes and in floodplains of Santa Paula Creek and contributing tributaries. The Bank Property's vegetation is comprised of five predominant habitat types, including Coastal Sage Scrub, Floodplain Scrub, Chaparral, Riparian Woodland, and Upland Woodland.

#### **B. Special-status Species Habitat and Occurrence**

The Bank Property provides suitable habitat for 14 special-status plant species (see Exhibit G-2), California condor, foothill yellow-legged frog, least Bell's vireo, southwestern willow flycatcher, California red-legged frog, two-striped garter snake, arroyo chub, and southwestern pond turtle.

#### **IV. Management and Monitoring**

The overall goal of long-term management is to foster the long term viability of the Bank Property's Waters of the U.S. and Covered Habitat. Routine monitoring and minor maintenance tasks are intended to assure the viability of the Bank Property in perpetuity.

To carry out the management tasks under this Long-term Management Plan, the Property Owners shall hire an individual or organization, acceptable to the IRT, to serve as land manager. The land manager must satisfy the following criteria:

- Possession of a B.S. or B.A. degree in wildlife management, natural resources, ecology, zoology, botany, biology, or similar degree;
- A minimum of two years' experience in field biology in California (preferably within county where Bank Property is located); and
- Demonstrated experience in similar projects, or in projects requiring similar skills.

#### **A. Biological Resources**

The approach to the long-term management of the Bank Property's biological resources is to conduct annual site examinations and monitoring of selected characteristics to determine stability



and ongoing trends of the preserved Waters of the U.S., including wetlands and associated buffers, and sensitive species habitat, mainly riverine habitats and riparian vegetation. Annual monitoring will assess the Bank Property's condition, degree of erosion, invasion of exotic or deleterious (e.g., thatch producing) species, water quality, fire hazard, and/or other aspects that may warrant management actions. While it is not anticipated that major management actions will be needed, an objective of this Long-term Management Plan is to conduct monitoring to identify any issues that arise, and using Adaptive Management to determine what actions might be appropriate. Those chosen to accomplish monitoring responsibilities will have the knowledge, training, and experience to accomplish monitoring responsibilities.

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 IRT in discussion with the Property Owners. Adaptive Management includes those activities necessary to address the effects of climate change, fire, flood, or other natural events, Force Majeure, etc. Before considering any Adaptive Management changes to the Long-term Management Plan, the IRT will consider whether such actions will help ensure the continued viability of Bank Property's biological resources.

The Property Owners shall implement the following:

#### **Element A.1 Waters of the U.S., including wetlands**

Objective: Monitor, conserve and maintain the Bank Property's Waters of the U.S., including wetlands and associated buffers. Limit any impacts to Waters of the U.S. from vehicular travel or other adverse impacts.

Task: At least one annual walk-through survey will be conducted to qualitatively monitor the general condition of these habitats. General topographic conditions, hydrology, general vegetation cover and composition, invasive species, erosion, will be noted, evaluated and mapped during a site examination in the spring. Notes to be made will include observations of species encountered, water quality, general extent of wetlands, and any occurrences of erosion, and weed invasion.

Task: Establish reference sites for photographs and prepare a site map showing the reference sites for the Bank file. Alternatively, utilize photographic reference sites, if any, developed during the Interim

Management Period. Reference photographs will be taken of the overall wetland mosaic at least every five years from the beginning of the long-term management, with selected reference photos taken on the ground more frequently, twice per year.

#### **Element A.2. Covered Habitat**

Objective: Monitor, conserve and maintain the Bank Property's Covered Habitat.

Task: As part of the annual site walk-through, the Bank Property's Covered Habitat will be examined for any changes, current condition or pending needs. Any necessary tasks will be identified, prioritized and implemented as funding is available.

#### **Element A.3 Threatened/Endangered Animal Species Monitoring**

Objective: Monitor habitat conditions needed to support steelhead.

Objective: Manage to maintain habitat for southern steelhead trout.

Task: Monitor status every year by conducting qualitative habitat assessment surveys twice per year.

#### **Element A.4 Non-native Invasive Species**

Invasive species threaten the diversity or abundance of native species through competition for resources, predation, parasitism, interbreeding with native populations, transmitting diseases, or causing physical or chemical changes to the invaded habitat.

Objective: Monitor non-native invasive species, including but not limited to noxious weeds, that diminish site quality for which the bank was established. The Property Owners shall consult the following sources for guidance on what species may threaten the site and on management of those species: The California Department of Food and Agriculture (CDFA) list of "noxious weeds" that are subject to regulation or quarantine by county agricultural departments, the California Department of Food and Agriculture's Integrated Pest Control Branch, and the University of California State Integrated Pest Management

Program list of "Exotic and invasive pests and diseases that threaten California's agricultural, urban, or natural areas".

Task: Mapping of non-native invasive species cover or presence shall occur during the first five years of initiating long-term management, to establish a baseline. Mapping shall be accomplished through use of available technologies, such as GIS and aerial photography.

Task: Each year's annual walk-through survey (or a supplemental survey) will include a qualitative assessment (e.g. visual estimate of cover) of potential or observed noxious weeds or other non-native species invasions, primarily in or around the wetlands.

## **B Security, Safety, and Public Access**

The Bank Property is open to general public access consistent with the USFS easement. This will continue to be an allowed use. Research and/or other educational programs or efforts may be allowed on the Bank Property as deemed appropriate by the IRT, but are not specifically part of this Long-term Management Plan.

### **Element B.1 Trash and trespass**

Objective: Monitor sources of trash, vandalism, and trespass.

Objective: Collect and remove trash, repair vandalized structures, and rectify trespass impacts. These activities are, and will continue to be the responsibility of the USFS as a condition of that agency's easement.

Task: During each site visit, record occurrences of trash and/or trespass. Record type, location, and management mitigation recommendations to avoid, minimize, or rectify a trash and/or trespass impact.

## **C. Reporting and Administration**

### **Element C.1 Annual Report**

Objective: Provide annual report on all monitoring conducted and general site conditions to IRT and any other appropriate parties.



Task: Prepare annual report and any other additional documentation. Include a summary. Complete and circulate to the IRT by August 15 of each year.

Task: Make recommendations with regard to (1) any habitat enhancement measures deemed to be warranted, (2) any problems that need near short and long-term attention, and (3) any changes in the monitoring or management program that appear to be warranted based on monitoring results to date.

## **V. Amendments and Notices**

### **A. Amendments**

The Property Owners and the IRT may meet and confer from time to time, upon the request of any one of them, to revise the Long-term Management Plan to better meet management objectives and preserve the habitat and Conservation Values of the Bank Property. Any proposed changes will be designed with input from all parties. Any and all amendments to the Long-term Management Plan shall be approved by the IRT in writing and such approved amendments thereto shall be considered required management components and shall be implemented by the Property Owners.

If the CDFG determine, in writing, that continued implementation of the Long-term Management Plan would jeopardize the continued existence of a state listed species, any written amendment to this Long-term Management Plan, determined by the CDFG as necessary to avoid jeopardy, shall be a required management component and shall be implemented by the Property Owners.

### **B. Notices**

Any notices regarding this Long-term Management Plan shall be directed as follows:

Richard E. Lyons and Laurie Prange Lyons  
PO Box 4, Ojai, CA 93024  
805-525-2200 main

805-525-2556  
civicrecords@gmail.com

U.S. Army Corps of Engineers  
Los Angeles District, Ventura Office  
2151 Alessandro Drive, Suite 110  
Ventura, CA 93001  
Attn: Chief, North Coast Branch

U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Attn: Director, Water Division

California Department of Fish and Game  
South Coast Region  
3883 Ruffin Road  
San Diego, CA 92123  
Attn: Regional Manager

California Department of Fish and Game  
Habitat Conservation Planning Branch  
1416 Ninth Street, 12th Floor  
Sacramento, CA 95814  
Attn: Branch Chief

## **VI. Funding and Task Prioritization**

### **A. Funding**

Table 1 summarizes the anticipated costs of long-term management for the Bank. These costs include estimates of time and funding needed to conduct the basic monitoring site visits and reporting. The total annual funding anticipated is \$4,200.00; therefore, with the current annual

estimated capitalization rate of 3.5% the total Endowment Fund amount required will be \$120,000.00.

In accordance with the BEI, long-term management activities will be funded via the Endowment Fund held in trust by the Endowment Holder. Any Endowment Fund interest earnings beyond those necessary to provide Endowment Principal growth commensurate with inflation and any revenues remaining after the Endowment Principal is adjusted for inflation that exceed the anticipated annual management expenses of the Bank Property will be made available by the Endowment Holder to the Property Owners to fund the long-term management and monitoring activities on the Bank Property in a manner consistent with this Long-term Management Plan.

#### **B. Task Prioritization**

Due to unforeseen circumstances, prioritization of tasks, including tasks resulting from new requirements, may be necessary if insufficient funding is available to accomplish all tasks. The Property Owners and the Interagency Review Team ("IRT") shall discuss task priorities and funding availability to determine which tasks will be implemented. In general, tasks are prioritized in this order: 1) required by a local, state, or federal agency; 2) tasks necessary to maintain or remediate habitat quality; and 3) tasks that monitor resources, particularly if past monitoring has not shown downward trends. Equipment and materials necessary to implement priority tasks will also be considered priorities. Final determination of task priorities in any given year of insufficient funding will be determined in consultation with the IRT and as authorized by the IRT in writing.

Table 1.

Santa Paula Creek Mitigation Bank  
Long Term Management Plan  
Annual Costs

Monitoring Element	Description	Hours	Cost/Unit	Cost	Frequency	Schedule
A.1 Waters of the US	Walking Survey, notes	8	65	520.00	Once/year	Spring
A.1 Reference Photographs	Take and compile	4	65	260.00	Once/year	Spring
A.2 Covered Habitat	Map, access health	4	65	260.00	Once/year	Spring
A.3 Sensitive Species Monitoring	Map, access health	4	65	260.00	Once/year	Spring
A.4 Non-native invasive species	Survey, map	4	65	260.00	Once/year	Spring
B.1 Trespass and trash	Walking Survey, notes	4	65	260.00	Once/year	Spring
C.1 Reporting	Analysis, write-up	16	105	1680.00	Once/year	Annually
D.1 Administration/Contingency	As needed			700.00	Once/year	As needed
Total Estimated Cost				4200.00		

EXHIBIT B-2  
Endowment Assessment for Mitigation Property



Table 1.

Santa Paula Creek Mitigation Bank  
Long Term Management Plan  
Annual Costs

Monitoring Element	Description	Hours	Cost/Unit	Cost	Frequency	Schedule
A.1 Waters of the US	Walking Survey, notes	8	65	520.00	Once/year	Spring
A.1 Reference Photographs	Take and compile	4	65	260.00	Once/year	Spring
A.2 Covered Habitat	Map, access health	4	65	260.00	Once/year	Spring
A.3 Sensitive Species Monitoring	Map, access health	4	65	260.00	Once/year	Spring
A.4 Non-native invasive species	Survey, map	4	65	260.00	Once/year	Spring
B.1 Trespass and trash	Walking Survey, notes	4	65	260.00	Once/year	Spring
C.1 Reporting	Analysis, write-up	16	105	1680.00	Once/year	Annually
D.1 Administration/Contingency	As needed			700.00	Once/year	As needed
Total Estimated Cost				4200.00		

EXHIBIT B-3  
Endowment Payment Schedule

**Endowment Payment Schedule**  
**Santa Paula Creek Mitigation Bank**

<b>TBD</b>	<b>FIRST CALENDER YEAR OF WORK WITH ENDOWMENT FUNDS ("YEAR 1")</b>
<b>TBD</b>	<b>CALENDAR YEAR OF FIRST PAYMENT REQUEST TO NFWF (between July 1 and November 15 of the calendar year prior to "YEAR 1")</b>

**Endowment Payment Schedule:**

<b>Task - Monitoring Element</b>	<b>Description</b>	<b>Annual Payment Schedule*</b>
A.1 Waters of the U.S.	Walking surveys, notes	\$520.00
A.1 Reference of Photographs	Take and compile	\$260.00
A.2 Covered Habitat	Map, access health	\$260.00
A.3 Sensitive Species Monitoring	Map, access health	\$260.00
A.4 Non-native invasive species	Survey, map	\$260.00
B.1 Trespass and Trash	Walking Survey, notes	\$260.00
C.1 Reporting	Analysis, write-up	\$1,680.00
<b>Total Annual Payment Schedule:</b>		<b>\$3,500.00</b>

**Contingency:**

D.1 Administration / Contingency**	As needed	<b>\$700.00</b>
------------------------------------	-----------	-----------------

\* All disbursements will be adjusted for inflation by NFWF upon payment per the Recipient Agmt.

\*\* The contingency is not included in the payment schedule.

## EXHIBIT C CDFW-NFWF MOA

### **Master Mitigation Account Memorandum of Agreement between the California Department of Fish and Game and the National Fish and Wildlife Foundation**

This Master Mitigation Account Memorandum of Agreement (this "Agreement") is entered between the California Department of Fish and Game, an agency of the State of California (the "CDFG") and the National Fish and Wildlife Foundation, a District of Columbia non-profit corporation (the "Foundation") (together, the "Parties," and individually, a "Party"), as of the date of the signature of the second Party to sign (such date, the "Effective Date").

#### **I. PURPOSES**

1. The purposes of this Agreement are to establish the California Department of Fish and Game Master Mitigation Account (the "CDFG Account") to receive long-term endowment and other monies to be used to conserve, protect, restore and enhance fish, wildlife, native plants and habitats under the jurisdiction of the CDFG ("Account Purpose"), and to provide for the Foundation's deposit, investment, management and administration of the CDFG Account for the Account Purpose. The Foundation will direct monies in the CDFG Account to specified conservation, protection, restoration, enhancement, or related purposes as described in the "Deposit Documents," as hereinafter defined.
2. The primary source of funds to be deposited, invested, managed and administered under this Agreement are monies to be paid by individuals or private or governmental entities (hereafter referred to individually as a "Participant" and collectively as the "Participants") as a requirement of approvals, permits or other authorizations issued by the CDFG to minimize and mitigate certain unavoidable impacts of Participant projects on fish, wildlife, native plants and habitats (the "CDFG Approvals").
3. The legal and regulatory programs pursuant to which such CDFG Approvals may be given include, but are not necessarily limited to, the California Endangered Species Act (Cal. Fish and Game Code Section 2050 *et seq.*), the California Lake and Streambed Alteration Program (Cal. Fish and Game Code Section 1600 *et seq.*), the California Natural Community Conservation Planning Act (Cal. Fish and Game Code Section 2800 *et seq.*), and the California Environmental Quality Act (Cal. Public Resources Code Section 21000 *et seq.*).
4. As described more fully herein, the Foundation will be responsible to ensure that monies deposited in the CDFG Account will be deposited, invested and managed in accordance with this Agreement and the CDFG's direction and investment policy guidance to achieve the objectives set forth in this Agreement and the applicable Deposit Documents. Long-term endowment funds deposited into the CDFG Account will be managed as a long-term investment intended to exist indefinitely and fund necessary

costs of long-term management of mitigation lands and mitigation projects required under CDFG Approvals, and will be invested accordingly in a diversified investment portfolio in accordance with the endowment investment policy statement approved by the CDFG attached to this Agreement as Exhibit A and incorporated herein by reference, as the CDFG may amend the same from time-to-time. The CDFG Account may also be used for the deposit and management of funds other than long-term endowment monies, such as funds intended to pay for near-term management, site enhancement, restoration, or other activities designed to further the conservation, protection, restoration, and enhancement of fish, wildlife, and plant resources subject to the CDFG's jurisdiction. Funds other than long-term endowment funds will be invested accordingly in a cash management portfolio established and maintained by the Foundation.

5. The use of the CDFG Account will be limited by the amount of money available in the CDFG Account at any given time, and by the stated purposes as described in the applicable Deposit Documents. The Foundation shall disburse funds in the CDFG Account in accordance with direction provided by the CDFG and as set forth in the Deposit Documents and "Recipient Agreements," as hereinafter defined. In the event NFWF becomes aware of a conflict between the direction provided by the CDFG in its Deposit Documents and any Recipient Agreements, the Foundation shall notify and request direction from the CDFG prior to any disbursement.

## II. AUTHORITY

1. The CDFG is an agency of the State of California with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species. (Cal. Fish and Game Code Section 1802.)

2. The Foundation is a charitable non-profit corporation established by the United States Congress in 1984 by the National Fish and Wildlife Foundation Establishment Act, 16 U.S.C. Section 3701 *et seq.*, as amended (the "Establishment Act"), and is a tax exempt organization under Section 501(c)(3) of the Internal Revenue Code. The Establishment Act directs the Foundation to undertake activities that further the conservation and management of fish, wildlife, and plant resources for present and future generations and authorizes the Foundation to accept funds from any legal source to further its mission. The Establishment Act also requires the Foundation to report annually to the United States Congress on its proceedings and activities, including by providing Congress with a "full and complete statement of its receipts, expenditures, and investments" each year. (16 U.S.C. Section 3706(b)).

3. This Agreement is authorized under the California Fish and Game Code Sections 1600 *et seq.*, 1802, 2050 *et seq.*, and 2800 *et seq.*; California Code of Regulations, Title 14, California Fish and Game Commission Policies; California Government Code Section 65965; and other applicable laws and regulations.

### **III. DEFINITIONS**

1. “Acquisition Measure” shall have the meaning assigned to such term in Section VI(4) of this Agreement.
2. “Agreement” shall have the meaning assigned to such term in the Preamble to this Agreement.
3. “Annual Fee” is addressed within Section VII(3).
4. “CDFG” shall have the meaning assigned to such term in the Preamble to this Agreement.
5. “CDFG Account” shall have the meaning assigned to such term in Section I(1) of this Agreement.
6. “CDFG Representative” shall mean the designated staff person for the CDFG (or his or her alternate, acting in the place of the primary CDFG Representative) responsible for primary communications and administration related to this Agreement pursuant to Sections IV(1) and XI(3).
7. “Deposit Documents” shall mean documents such as permits, consents, authorizations, approvals and other writings issued by the CDFG which describe the sources and purposes of the various funds deposited into the CDFG Account. A “Set of Deposit Documents” is associated with a single project but may include more than one permit, consent, authorization, approval, or other writing issued by CDFG. In addition, at its election, the CDFG may create a standard form Deposit Document for certain Sub-Accounts (as defined below) that includes information the CDFG determines is necessary, such as: 1) Project name; 2) Project location; 3) land ownership and designated manager of the Project site; 4) Project proponent and affiliate(s); and 5) specific mitigation measures or other measures agreed to by the Participant(s) that are to be funded from the monies deposited into the Sub-Account for the applicable Project.
8. “Effective Date” shall have the meaning assigned to such term in the Preamble to this Agreement.
9. “Endowment Measure” shall have the meaning assigned to such term in Section VI(4) of this Agreement.
10. “Enhancement Measure” shall have the meaning assigned to such term in Section VI(4) of this Agreement.
11. “Establishment Act” shall have the meaning assigned to such term in Section II(2) of this Agreement.

12. "Foundation" shall have the meaning assigned to such term in the Preamble to this Agreement.
13. "Foundation Representative" shall mean the designated staff person for the Foundation (or his or her alternate, acting in the place of the primary Foundation Representative) responsible for primary communications and administration related to this Agreement pursuant to Sections V(1) and XI(3).
14. "Participant" and "Participants" shall have the meanings assigned to such terms in Section I(2) of this Agreement.
15. "Party" and "Parties" shall have the meanings assigned to such terms in the Preamble to this Agreement.
16. "Per Sub-Account Deposit Fee" is addressed within Section VII(2) of this Agreement.
17. "Project" shall mean a mitigation project consistent with the Account Purpose that has been selected by the CDFG for funding with amounts in the CDFG Account in accordance with the procedures set forth in this Agreement.
18. "Recipient" shall mean any person or entity that receives monies from the CDFG Account for the performance of a Project as set forth in a Recipient Agreement.
19. "Recipient Agreement" shall mean a contract, grant agreement, invoice, work order, or other written agreement or arrangement between the Foundation and a Recipient for the performance of a Project, including but not limited to long-term management activities, to be funded through a Sub-Account (as defined below).
20. "RFP" shall have the meaning assigned to such term in Section V(6) of this Agreement.
21. "Sub-Account" shall mean each individual sub-account within the CDFG Account established for the Endowment Measures, Acquisition Measures, and/or Enhancement Measures associated with each Set of Deposit Documents. The Foundation shall track and account for each Sub-Account in a manner that allows the funds on deposit in, and the account activity related to, each Sub-Account to be distinguishable from all other funds and Sub-Accounts within the overall CDFG Account. Within each Sub-Account, the Foundation shall track and account for all monies deposited by Participants or other depositors in a manner that allows the funds on deposit in, and the account activity related to, each Sub-Account to be distinguishable from all other funds and Sub-Accounts within the overall CDFG Account.
22. "Sub-Account Representative" shall have the meaning assigned to such term in Section IV(1) of this Agreement.

#### **IV. CDFG RESPONSIBILITIES**

1. The CDFG shall appoint the CDFG Representative and an alternate, who shall represent the CDFG in carrying out its obligations under this Agreement. The CDFG Representative and the alternate shall be the only persons authorized to approve deposits into, or direct disbursements out of, the CDFG Account. As described in additional detail in Section VI(5) below, the CDFG, by and through the CDFG Representative, shall retain sole responsibility for specifying the amount and designated purpose of funds to be deposited into the CDFG Account. If and to the extent the CDFG elects to designate a representative other than the CDFG Representative for a particular Sub-Account or other purpose under this Agreement (such person, a "Sub-Account Representative"), the CDFG shall notify the Foundation in writing of such election and, thereafter, the Sub-Account Representative shall function as the "CDFG Representative" hereunder for the purposes specified in such notice. The initial CDFG Representative and alternate are designated in Section XI(3). The CDFG shall notify the Foundation of any change in the CDFG Representative, Alternate or Sub-Account Representative by giving notice pursuant to Section XI.
2. From time to time, the CDFG Representative shall direct the Foundation in writing to disburse funds from Sub-Accounts to pay for performance of specified Projects consistent with the applicable Deposit Documents. Such disbursement may occur pursuant to a Recipient Agreement between the Foundation and the applicable Recipient of funds from a Sub-Account or by any other means specified by the CDFG (which may include, without limitation, direct disbursements by the Foundation to Recipients automatically in specified amounts and/or at specified intervals). The CDFG shall have the right at any time to review and approve (a) all Recipient Agreements, including any amendments, prior to their execution and (b) all requests from Recipients for disbursements of funds from the CDFG Account, prior to the Foundation's making such disbursements. If the CDFG directs the Foundation to make disbursements from the CDFG Account to one or more Recipients in specified amounts and/or at specified intervals, the Foundation is entitled to rely upon such direction and shall make such disbursements in the amounts and/or at the intervals so specified until and unless otherwise directed by the CDFG in writing.
3. The CDFG may elect to use money from the CDFG Account for Projects to be carried out by the CDFG rather than by a third-party Recipient. In such instances, the CDFG Representative will transmit to the Foundation Representative a Project budget, a brief description of Project activities, and associated payment procedures for transfer of money from the CDFG Account to the CDFG as payment for performance of the relevant Project.
4. If the CDFG elects to conduct any annual technical reviews to evaluate the progress and results of Projects funded by the CDFG Account, the CDFG may request the participation of the Foundation in such reviews. If the CDFG determines that termination or cancellation of a particular Project is warranted, the CDFG Representative will so inform the Foundation in writing.



5. The CDFG shall provide information to the general public, as appropriate, about the CDFG Account pursuant to any requirements the CDFG may have under the California Public Records Act or other authorities.

## **V. FOUNDATION RESPONSIBILITIES**

1. The Foundation shall appoint the Foundation Representative and an alternate, who shall represent the Foundation in carrying out its obligations under this Agreement. The CDFG may rely on all written communications made hereunder by the Foundation Representative or alternate as the communications of the Foundation itself. The Foundation shall notify the CDFG in writing of any change in the Foundation Representative or alternate within ten (10) days of such change by giving notice to the CDFG pursuant to Section XI.

2. The Foundation shall maintain the CDFG Account in an interest bearing or investment account at one or more financial institution(s) that is a member of the Federal Deposit Insurance Corporation or Securities Investor Protection Corporation (each an "Account Holder" and together the "Account Holders"). In consultation with third parties and/or the Foundation, the CDFG will determine the appropriate investment strategy or strategies to apply to the CDFG Account, including each Sub-Account within the CDFG Account. For accounting purposes, the Foundation shall ensure that the CDFG Account shall be distinguishable from all other accounts maintained by the Foundation. The Foundation shall also ensure that all Sub-Accounts within the CDFG Account are distinguishable from each other.

3. The Foundation shall invest amounts in the CDFG Account consistent with this Agreement, including but not limited to this Article V and Sections I(4), and VI(6) of this Agreement and applicable State and Federal laws, and in accordance with investment guidance determined by the CDFG and communicated to the Foundation in writing for implementation by each of the Account Holders. In addition, if requested by the CDFG, the Foundation shall invest amounts in any Sub-Account in an investment pool to achieve a specified purpose and tenure of the relevant funds consistent with the applicable Deposit Document. Day-to-day investment decisions will be made by the professional investment advisor or financial institution with which the Foundation has established or will establish an investment advisory relationship. The Foundation may rely on the advice of any such adviser, and may delegate day-to-day investment decision-making authority, consistent with applicable State and Federal law, to such adviser with respect to management of the CDFG Account or any Sub-Account. Investment income accruing to each Sub-Account will be credited thereto (with investment income accruing on pooled funds apportioned *pro rata* to each Sub-Account within such pool) and shall be used to carry out the purposes of the various Sub-Accounts as set forth in the applicable Deposit Documents.

4. For investment purposes only, the Foundation is authorized to commingle any or all of the assets existing in the CDFG Account with other funds held or managed by the Foundation that are subject to identical investment purposes and restrictions. The intent of this authorization is to allow the Foundation to pool funds subject to identical investment purposes and restrictions for collective management, such that all participating funds may benefit from efficiencies of scale. Any funds from the CDFG Account commingled in this manner shall at all times remain subject to the investment guidance specified by the CDFG for such funds. In addition, notwithstanding this authorization, and in accordance with Section V(2) above, the Foundation shall ensure that funds in the CDFG Account shall at all times be distinguishable within the Foundation's internal account system from the balances of all other accounts maintained or managed by the Foundation.
5. The Foundation shall administer the CDFG Account consistent with Section VII, below.
6. If requested by the CDFG, under separate agreements with the CDFG, the Foundation shall prepare one or more specialized requests for proposals (each an "RFP") for Projects to be selected by the CDFG and funded by the CDFG Account.
7. The Foundation shall pay Recipients' requests for disbursements in accordance with the procedures set forth in the respective Recipient Agreements or, if no Recipient Agreement exists, as otherwise specified by the CDFG in writing.
8. The Foundation will transfer money from the CDFG Account to the CDFG as payment for performance of Projects by the CDFG in accordance with payment procedures provided by the CDFG pursuant to Section IV(3).
9. If requested by the CDFG, the Foundation shall participate with the CDFG in annual technical reviews to evaluate the progress and results of Projects funded by the CDFG Account. The Foundation will also take appropriate steps to terminate or cancel a Project if directed to do so by the CDFG.

## **VI. STANDARD OPERATING PROCEDURES**

The CDFG and the Foundation expect that, in the ordinary course, the procedures set forth in this Section VI will govern the deposit, management, and disbursement of funds in Sub-Accounts within the CDFG Account. If and to the extent that an applicable Deposit Document or Set of Deposit Documents, provisions of applicable law or regulation, or written instructions delivered by the CDFG to the Foundation specify additional or different procedures for such deposit, management, or disbursement, then such alternate procedures shall be deemed to apply.

1. Permits, consents, authorizations, and/or related approvals issued by the CDFG may directly require Participants to pay funds to the Foundation for management pursuant to

this Agreement, or the CDFG may direct Participants to pay such funds to the Foundation through other communications transmitted to Participants in conjunction with or after issuance of the applicable Deposit Document(s).

2. For each payment of funds to the Foundation associated with a Set of Deposit Documents the CDFG shall either transmit, or require the paying Participant to transmit with its payment, to the Foundation copies of the Set of Deposit Documents or other communications requiring such payment.

3. For each payment of funds to the Foundation pursuant to Section VI(1) above, the Set of Deposit Documents or other communications transmitted to the Foundation (or, if not, a separate written instrument delivered by the CDFG to the Foundation) shall specify (a) the paying Participant and affiliates, (b) the paying Participant's project name, (c) the location of the paying Participant's project (or other activity) giving rise to the required payment, (d) land ownership and designated manager of the project site, and (e) the mitigation measures required to be funded by such payment.

4. The CDFG shall classify (either in the Set of Deposit Documents or a separate written instrument delivered to the Foundation) each specific mitigation measure identified in a Deposit Document or other instrument delivered to the Foundation as either (a) a long-term maintenance or management measure (each, an "Endowment Measure"), (b) a near-term land acquisition measure (each, an "Acquisition Measure"), or (c) a near-term restoration, enhancement, rehabilitation or other measure not described in (a) or (b) (each, an "Enhancement Measure").

5. The Parties expressly agree and acknowledge that as between the Parties the specification of mitigation measures and mitigation funds in a Set of Deposit Documents is the sole and exclusive responsibility of the CDFG. Without limiting the foregoing, the amount of mitigation funds specified for any Endowment Measures, whether calculated pursuant to a Property Analysis Record or otherwise, shall be the sole and exclusive responsibility of the CDFG and applicable Participant(s), and shall in no respect be the responsibility of the Foundation. The CDFG agrees and acknowledges that the Foundation is expressly entitled to rely on the validity of all such mitigation measures and the accuracy of the calculation of mitigation funds without independent verification. The Foundation shall not be liable in any respect to the CDFG, or to any other party, for any errors, omissions, inaccuracies, or other elements in the specification of such mitigation measures or mitigation funds.

6. With respect to the funds received by the Foundation in connection with each Set of Deposit Documents, the Foundation shall establish an individual Sub-Account corresponding to each measure identified in Section VI(4)(a)-(c) above provided for in the Set of Deposit Documents. The Foundation shall deposit funds it receives in connection with a particular Set of Deposit Documents and designated, respectively, for Enhancement Measures, Acquisition Measures, or Endowment Measures, into the applicable Sub-Account established with respect to that Set of Deposit Documents.

7. Pending disbursement in accordance with this Agreement, the Foundation shall (a) invest funds in Endowment Measure Sub-Accounts in accordance with the endowment investment policy statement approved in writing by the CDFG attached to this Agreement as Exhibit A, as the same may be amended from time-to-time and (b) invest funds in Enhancement Measure and Acquisition Measure Sub-Accounts in accordance with the Foundation's then-prevailing investment policy statement governing cash management. A copy of the Foundation's current investment policy statement governing cash management is attached to this Agreement as Exhibit B and incorporated herein by this reference. The Foundation shall notify the CDFG of any change to such policy statement no later than ten (10) days after such change becomes effective.

8. At the direction of the CDFG, the Foundation shall enter into Recipient Agreements for the performance of appropriate Projects or other activities by Recipients to be funded with amounts in Enhancement Measure and Acquisition Measure Sub-Accounts. Recipient Agreements shall be subject to approval by the CDFG. The Foundation shall enter into such Recipient Agreements and shall pay Recipients for performance of such Projects and activities in accordance with the terms of such Recipient Agreements. The CDFG may also direct the Foundation to make direct disbursements (without a governing Recipient Agreement) of amounts in Enhancement Measure and Acquisition Measure Sub-Accounts to Recipients (or other persons or entities) for performance of appropriate Projects or activities as determined by the CDFG.

9. At the direction of the CDFG, the Foundation shall enter into Recipient Agreements for the performance of appropriate Projects or other activities by Recipients to be funded with amounts in Endowment Measure Sub-Accounts. Recipient Agreements shall be subject to approval by the CDFG. The Foundation shall enter into such Recipient Agreements and shall pay Recipients for performance of such Projects and activities in accordance with the terms of such Recipient Agreements. The CDFG may also direct the Foundation to make direct disbursements (without a governing Recipient Agreement) of amounts in Endowment Measure Sub-Accounts to Recipients (or other persons or entities) for performance of appropriate Projects or activities as determined by the CDFG. At the CDFG's election transmitted in writing to the Foundation, Recipient Agreements or direct disbursement arrangements governing payment for Endowment Measures may expressly provide for payment by the Foundation to Recipients (or other persons or entities) of specific dollar amounts at specific time intervals, including advance payments, without the CDFG's ongoing approval of individual payments. In such instances, the CDFG reserves the right to issue a "stop payment" notice to the Foundation (upon receipt of which the Foundation shall immediately cease any further disbursements from the applicable Sub-Account) if the CDFG determines that the applicable Recipient (or other person or entity) is not properly implementing the Endowment Measure for which it is receiving disbursement of Sub-Account funds or that there is a need to reduce the amount of funds being disbursed. At the CDFG's request, the Foundation and its investment advisors will consult with the CDFG as to the projected financial impact of any potential disbursement from an Endowment Measure Sub-Account on the continuing expected financial viability of such Sub-Account.

## VII. GENERAL ACCOUNT ADMINISTRATION

1. Within ten (10) days after the Effective Date, the Foundation shall establish the CDFG Account. Each Sub-Account shall be created and funded within the CDFG Account as and when the Foundation receives Sub-Account funds. In connection with the creation and funding within the CDFG Account, the Foundation shall assign unique identifying information to each Sub-Account.
2. Each Sub-Account shall be subject to a one-time Per Sub-Account Deposit Fee of three thousand dollars (\$3,000). The Per Sub-Account Deposit Fee is to cover the cost of establishing the Sub-Account in the Foundation's financial and accounting systems and is to be paid by the Participant separate from the CDFG-directed deposit amount. The Foundation shall have the right to increase the Per Sub-Account Fee once every five years (each an "Adjustment Date") after the Effective Date if necessary to ensure that the Per Sub-Account Fee reflects inflation after the year 2010 and retains its purchasing power in 2010 dollars. The amount of any such increase shall be based upon the increase, if any, in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, All Items, 1982-84 = 100 ("Index"). The "Beginning Index" shall be the Index published most recently before the Effective Date. The "Comparison Index" shall be the Index published most recently before the Adjustment Date. If the Comparison Index is greater than the Beginning Index, then the Per Sub-Account Fee shall be increased by an amount equal to the ratio that the Comparison Index bears to the Beginning Index, as rounded to the nearest dollar. As an example, if the Beginning Index is 215 and the Comparison Index is 220, then the increase shall be \$70 ( $\$3,000 \times 220/215$ ). In accordance with Section VI(4) above, funds deposited into the CDFG Account for purposes of a particular Set of Deposit Documents may result in the creation of up to three (3) separate Sub-Accounts, each of which shall be subject to the Per Sub-Account Deposit Fee. If not paid through other means, the Foundation shall assess and collect the Per Sub-Account Fee on the applicable deposit amount (such Per Sub-Account Fee to be deducted by the Foundation from the deposit amount itself).
3. Each Sub-Account shall also be subject to an Annual Fee, to cover the cost of annual administration, operation and accounting of such Sub-Account. The Annual Fee on Enhancement Measure Sub-Accounts, Acquisition Measure Sub-Accounts, and undifferentiated Sub-Accounts shall be the greater of three percent (3%) of the balance of each such Sub-Account or one thousand dollars (\$1,000.00). The Annual Fee on Endowment Measure Sub-Accounts shall be the greater of one percent (1%) of the balance of each such Sub-Account or one thousand dollars (\$1,000.00). The Foundation shall assess and collect the Annual Fee either quarterly or annually, in either case at the Foundation's election, during each year in which the applicable Sub-Account is in existence. The Foundation shall collect the appropriate Annual Fee by deducting it from the balance of each respective Sub-Account.

4. Unless directed otherwise by the CDFG, the Foundation shall submit CDFG Account activity reports for each Sub-Account to the CDFG Representative semi-annually by June 15 and December 15 (for all non-Endowment Measure Sub-Accounts) and by March 15 (for Endowment Measure Sub-Accounts) of each year the CDFG Account is in existence. In each activity report, the Foundation shall report on deposits, disbursements, fees, and earnings and other investment income during the period to which the report pertains, with a reconciliation of the remaining unobligated balance. The activity reports will also summarize the current status of all active Recipient Agreements and will include a description of the work or other activities performed under such Recipient Agreements for which disbursements from the CDFG Account were made during the applicable reporting period. Upon request, the Foundation shall also provide to the CDFG Representative copies of its audited financial statements for any completed fiscal year.

5. With respect to Endowment Measure Sub-Accounts, the Parties agree to use best efforts to jointly develop (after the Effective Date) one or more additional reporting thresholds that would trigger reporting to the CDFG in addition to the reports described in Section VII(4) immediately above. The intent of this provision is to design a process by which the Foundation would, or would cause its investment advisors to, provide notice to the CDFG in the event that actual investment returns or prevailing economic conditions pose a material risk of depletion with respect to the Endowment Measure Sub-Accounts. The thresholds that would trigger such additional reporting will be developed by the CDFG and the Foundation in consultation with the Foundation's investment advisors. The Parties further agree to jointly develop one or more options that may be employed by the CDFG to mitigate such risk as and when it might arise. These options may include, but are not necessarily limited to, a determination and directive by the CDFG to suspend or reduce disbursements from the Endowment Measure Sub-Accounts for a period of time until the risk of depletion has receded to acceptable levels.

6. The Parties agree and acknowledge that, at their mutual election, they may enter into further agreements regarding the establishment, maintenance, and/or operation of additional Sub-Accounts created within the CDFG Account. If and to the extent that any such further agreements contain terms or conditions different from those set forth in this Agreement, the terms of such further agreements shall be deemed to supersede the provisions of this Agreement with respect to such additional Sub-Accounts.

7. No funds disbursed from the CDFG Account may be used by any Recipient to pay for lobbying activities, illegal activities, unauthorized (not identified in Deposit Documents) operating expenses or any litigation expenses, except that with the prior written approval of the CDFG such funds may be disbursed by the Foundation for the actual and reasonable costs of enforcement or defense of conservation easements or fee titles for mitigation properties.

8. The Foundation shall ensure that no funds disbursed from the CDFG Account are permitted to be used for any purpose prohibited by Section VII(7), above, or to unlawfully augment any Recipient's federal appropriations, whether in violation of the United States Constitution, Title 31, U.S.C. Section 1301(a) (the "Purpose Statute"), Title

31, U.S.C. Section 1341 (the “Anti-Deficiency Act”), Title 31, U.S.C. Section 3302(b) (the “Miscellaneous Receipts Act”), or other applicable law.

## **VIII. LIMITATIONS ON FOUNDATION’S LIABILITY**

The Foundation shall not be liable to the CDFG or other persons for losses arising from investments pursuant to this Agreement that are consistent with the CDFG-approved endowment investment policy statement. The Foundation shall maintain reasonable and customary supervision and employment policies for its employees, but shall be liable for the acts of its employees only to the extent of a breach of the Foundation’s obligations under this Agreement by such employees when they are acting within the course and scope of their employment.

## **IX. FIDUCIARY OBLIGATIONS OF FOUNDATION**

1. The Foundation shall make no disbursement or obligation of funds in the CDFG Account, including but not limited to the Endowment Measure Sub-Accounts, except in strict accordance with the provisions of this Agreement.
2. The Foundation shall have a duty of loyalty to the CDFG with respect to the CDFG Account, and shall not use or borrow against funds in the CDFG Account for its own benefit, except for assessment and collection of the fees due to the Foundation as provided by this Agreement.
3. Except to the extent provided in this Agreement, the endowment investment policy statement approved by the CDFG attached as Exhibit A, or any other applicable agreement between the CDFG and the Foundation, the Foundation’s fiduciary obligations with respect to investment of funds held in the Endowment Measure Sub-Accounts shall be governed by the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”), codified under California law at Cal. Prob. Code §18501 et seq. or any applicable successor to such law.
4. Except to the extent provided in the Foundation’s investment policy statement governing cash management or any other applicable agreement between the CDFG and the Foundation, the Foundation’s fiduciary obligations with respect to investment of funds held in the Enhancement Measure or Acquisition Measure Sub-Accounts shall be governed by Cal. Prob. Code §5240-5241, which sets forth requirements applicable to assets held by nonprofit corporations for investment.



## **X. TERM, TERMINATION, AND TRANSFER OF AGREEMENT**

1. This Agreement shall terminate (a) on the tenth (10<sup>th</sup>) anniversary of the Effective Date if not extended by the Parties in writing prior thereto or (b) without cause on the date specified by either Party in a written notice delivered to the other Party not less than one hundred eighty (180) days prior to the intended date of termination.
2. Upon termination of this Agreement, the Foundation shall immediately transfer all monies remaining in the CDFG Account, other than monies properly due and owing to the Foundation or its financial institutions hereunder, to the control of the CDFG or an entity designated by the CDFG to serve as a successor.
3. Within ninety (90) days following final disbursement of the funds in the CDFG Account to any successor, the Foundation shall provide to the CDFG a final accounting showing the deposits (including interest accrued thereon) and disbursements of all sums received pursuant to this Agreement, from the date of the last semi-annual accounting through the date of final disbursement, together with copies of all Recipient Agreements and other documents that the CDFG may reasonably request.

## **XI. CONTACT INFORMATION/COMMUNICATIONS**

1. All approvals, notices, reports and other communications required or permitted under this Agreement shall be in writing and delivered by first-class mail, overnight mail, receipt-confirmed facsimile, or electronic .pdf format (with a copy of the electronic .pdf communication also delivered by another means provided in this Section XI(1)). Each Party agrees to notify the other promptly after any change in named representative, address, telephone, or other contact information.
2. All deposits to the CDFG Account by Participants or the CDFG made by check shall be mailed to the Foundation's headquarters office at 1133 15<sup>th</sup> Street, NW, Suite 1100, Washington, D.C. 20005, to the attention of the Chief Financial Officer. All deposits to the CDFG Account by Participants or the CDFG made by electronic funds transfer shall be directed to the Foundation (Taxpayer I.D. Number 52-138-4139), in accordance with wiring instructions provided by the Foundation to the payor at the time of deposit.

3. The individuals named below shall be the Representatives of the CDFG and the Foundation for purposes of this Agreement. Contact information for the CDFG Representative and Foundation Representative, respectively, is as follows (it being agreed and acknowledged that contact information for deposits to the CDFG Account shall be as set forth in Section XI(2) above):

If to the CDFG:

Sandra Morey  
Deputy Director  
Ecosystem Conservation Division  
California Department of Fish and Game  
1416 Ninth Street  
Sacramento, CA 95814  
Phone: (916)653-6956  
Facsimile: (916) 653-3673  
Email: Smorey@dfg.ca.gov

CDFG Alternate:

Branch Chief  
Habitat Conservation Planning Branch  
California Department of Fish and Game  
1416 Ninth Street  
Suite 1260  
Sacramento, CA 95814  
Phone: (916)653-9864  
Facsimile: (916) 653-2588  
Email: sroman@dfg.ca.gov

If to the Foundation:

Liz Epstein  
Senior Manager, IDEA  
National Fish and Wildlife Foundation  
90 New Montgomery Street  
Suite 1010  
San Francisco, California  
Phone: (415) 243-3102  
Facsimile: (415) 778-0998  
[liz.epstein@nfwf.org](mailto:liz.epstein@nfwf.org)

Foundation Alternate:

AJ Shelton  
Manager, IDEA  
National Fish and Wildlife Foundation  
90 New Montgomery Street  
Suite 1010  
San Francisco, California 94105  
Phone: (415) 243-3106  
Facsimile: (415) 778-0998  
Email: AJ.shelton@nfwf.org

## **XII. MISCELLANEOUS PROVISIONS**

1. The Foundation may not assign this Agreement, in whole or in part, to any individual or other legal entity without the prior written approval of the CDFG, which the CDFG may withhold. The CDFG may assign its rights to a successor agency without the consent of the Foundation provided that the successor agency is legally obligated to assume or otherwise assumes the CDFG's obligations hereunder.
2. If any provision of this Agreement is held to be unlawful or invalid by any court of law with duly established jurisdiction over this Agreement, the Parties intend that the remainder of this Agreement shall remain in full force and effect notwithstanding the severance of the unlawful or invalid provision(s).
3. Each of the Parties is acting in its independent capacity in entering into and carrying out this Agreement and not as an agent, employee or representative of the other Party.

4. The Parties will cooperate in good faith to achieve the objectives of this Agreement and to avoid disputes. The Parties will use good faith efforts to resolve disputes at the lowest organizational level and, if a dispute cannot be so resolved, the Parties will then elevate the dispute to the appropriate officials within their respective organizations.

5. Nothing contained in this Agreement is intended to unlawfully delegate the CDFG's duties or to limit the authority of the CDFG to fulfill its statutory or regulatory responsibilities.

6. This Agreement shall not be the basis of any claims, rights, causes of action, challenges, or appeals by any person not a Party to this Agreement. Nothing in this Agreement shall be construed to create privity of contract between the CDFG and any third parties, including Recipients whose Projects are funded from the CDFG Account.

7. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, disregarding principles of conflicts of law. Venue for any action arising out of this Agreement shall be in the Superior Court of the County of Sacramento, California.

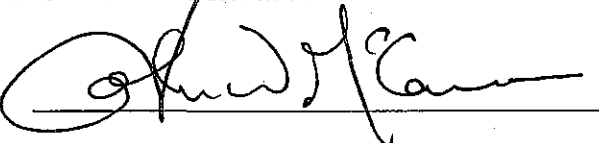
8. Any waiver by either Party of any term or provision of this Agreement must be given in writing. No waiver shall be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision respecting any other event or circumstance.

9. The headings used in this Agreement are for convenience only and shall not determine or limit the interpretation, construction or meaning of this Agreement.

10. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and may not be amended, except in writing signed by each Party hereto. Each Party to this Agreement warrants to the other that its respective signatory has full right and authority to enter into and consummate this Agreement and the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

**CALIFORNIA DEPARTMENT OF FISH AND GAME**

By: 

John McCamman, Director

Date: Nov 23, 2010

**NATIONAL FISH AND WILDLIFE FOUNDATION**

By: 

Jeff Trandahl, Executive Director

Date: Nov 17, 2010

## **EXHIBIT A**

### **Foundation Investment Policy Statement Governing Endowment Management (CDFG-Approved)**

## **CALIFORNIA DEPARTMENT OF FISH AND GAME**

### **INVESTMENT POLICY STATEMENT FOR MITIGATION ENDOWMENT ACCOUNTS HELD BY THE NATIONAL FISH AND WILDLIFE FOUNDATION**

#### **Definitions**

<b>“CDFG”</b>	The California Department of Fish and Game, an agency of the State of California with jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species.
<b>“COMMITTEE”</b>	The IDEA Endowment Committee of the Foundation.
<b>“ENDOWMENT FUNDS”</b>	These consist of assets held by the Foundation within its Impact-Directed Environmental Accounts program and designated by the CDFG for long-term management with a growth and income focus. These are hereafter referred to as Endowment Funds or, collectively, the “Endowment.”
<b>“FOUNDATION”</b>	The National Fish and Wildlife Foundation.
<b>“IPS”</b>	This investment policy statement for CDFG mitigation endowment accounts held by the Foundation.
<b>“MANAGER”</b>	The investment management organization(s) engaged as the Foundation’s investment manager. As of August 2010, the Manager is Commonfund.

## **Broad Philosophy**

This IPS governs the investment management of Endowment Funds that are generated as a component of required environmental mitigation as set forth in permits, licenses, authorizations, and/or other “decision documents” issued by, through, or otherwise subject to the jurisdiction of the CDFG. The legal and regulatory programs pursuant to which such Endowment Funds are generated include, but are not necessarily limited to, the California Endangered Species Act (Cal. Fish and Game Code Section 2050 *et seq.*), the California Lake and Streambed Alteration Program (Cal. Fish and Game Code Section 1600 *et seq.*), the California Natural Community Conservation Planning Act (Cal. Fish and Game Code Section 2800 *et seq.*), and the California Environmental Quality Act (Cal. Public Resources Code Section 21000 *et seq.*).

The CDFG has executed a Memorandum of Agreement (“MOA”) with the Foundation regarding the Foundation’s management of several categories of funds required by the CDFG to pay for environmental mitigation measures. One specific category of funds that may be required by the CDFG, and deposited into one or more accounts at the Foundation, is referred to as “long-term land management” or “endowment” funding. These funds are intended to provide a source of long-term, perhaps perpetual, yearly funding for the parcels of real property with which they are associated. It is the CDFG’s expectation that such funds will be managed by the Foundation and invested by the Manager in a manner that enhances the likelihood that the initial principal amount of endowment funding for a particular parcel will provide sufficient investment growth and income to pay for required management and maintenance of that property over an indefinite period of time. Such funds will comprise the Endowment addressed by this IPS.

The Endowment Funds governed by this IPS will be maintained in financial accounts held at the Foundation, which will administer the Endowment in accordance with the terms hereof. Except to the extent provided otherwise in this IPS, in the MOA, or as otherwise specified by the CDFG in writing, the Foundation will manage the Endowment in accordance with the Uniform Prudent Management of Institutional Funds Act (“UPMIFA”), codified in California at Cal. Prob. Code §18501 *et seq.* This IPS will remain in effect until modified at the direction of the CDFG, acting in consultation with the Committee. The Committee will monitor the performance of the Endowment Funds and of the Manager and may make recommendations to the CDFG, from time to time as warranted, for potential changes in the objectives and policies set forth herein. Final responsibility for the provisions of this IPS and any changes hereto will at all times remain with the CDFG. The Manager is expected to propose to the Foundation any revisions to these objectives and policies at any time that the Manager deems appropriate or advisable, and the Foundation will thereafter convey such proposed revisions to the CDFG for its consideration.

The Foundation has delegated to the Manager the day-to-day management and investment of the Endowment Funds. Under the scope of this delegation, the Manager shall have discretion to manage the Endowment Funds in a manner that best achieves the

investment objectives within the guidelines set forth in this IPS. In discharging its duties as investment manager, the Manager shall invest and manage the Endowment Funds in good faith and as a prudent investor would, exercising reasonable care, skill, and caution. The Foundation has delegated the investment management authority it might otherwise have to the Manager in the good faith belief that the Manager will achieve the objectives set forth in this IPS. The CDFG has approved this delegation and has reserved the right to request and/or approve future delegation(s) to other investment managers of the day-to-day management and investment of the Endowment Funds.

### **Overall Objectives**

This IPS is designed to:

- Establish appropriate **risk and return objectives** in light of the risk tolerance and the indefinite investment time horizon for the Endowment.
- Establish **asset allocation guidelines** and suitable investments for the Endowment, consistent with the risk and return objectives of this IPS.
- Provide a framework for **ongoing monitoring** of investment performance of the Endowment.

### **Risk and Return Objectives**

Return Objectives. The overall objective with respect to the investment of Endowment Funds hereunder is to generate a level of financial support sufficient to pay the annual costs of long-term management for indefinite periods of time on parcels of real property secured or identified as “mitigation parcels” in connection with permits, authorizations, and other proceedings of the CDFG. It is the CDFG’s expectation that these costs will be funded exclusively from the corresponding Endowment Funds deposited for each parcel and, thus, that no other funding sources will contribute to defraying these costs.

The CDFG calculates the principal amount of each tranche of Endowment Funds (each corresponding to an individual parcel of real property) using an assumed net annual drawdown rate of 3.50%. The CDFG has also assumed 3% annually as an estimate of long-term inflation and 1% annually as an estimate of the administrative costs of operating the Endowment. Accordingly, in investing Endowment Funds, the Manager will seek to attain an average nominal annual total return, net of any fees charged by the Manager or any underlying investment managers, of at least seven and one-half percent (7.50%) over the long term. This target average nominal annual return is referred to hereinafter as the “Return Goal.”



This IPS is based on the assumption that the spending on a CDFG mitigation parcel for land management activities over the long term will average no more than 3.50% annually of the average market value of the parcel's corresponding Endowment Funds. This approach is intended to preserve the principal of the Endowment Funds to the extent practicable while generating a level of income that will be available to fund land management activities on the mitigation parcels. To the extent the CDFG deems it necessary or desirable to allow a spending level greater than that projected for any particular parcel (which projection will be based on an assumed annual spend rate of 3.50%), the likelihood will increase that investment earnings alone (both appreciation and income) on the corresponding Endowment Funds will be insufficient to fund management activities on the relevant parcel in perpetuity. Thus, a decision by the CDFG to allow a spending level greater than that projected for any particular parcel will decrease the statistical likelihood that the Endowment Funds for that parcel will exist in perpetuity.

In addition to using the Return Goal, the Committee will evaluate the Manager's performance on a relative basis by comparing it against market performance benchmarks and appropriate capital market measures, such as securities indices. The Manager's performance relative to these benchmarks and measures is referred to hereinafter as the "Relative Performance Goal." The Relative Performance Goal will be measured by comparing actual Endowment investment results over the current quarter – as well as over moving, annualized one, three, and five year time periods – against a weighted Endowment portfolio benchmark.

The weighted Endowment portfolio benchmark will be created by including in the benchmark appropriate indexed returns (e.g., Barclays Aggregate, S&P 500, etc.), pro rata, according to the asset class weightings in the Endowment's target allocation. The overall Endowment benchmark for a period may be adjusted if there are disparities in asset allocations during any single time frame caused by very large Endowment inflows or outflows and/or tactical allocations that would cause the benchmark to be inappropriate for the time period being examined.

Risk Objectives. The acceptable risk profile for the Endowment should generally be for the Manager to assume the lowest possible risk consistent with achieving the Return Goal. While negative returns in any single year may be unavoidable, over longer terms, the Manager should select asset allocations that are expected to achieve overall positive portfolio returns. In order to allow ongoing assessment and monitoring of portfolio risk, the Manager will prepare and present to the Committee at least annually a report on the overall risk profile of the portfolio based on the then-existing asset allocation thereof. This report will also be made available to the CDFG.

Risk can be construed to include multiple different outcomes including loss of principal, failure to meet an expected return, or, most commonly, volatility of investment returns around an expected mean (also known as "standard deviation"). The CDFG's policy

regarding investment risk, consistent with modern portfolio theory and UPMIFA's express preference for diversification in endowment portfolios, is that risk cannot be eliminated but should be managed.

The Committee is delegating to the Manager the responsibility of understanding the risks inherent in the investment strategy selected to attempt to achieve the Return Goal, ensuring that the Endowment portfolio is properly compensated for these risks, measuring and monitoring those risks, and periodically communicating this risk information to the Committee and, to the extent requested, the CDFG. Most importantly, the level of overall Endowment portfolio risk taken should be consistent with the statistically-likely achievement of the overall Return Goal.

### **Asset Allocation Guidelines**

**General.** Endowment Funds shall be invested in a diversified, balanced portfolio that may include fixed income instruments, equity instruments, real assets, alternative investments, and cash. The Endowment Funds may be invested in any combination of individual securities, separately managed accounts with investment managers, commingled funds, or mutual funds. In the case of investments by third-party investment managers, those managers will have full discretion over their own portfolio management decisions consistent with the guidelines provided by this IPS. In the case of investments in commingled funds and mutual funds, their management will be carried out within their respective structures and in accordance with their applicable prospectus materials.

The specific asset allocations within the Endowment portfolio, including necessary or appropriate rebalancing among the asset classes from time to time, will remain the responsibility of the Manager, exercising reasonable judgment in light of prevailing market conditions and the objectives of this IPS, including the permissible asset allocation ranges that follow.

**During Transition Period.** The CDFG has determined that the Endowment Funds designated for a particular mitigation parcel should not be drawn upon at all during the first three years after which such Endowment Funds have been received. (Funding for land management activities on mitigation parcels during this three-year transition period (hereafter, the "Transition Period") will be drawn from sources other than the Endowment Funds.) Given this determination, the CDFG and the Committee are delegating to the Manager the discretion to deviate from the asset allocation that would otherwise apply under this IPS for Endowment Funds held during their Transition Period.

In particular, it is possible that certain minimum asset allocation bands (as set forth below) will not be met with respect to Endowment Funds held during their Transition Period. While it is expected that new Endowment Funds will generally be invested in the standard asset allocation incrementally (i.e., averaged in) over the course of the

Transition Period, the CDFG and the Committee recognize that there may be market conditions that warrant slower or faster investment of new Endowment Funds in the standard asset allocation. Given that the Manager may determine it best not to fully deploy a certain tranche of Endowment Funds in the standard asset allocation immediately, the CDFG and the Committee are delegating to the Manager the discretion to decide in what short-term investment vehicle(s) such Endowment Funds should be invested during the Transition Period pending deployment into the standard asset allocation.

Asset Allocation Ranges. The permissible asset allocation ranges for the asset classes in which the Manager will invest the Endowment, consistent with the overall risk and return objectives of this IPS, are as follows:

<i>Asset Class</i>	<i>Minimum</i>	<i>Target</i>	<i>Maximum</i>	<i>Benchmark</i>
<b>Total Equity</b>	<b>15%</b>	<b>25%</b>	<b>50%</b>	
Domestic Equity		7%		Russell 3000
International Equity		6%		MSCI World x
US				
Emerging Markets Equity		7%		MSCI EM
Private Equity		5%		S&P 500 + 4%
<b>Total Fixed Income</b>	<b>15%</b>	<b>25%</b>	<b>50%</b>	
Core Bonds		10%		Barclays
Aggregate				
Global Sovereign Debt		15%		World Govt
Bond				
<b>Real Assets</b>	<b>5%</b>	<b>25%</b>	<b>40%</b>	
TIPs		7%		Barclays TIPs
Commodities		8%		DJ UBS
Commodities				
Natural Resources		5%		S&P Energy +
4%				
Real Estate		5%		NCREIF
<b>Marketable Alternatives</b>	<b>5%</b>	<b>25%</b>	<b>40%</b>	
Directional Hedge Funds		13%		HFRI Hedged
Equity				
Relative Value Funds		12%		HFRI FOF
Conservative				
<b>Cash</b>	<b>0%</b>	<b>0%</b>	<b>10%</b>	3 month TBill

1. The primary purpose of the equity and real asset portion of the Endowment portfolio is to provide the potential for growth of principal and protect the purchasing power of the portfolio.
2. The equity and real asset portion should normally represent approximately 50% of the total Endowment assets. It is recognized that the equity and real asset portion entails the assumption of greater risk from market variability.
3. The primary purpose of the fixed income portion is to provide a deflation hedge and to reduce overall volatility in the portfolio.
4. The fixed income portion should normally represent approximately 25% of the total Endowment assets. This ratio may be changed from time to time to take advantage of variations in market conditions. Variances from the 50%/25% ratio of equity to fixed income may occur as the Manager brings the portfolio into balance or attempts to capitalize upon valuation shifts in the market.
5. Alternative investments should normally represent approximately 25% of the portfolio.
6. Although cash is recognized as an asset class hereunder, Endowment Funds will generally be fully invested at all times and cash will generally be held only to meet liquidity needs or during the portfolio rebalancing process.
7. The ratios above are targets for the allocation of Endowment Funds to the various asset classes. Actual allocation of Endowment Funds among the asset classes will vary based upon market conditions and the Manager's exercise of discretion in attempting to best meet the objectives of this IPS.
8. Endowment Funds will be diversified both by asset class and within these asset classes as noted above. The fixed income portion will typically be diversified with regard to credit, maturity, and sector. The equity and real asset portion will typically be diversified by sector, industry, asset type, and market capitalization. The alternative investment portion will typically be diversified by manager, style, and objective. These added elements of diversification will have the goal of preventing any single security, sector, or asset type from having a disproportionately large impact on the performance of the total Endowment portfolio.

#### **Guidelines for Equities and Real Assets**

1. The equity and real asset portion will be diversified over sectors, industries, assets, and size of organizations. In no event and at no time will the securities of any one issuer exceed 5% at cost and 8% at market of the total Endowment portfolio.
2. Decisions regarding sectors, industries, asset types, or specific securities will be left to the discretion of the Manager, who will exercise care and diligence in discharging its fiduciary responsibility.

3. Performance will be monitored (including up to quarterly evaluation of core managers) on a regular basis and evaluated over a rolling three-year period.

#### **Guidelines for Fixed Income**

1. The Manager should employ active management techniques with respect to the fixed income portion of the Endowment portfolio but changes in the average maturity of fixed income instruments should be moderate and incremental. The Manager should discuss liquidity needs with the Committee as appropriate.
2. The fixed income portion should be diversified such that the securities of any one issuer, with the exception of the United States Government or its agencies, are limited at any time to 5% at cost and 8% at market of the total portfolio. Further, fixed income securities should generally be of investment grade. The use of high yield bonds is permitted, provided such bonds are held within a commingled fund or mutual fund and used to further diversify the Endowment portfolio. However, no more than 10% (at market) of the total Endowment portfolio may be allocated to high yield bonds. If a security already held in the portfolio is downgraded, the Manager will evaluate it carefully to determine whether the security should be kept in the portfolio or eliminated within a prudent time frame.
3. Performance will be monitored on a regular basis and evaluated over a rolling three-year period.

#### **Guidelines for Alternative Investments**

1. The alternative investment portion of the Endowment portfolio may be included or excluded at the discretion of the Manager at any time the total balance of the Endowment is equal to or less than thirty million dollars (\$30,000,000).
2. In no event and at no time will the securities, units, or other assets of any one issuer of alternative investments exceed 3% at cost and 5% at market of the total portfolio.
3. Decisions regarding specific alternative investments will be left to the discretion of the Manager, who will exercise care and diligence in discharging its fiduciary responsibility.
4. Performance will be monitored on a regular basis and evaluated over a rolling three-year period.

### **Guidelines for Cash**

1. The Manager will periodically discuss liquidity needs with the Committee.
2. Beyond cash needed for liquidity purposes, the cash portion will be included or excluded at the discretion of the Manager in seeking to achieve the objectives of this IPS.

### **Ongoing Monitoring**

#### **Performance Objectives**

1. The benchmark objective for the asset classes will be as follows:  
**Equities:** MSCI All Country World Index  
**Fixed Income:** (weighted) 40% Barclays Aggregate, 60% World Government Bond Index  
**Real Assets:** CPI + 4%  
**Marketable Alternatives:** HFRI Fund of Fund Composite
2. The benchmark objectives for the individual investment strategies are defined in the asset allocation table above.
3. With respect to each individual asset class, performance will also be measured by a benchmark objective that total return rank above the 50th percentile against a universe of similar funds.
4. All benchmarks and objectives will apply to a three-year rolling period.

#### **Guidelines for Transactions**

As a general guideline, all transactions shall be entered into on the basis of the best execution which is interpreted to mean the best realized price.

### **Monitoring of Objectives and Results**

1. All objectives and policies set forth in this IPS remain in effect until modified by the CDFG in consultation with the Committee. The Committee will promptly communicate any such modifications to the Manager in writing.
2. If the Manager believes that the policies or guidelines inhibit the investment performance or are otherwise inconsistent with any objectives set forth in this IPS, it is the responsibility of the Manager to so notify the Committee.
3. The Endowment portfolio will be monitored on a continual basis for consistency in asset allocation and return objectives. Asset concentrations will also be monitored for exposure to sectors, industries, and individual securities, notwithstanding the fact the Manager is responsible for investment decisions. The CDFG and the Committee may evaluate the Manager to ensure that the factors underlying the performance expectations remain in place.
4. The Manager will report on the following to the Committee quarterly with respect to both the Endowment as a whole and each parcel-specific sub-account within the Endowment:
  - a. Current holdings at cost and market
  - b. Purchases and sales during the period being reported
  - c. Additions and withdrawals during the period being reported
  - d. Total return net of commissions and fees
  - e. Changes in staff or ownership of the Manager to the extent these changes potentially impact the ability of the Manager to fulfill its duties hereunder



## **EXHIBIT B**

### **Foundation Investment Policy Statement Governing Cash Management**

#### **NATIONAL FISH AND WILDLIFE FOUNDATION IMPACT-DIRECTED ENVIRONMENTAL ACCOUNTS**

#### **INVESTMENT POLICY FOR CASH RESERVES**

**As of July 1, 2010**

#### **Definitions**

- “FOUNDATION”** The National Fish and Wildlife Foundation.
- “FUNDS”** These consist of the cash balances held by the Foundation within its Impact-Directed Environmental Accounts program and managed in accordance with this Investment Policy Statement. These are hereafter referred to as the Funds.
- “COMMITTEE”** The IDEA Funds Management Committee of the Foundation.
- “MANAGER”** The investment management organization(s) engaged as the Foundation’s investment manager. As of July 2010, the Managers are Bank of America and SunTrust Bank.

#### **Broad Philosophy**

The investments shall be made solely in the interest of the National Fish and Wildlife Foundation and its clients. The Committee’s approach to management of the Funds reflects consideration of both preservation of principal and the assumption of the degree of risk associated with the “Investment Universe” specified below in order to achieve commensurate returns. The Committee recognizes that risks, volatility, and possibility of loss in purchasing power are present to some degree with all types of investment vehicles. While high levels of risk are to be avoided, the assumption of the risk associated with the “Investment Universe” specified below is warranted and encouraged in order to allow the Manager the opportunity to achieve satisfactory results consistent with the objectives and the fiduciary character of the Funds.

The Committee has determined that the Funds should be managed in a way that reflects the following directives:

- The Funds shall be invested with the care, skill, prudence, and diligence under the circumstances prevailing from time to time that a prudent person acting in a similar capacity would use.
- Consistent year-to-year results are preferred to large fluctuations in rates of return.
- The level of risk-taking associated with the “Investment Universe” specified below is justified as a method of providing adequate returns.
- Funds shall be invested so as to minimize the risk of large losses and control excessive volatility.
- Short-term fluctuations in value shall be considered secondary to overall results.

### **Responsibilities of the Committee**

The Committee will not reserve any control over investment decisions, with the exception of specific limitations described below. The Manager will be held responsible and accountable to achieve the objectives stated herein. The Committee believes that the limitations will not hamper the Manager; however, the Manager if necessary should request modification that is deemed appropriate. The Committee recognizes its responsibility to ensure that the assets of the Funds are managed effectively and prudently, by a Manager operating in full compliance with all applicable laws.

The specific responsibilities of the Committee in the investment process include, and are limited to:

- Developing sound and consistent investment policy guidelines
- Establishing reasonable investment objectives
- Selecting qualified investment managers
- Communicating the investment policy guidelines and objectives to the Manager, who, in turn, will be accountable for achieving investment results consistent with those guidelines and objectives
- Monitoring and evaluating performance results to assure that policy guidelines are being adhered to and that objectives are being met, and
- Taking appropriate action in the case of the Manager’s failure to perform to mutual expectations

The Committee believes that it can best exercise the responsibilities above by “managing the investment manager.” The Foundation recognizes that for the best probable results,

the determination of detailed investment strategy and day-to-day investment management must lie with professional managers and not with the Committee.

### **Responsibilities of the Manager**

The Manager will be responsible for making all investment decisions regarding the assets of the Funds and will be accountable for the objectives indicated herein.

Within the specific constraints identified in this investment policy, the Manager is expected to exercise complete investment discretion. The Manager also expressly assumes the following obligations:

- The Manager is responsible for frequent communication with the Committee on all significant matters pertaining to investment policies. The Committee expects to be promptly informed of any material changes in investment strategy and other matters broadly affecting policy. The Committee recognizes that its investment guidelines and objectives should be based on sound principles that are likely to serve the Foundation and its clients well in all reasonably foreseeable market environments
- The Manager will provide the Foundation with timely quarterly performance reports that include performance comparisons with relevant market indices.
- The Manager and its employees assigned to manage the Funds are responsible for strict compliance with the pertinent provisions of all applicable laws and regulations, including but not limited to those implemented by the U.S. Internal Revenue Service and the U.S. Securities and Exchange Commission, as they pertain to their duties, functions, and responsibilities as fiduciaries.

### **Investment Policy Guidelines**

The Committee's guidelines for investments for the Funds are as follows:

- Fixed income investments should be defined as fixed income obligations.
- The Manager will make reasonable efforts to preserve the principal of the Funds, but preservation of the principal shall not be imposed as an absolute requirement on individual investments.
- The Manager will continuously manage and review the investment portfolio.
- The Manager will exercise prudence when investing in fixed income securities so that adequate diversification is achieved within that asset class.
- To the extent deemed desirable, the Manager may invest in money market funds whose quality is consistent with investment grade assets.

- The “duration” of the portfolio will be no more than 2 years, with duration serving as a measure of the approximate price volatility of a bond. Since one objective of this Investment Policy Statement is to limit volatility with respect to investment of the Funds, duration is an appropriate metric; a portfolio duration of 2 years implies that for a 1% change in interest rates, there will be a 2% change in price.
- The Manager may not invest more than 5% at cost of the Funds in the bonds, commercial paper, or other debt instruments of any one company or entity (with corporate affiliates being treated as the same entity for these purposes). Obligations of the U.S. Government or its agencies are exempted from this requirement.
- In order to help prevent a possible loss upon the forced sale of a security to meet a required disbursement of Funds, the Committee will, upon request and to the extent practicable, provide the Manager with the estimated required net cash flow on a timely basis.
- All assets selected for the Funds must have a readily ascertainable market value and must be readily marketable.

### **Investment Universe**

Permitted securities include, but are not limited to, the following:

- Cash equivalents as defined in the fixed income permissible universe, i.e., U.S. Treasuries and fixed income securities.
- Investment grade corporate bonds.
- Obligations of the U. S. Government and, to the extent that payment of principal and interest is backed by the full faith and credit of the United State, its agencies and instrumentalities.
- Investment grade Municipal Bonds issued on behalf of states, territories, or possessions of the United States and their political subdivisions, agencies, authorities, and instrumentalities.
- Asset-backed securities (such as auto, credit card, and manufactured housing-backed issues) rated BBB+ or better by Standard and Poor’s or Moody’s and that meet appropriate weighted average life and price requirements.
- Commercial Paper rated A1/P1 by Standard and Poor’s or Moody’s.
- The Manager may invest all or any portion of the Funds in mutual funds that are, themselves, invested exclusively in investments included in the above Investment

Universe. Where funds are used, each fund is expected to operate within the parameters established by its Prospectus.

### **Investment Objectives and Evaluation**

The common objective of the Committee and the Manager is to make sound and prudent decisions concerning the Funds. As a means to this end, the Committee must make responsible decisions regarding the selection, monitoring, and evaluation of investment managers.

The Manager must make responsible decisions regarding the selection of specific securities and the general timing of purchases and sales necessary to achieve a satisfactory total return consistent with this Investment Policy. The Committee believes that the Manager should be evaluated on its long-term track record and its ability to demonstrate excellent performance on a risk-adjusted basis.

In addition, the Committee hereby incorporates the following principle with respect to evaluating Manager performance:

- Absolute rates of return are useful to communicate performance expectations to an investment manager, but such absolute returns must be measured over an extended multi-year time period. Relative measures should also be used to determine whether the Manager is adding value through the investment process. Therefore, the Manager's results in investing the Funds should be compared regularly with the performance of similar funds and with appropriate indices as determined by the Committee.

### **Evaluation and Review**

The Committee will review actual results achieved by the Manager to determine whether:

- The Manager performed according to the investment philosophy and policy guidelines set forth herein.
- The Manager performed satisfactorily when compared with similar funds and with relevant market indices.

The Manager performed satisfactorily on an absolute total return basis, taking into account the amount of risk (as measured by recognized volatility analysis).

First Addendum  
to the  
Master Mitigation Account  
Memorandum of Agreement between the  
California Department of Fish and Game and the  
National Fish and Wildlife Foundation

This First Addendum (the "First Addendum") to the Master Mitigation Account Memorandum of Agreement between the California Department of Fish and Game and the National Fish and Wildlife Foundation, dated November 23, 2010 (the "Agreement"), is entered into between the California Department of Fish and Game (the "CDFG") and the National Fish and Wildlife Foundation (the "Foundation") (together, the "Parties" and individually, a "Party") as of the date of the signature of the second Party to sign (such date, the "Effective Date"), pursuant to Section VII(6) of the Agreement. All capitalized terms used but not otherwise defined in this First Addendum shall have the respective meanings assigned to such terms in the Agreement.

Specifically, the Parties hereby memorialize their agreement that the Foundation shall establish, maintain, and operate additional Sub-Accounts within the CDFG Account to receive funds required under CDFG permits, consents, authorizations, and/or related approvals, which funds are designated to pay for the first three years (or other initial period) of long-term maintenance or management of compensatory mitigation lands. These Sub-Accounts shall be called Initial and Capital Sub-Accounts for Long-Term Maintenance or Management Measures ("I&C Sub-Accounts").

The following terms and conditions shall apply to the I&C Sub-Accounts:

1. In accordance with Section VII(2) of the Agreement, the I&C Sub-Accounts shall be subject to a one-time Per Sub-Account Deposit Fee of three thousand dollars (\$3,000).
2. Funds in the I&C Sub-Accounts shall be invested and managed by the Foundation in accordance with the Foundation's investment policy statement governing cash management as set forth in the Agreement.
3. Each I&C Sub-Account shall be subject to an Annual Fee equal to the greater of one percent (1%) of the balance of the I&C Sub-Account or one thousand dollars (\$1,000). The Foundation shall assess and collect the Annual Fee either quarterly or annually, in either case at the Foundation's election, during each year the respective I&C Sub-Accounts are in existence. The Foundation shall collect the Annual Fee by deducting it from the balance of the respective I&C Sub-Accounts.
4. The Foundation shall not be required to make more than one single annual disbursement to a Recipient of funds from an I&C Sub-Account. Disbursements shall be in annual amounts specified by CDFG and shall be made by the Foundation to the specified Recipient pursuant to a Recipient Agreement approved by the CDFG for the performance



of appropriate long-term maintenance and management measures as determined by the CDFG.

- a. If an I&C Sub-Account is not accompanied by Endowment Sub-Account, the Recipient Agreement may only be in the form of a direct invoice
  - b. If an I&C Sub-Account is accompanied by Endowment Sub-Account, the Recipient Agreement may be in the form of: 1) a direct invoice; or 2) a separate governing written agreement between the Foundation and the Recipient, as determined by the CDFG.
5. For I&C Sub-Accounts pertaining to lands for which the CDFG is the land manager, the Foundation and the CDFG may agree to different terms regarding the administration of the I&C Sub-Account, including, but not limited to the Annual Fee. Any such different terms will be memorialized in a written instrument delivered by the CDFG to and agreed to by the Foundation.
  6. The provisions of this First Addendum shall apply retroactively to July 1, 2011.
  7. Except as expressly stated in this First Addendum, the provisions of the Agreement shall apply to the I&C Sub-Accounts.

IN WITNESS WHEREOF, the Parties have caused this First Addendum to be executed by their respective authorized representatives, intending to be bound legally.

CALIFORNIA DEPARTMENT OF FISH AND GAME

BY: \_\_\_\_\_

Charlton Bonham, Director

DATE: \_\_\_\_\_

3.6.12

NATIONAL FISH AND WILDLIFE FOUNDATION

BY: \_\_\_\_\_

Jeff Trandahl, Executive Director

DATE: \_\_\_\_\_

3.9.12