



MEMORANDUM

Date: November 26, 2010

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Implementing Agreement for the Multi-species Conservation Plan**

Pima County will soon submit an application for a federal endangered species permit under Section 10(a) of the Endangered Species Act to the United States Fish and Wildlife Service (Service). The application will include a draft Implementing Agreement (Agreement) in addition to the administrative draft Multi-species Conservation Plan (MSCP).

As the name implies, the Agreement, when signed by both parties, would put into effect the terms of the approved MSCP and permit. Pima County and the Service will negotiate the Agreement and MSCP during a federal process, which is expected to take at least one year after Pima County submits the application. The draft Agreement that will accompany the application will be a starting point for discussions with the Service and will also be available for public comment.

Implementing agreements do not diminish Pima County's land use authorities. Recognition of local land-use authority is one reason why the federal government, in essence, allows local communities to develop alternative strategies such as the MSCP for complying with the Endangered Species Act (ESA).

Over the years, the federal government has simplified and standardized the form and content of implementing agreements. The federal government today relies far more on the Code of Federal Regulations and the terms of the approved MSCP than on implementing agreements. An actual example of a recent implementing agreement is attached to illustrate the form and content our Agreement will likely take. As may be apparent from this example, most of the important details of how various programs will be administered and funded will be located in the final MSCP.

Pima County is in a very different position than most other communities applying for a Section 10(a) permit under the ESA. In Pima County, habitat conservation is already proceeding due to efforts at the local level since the inception of the Sonoran Desert Conservation Plan (SDCP). Since 2002, the County has applied conservation guidelines and tools through application of the Maeveen Marie Behan Conservation Lands System, improved natural resource regulations and policies, and administered a successful land acquisition program. The County's Natural Resources, Parks and Recreation Department is

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managing many of the acquired lands, which will be the cornerstone of Pima County's mitigation program for the MSCP. Even before the Section 10(a) permit is issued, Pima County and the Regional Flood Control District (RFCD) will exceed the mitigation needs for at least the first 10-year phase of the permit, largely through implementation of the local SDCP. Through these and other actions at the local level, Pima County has greatly reduced the uncertainties associated with entering into Section 10(a) agreements.

Pima County Regional Flood Control District will be a party to the Agreement with Pima County. The RFCD's programs for flood control projects, floodplain management and riparian habitat conservation remain vital components of the MSCP. While the RFCD is a separate legal authority from Pima County, it is logical to include the RFCD as a party to the Agreement since the administration of both the RFCD and County is unified through the individuals elected to the Board of Supervisors.

Though our efforts to date have been significant, I nonetheless expect new questions will arise in the process of developing a final MSCP and Implementing Agreement. These questions will be addressed via the formal federal process, to the extent necessary, and by County staff in consultation with me and stakeholders to the degree the issues can be resolved outside the federal process. Julia Fonseca, Environmental Planning Manager, Office of Conservation Science and Environmental Policy, will lead County and RFCD staff and serve as point of contact for the Service and the community. Supporting staff include Sherry Ruther for Development Services, Linda Mayro for Cultural Resources, Suzanne Shields for the RFCD, Brian Powell for ecological monitoring and Kerry Baldwin for land management.

CHH/mjk

Attachment

c: Suzanne Shields, Director, Regional Flood Control District
Julia Fonseca, Environmental Planning Manager, Office of Conservation Science and Environmental Policy
Sherry Ruther, Planning Manager, Development Services Department
Linda Mayro, Cultural Resources Manager
Kerry Baldwin, Natural Resources Division Manager, Natural Resources, Parks and Recreation Department
Brian Powell, Program Manager, Office of Conservation Science and Environmental Policy

IMPLEMENTING AGREEMENT

**By and Among
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT,
SALT RIVER VALLEY WATER USERS' ASSOCIATION, and
U.S. FISH AND WILDLIFE SERVICE**

**TO ESTABLISH A MITIGATION PROGRAM FOR ENDANGERED,
THREATENED AND CANDIDATE SPECIES AT HORSESHOE AND
BARTLETT RESERVOIRS, MARICOPA AND YAVAPAI COUNTIES,
ARIZONA.**

This Implementing Agreement (Agreement) is made and entered into as of the 16th day of May, 2008 by and among the Salt River Project Agricultural Improvement and Power District and the Salt River Valley Water Users' Association (collectively referred to hereinafter as SRP), and the United States Fish and Wildlife Service (referred to hereinafter as FWS).

1.0 RECITALS

This Agreement is entered into with regard to the following facts:

WHEREAS, portions of the riparian vegetation complex located within the conservation storage space at Horseshoe and Bartlett Reservoirs in Maricopa and Yavapai counties, Arizona, are occupied and utilized as habitat by the southwestern willow flycatcher, an endangered species, the bald eagle, a threatened species, and the yellow-billed cuckoo, a candidate species; and

WHEREAS, Horseshoe Reservoir, the Verde River and portions of its tributaries above Horseshoe Reservoir, and the Verde River below Bartlett Reservoir are occupied, or may be occupied during the term of the Agreement, by the following native fish, frog, and gartersnake species: razorback sucker, an endangered species; Colorado pikeminnow, an endangered species; Gila topminnow, an endangered species; spikedace, a threatened species; loach minnow, a threatened species; and roundtail chub, longfin dace, Sonora sucker, desert sucker, speckled dace, lowland leopard frog, northern Mexican gartersnake, and narrow-headed gartersnake, which are species that may be listed; and

WHEREAS, SRP, with technical assistance from FWS, has developed a series of measures, described in the Horseshoe and Bartlett Habitat Conservation Plan ("HCP"), to minimize and mitigate to the maximum extent practicable the incidental take from SRP's continued operation of the conservation storage space at Horseshoe and Bartlett Reservoirs on the subject listed and unlisted species and their associated habitats;

THEREFORE, SRP and FWS do hereby understand and agree as follows:

2.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

2.1 The term "Agreement" shall mean this Implementing Agreement.

- 2.2** The term “Compensation Lands” shall mean the 200 or more acres of land acquired and managed by SRP or its designated agent pursuant to the terms of the HCP.
- 2.3** The term “Covered Activities” shall mean the continued operation of the total conservation capacity at Horseshoe Reservoir that corresponds to a maximum surface elevation of 2,026 feet, and the continued operation of the total conservation capacity at Bartlett Reservoir that corresponds to a maximum surface elevation of 1,798 feet, as described in Subchapter I.B.2 of the HCP, by the Permittee or any successor-in-interest to the Permittee.
- 2.4** The term “Covered Species” shall mean the species identified in Section 1.0 of this Agreement and covered by the HCP and the Permit.
- 2.5** The term “Effective Date” shall mean the date as of which FWS issues the Permit.
- 2.6** The term “ESA” shall mean the Endangered Species Act, 16 U.S.C. § 1531 et seq. Terms defined and utilized in the ESA and implementing regulations shall have the same meaning when utilized in this Agreement, except as specifically noted herein.
- 2.7** The term “HCP” shall mean the Horseshoe and Bartlett Habitat Conservation Plan, to be implemented by SRP in conjunction with the Covered Activities. Terms defined and utilized in the HCP shall have the same meaning when utilized in this Agreement, except as specifically noted herein.
- 2.8** The term “Party” or “Parties” shall mean one or more of the parties to this Agreement.
- 2.9** The term “Permit” shall mean an incidental take permit issued by FWS to SRP pursuant to Section 10(a)(1)(B) of the ESA. Terms utilized and defined in the Permit shall have the same meaning when utilized in this Agreement, except as specifically noted herein.
- 2.10** The term “Permit Area” shall mean: (1) the Salt River and 100-year floodplain between Granite Reef Dam and the confluence with the Verde River; (2) the Verde River and the 100-year floodplain between the confluence with the Salt River and the upstream end of Horseshoe at full pool, including the total conservation capacity at Horseshoe Reservoir that corresponds to a maximum surface elevation of 2,026 feet, and the lands within the total conservation capacity at Bartlett Reservoir that corresponds to a maximum surface elevation of 1,798 feet; (3) the Verde River between the upper end of Horseshoe at full pool and the Allen Ditch Diversion near Peck’s Lake; (4) the lower 0.125 miles of all intermittent and ephemeral streams and washes tributary to the reaches listed above; and (5) the lower 6 stream miles of Lime Creek, the lower 8 stream miles of the East Verde River, the lower 3 stream miles of Fossil Creek, the lower 2 stream miles of West Clear Creek, the lower 12 stream miles of Wet Beaver Creek, and the lower 3 stream miles of Oak Creek.
- 2.11** The term “Permittee” shall mean SRP.
- 2.12** The term “Unforeseen Circumstances” shall mean changes in circumstances affecting a species or geographic area covered by the HCP, which could not reasonably have been anticipated by the Parties at the time of the HCP’s negotiation and development, and which result in a substantial and adverse change in the status of

Covered Species. The term “Unforeseen Circumstances” shall not include Changed Circumstances, as that term is defined in the Permit.

2.13 The term “Unlisted Covered Species” shall mean a Covered Species that is not listed as endangered or threatened under the ESA on the Effective Date. The term “Unlisted Species” includes both candidate species and other species of concern.

3.0 PURPOSES

The purposes of this Agreement are:

3.1 To ensure implementation of each of the terms of the HCP and its associated permit; and

3.2 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in this Agreement and the HCP.

4.0 INCORPORATION OF HCP AND PERMIT; GOVERNING LAW

4.1 The HCP, the Permit, and each of their provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction among the terms of this Agreement, the HCP, and the Permit, the terms of the Permit shall control. In all other cases, the terms of this Agreement, the HCP, and the Permit shall be interpreted to be supplementary to each other.

4.2 This Agreement, the HCP, and the Permit, and the Parties’ compliance therewith, shall be governed by the ESA and implementing regulations.

5.0 LEGAL REQUIREMENTS

In order to fulfill the requirements that will allow FWS to issue the Permit, the HCP sets forth measures that are intended to ensure that any take occurring within the Permit Area will be incidental; that the impacts of take will, to the maximum extent practicable, be minimized and mitigated; that procedures to deal with unforeseen circumstances will be provided; that adequate funding for the HCP will be provided; and that the take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. It also includes measures that have been suggested by FWS as being necessary or appropriate for purposes of the HCP.

6.0 TERM

6.1 This Agreement shall have a duration beginning on the Effective Date, and continuing in full force and effect for a period of 50 years thereafter, or until revocation or surrender and cancellation of the Permit as provided for therein, whichever occurs earlier.

6.2 Unless the Permit is revoked or surrendered and cancelled as provided for therein, the provisions of the HCP and this Agreement requiring the acquisition and management of Compensation Lands as habitat for the Covered Species shall, if permitted by law, be permanent and extend beyond the term of this Agreement. If the Permit is revoked or surrendered and cancelled, the extent, if any, of the Permittee’s continuing obligations

under the HCP and this Agreement shall be determined in accordance with Subparagraph 6.3 hereof.

6.3 In the event that the Permit is revoked or surrendered and cancelled as provided for therein, the provisions of the HCP and of this Agreement requiring the acquisition and management of Compensation Lands as habitat for the Covered Species shall be permanent and extend beyond the term of this Agreement if permitted by law, but only to the extent necessary to mitigate for take of Covered Species that occurred pursuant to the terms of the Permit, before its revocation or surrender and cancellation, as determined by FWS in collaboration with the Permittee.

7.0 FUNDING

The Permittee commits to fully meeting the actual costs of implementing the HCP, even if actual costs exceed estimates in the HCP. For the first five years that the Permit is in effect, the Permittee shall include in its annual budget such funds as are necessary to carry out the Permittee's obligations under the HCP and this Agreement. No later than five years after the Permit is issued, the Permittee shall ensure that funding is available to meet its continuing obligations under this Agreement and the HCP through an account or accounts solely designated for this purpose. The account or accounts may be in the form of a trust account, irrevocable letter of credit, insurance, or surety bond. The account or accounts must be acceptable to FWS and must be in an amount agreed to by FWS and the Permittee that is sufficient to meet the Permittee's continuing obligations under this Agreement and the HCP.

8.0 RESPONSIBILITIES OF PARTIES IN MITIGATION PROGRAM; IMPLEMENTATION AND MONITORING RESPONSIBILITIES

8.1 Responsibilities of the Permittee

a. The HCP will be deemed properly implemented if the commitments and provisions of the HCP, this Agreement, and the Permit have been or are being implemented in accordance with their terms.

b. The Permittee shall undertake all activities set forth in the HCP in order to meet the terms of the HCP and comply with the Permit, including the adaptive management procedures described in the HCP, if required.

c. As required by Subchapter V.E.3 of the HCP, for each year that the Permit is in effect, the Permittee shall submit an annual report to FWS containing a description of its activities and an analysis of whether the terms of the HCP were met for the reporting period. The report shall be submitted to FWS on or before each February 1 for the previous calendar year and shall provide all reasonably available data regarding impacts to habitat of and effects on the Covered Species and, where requested by FWS, changes to the overall population of Covered Species that occurred in the Permit Area by the Permit during the reporting period. The report shall also include the following certification from a responsible company official of the Permittee who supervised or directed the preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of

this report, the information submitted is true, accurate, and complete.

d. The Permittee will provide, within 30 days of being requested by FWS, any additional information in its possession or control related to implementation of the HCP that is requested by FWS for the purpose of assessing whether the terms and conditions of the Permit and the HCP, including the HCP's adaptive management plan, are being fully implemented.

8.2 Responsibilities of FWS

a. Upon execution of this Agreement by all Parties, and satisfaction of all applicable legal requirements, FWS shall issue the Permittee a Permit authorizing the incidental take by the Permittee of threatened or endangered Covered Species resulting from the Covered Activities.

b. After issuance of the Permit, FWS shall monitor the implementation of the terms of the Permit, this Agreement, and the HCP in order to ensure compliance by the Permittee. FWS may conduct inspections and monitoring in connection with the Permit in accordance with 50 C.F.R. § 13.47.

c. Provided that the Permittee has complied with its obligations under the HCP, this Agreement, and the Permit, FWS may require measures of the Permittee in addition to those required by the HCP only in accordance with the terms and conditions of the Permit governing Unforeseen Circumstances.

9.0 REMEDIES

9.1 Enforcement of Agreement, Remedies for Breach

Except as provided in Subparagraph 9.2 hereof, each Party shall be entitled to pursue legal action, including the filing of a suit for specific performance, declaratory or injunctive relief, to enforce the terms of this Agreement, the Permit, and the HCP, and to seek remedies for any breach hereof.

9.2 No Monetary Damages, Effect of Agreement on Pre-existing Liabilities, Enforcement Authority of FWS

a. No Monetary Damages. No Party shall be liable in monetary damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

b. Retain Liability. Except as otherwise provided in Subparagraphs 4.2 and 9.2.e hereof, the Parties shall retain whatever liability they would possess for their present and future acts or failure to act in the absence of this Agreement.

c. Land Owner Liability. All Parties shall retain whatever liability they would possess as an owner of interests in land in the absence of this Agreement.

d. Enforcement of the ESA and Other Applicable Laws by FWS. Except as otherwise provided in Subparagraphs 4.2 and 9.2.e hereof, nothing contained in this Agreement is intended to limit the authority of FWS to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA and other applicable laws.

e. Exception. Notwithstanding Subparagraphs 9.2.b and 9.2.d hereof, as long as the HCP is being properly implemented and the terms and conditions of the Permit are being met, FWS shall not be permitted to seek civil or criminal penalties or otherwise enforce the take prohibitions of the ESA and other applicable laws against the Permittee for incidental take of Covered Species that is in accordance with the terms of the Permit.

10.0 SEVERABILITY

The provisions of this Agreement shall be deemed severable, and if any portion of this Agreement shall be held invalid, illegal, or unenforceable by a federal court, after exhaustion of all available appeals, the remainder shall continue to be effective and binding upon the Parties. Notwithstanding the foregoing, in the event that any portion of this Agreement shall be held invalid, the Parties shall use their best efforts to agree upon amendments to this Agreement that are consistent with the law then existing.

11.0 PRIVATE PROPERTY RIGHTS AND LEGAL AUTHORITIES UNAFFECTED

Except as otherwise specifically provided herein, nothing in this Agreement shall be deemed to restrict the rights of the Permittee to engage in the Covered Activities, or the Permittee's use or development of those lands or water rights, or interests in lands or water rights, constituting the Permit Area; provided, however, that nothing in this Agreement shall absolve the Permittee from such other limitations as may apply to the Covered Activities, or to such lands or water rights, or interests in lands or water rights, under other laws of the United States and the State of Arizona.

12.0 AMENDMENTS TO THE AGREEMENT

12.1 In General

This Agreement may be amended consistent with the ESA and with the written consent of each of the Parties hereto.

12.2 Minor Modifications

Any Party may propose minor modifications to this Agreement by providing written notice to all other Parties. Minor modifications to this Agreement may include, but are not limited to, corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning. The notice of proposed minor modifications provided for in this Subparagraph shall include a description of the proposed minor modification and a statement of the reasons therefor. The Parties will use reasonable efforts to respond to proposed minor modifications to this Agreement within 60 days of receipt of such notice. Proposed minor modifications to this Agreement will become effective only upon all other Parties' written approval.

13.0 MISCELLANEOUS PROVISIONS

13.1 No Partnership

Except as otherwise expressly set forth herein, neither this Agreement nor the HCP shall make or be deemed to make one Party hereto the agent for or the partner of another Party.

13.2 Successors and Assigns

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

13.3 Notice

Any notice permitted or required by this Agreement shall be in writing and shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

Assistant Regional Director, Ecological Services
United States Fish and Wildlife Service
P.O. Box 1306
Albuquerque, New Mexico 87103-1306

Field Supervisor
United States Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021

Associate General Manager, Water
Salt River Project
P.O. Box 52025
Phoenix, Arizona 85072-2025

13.4 Entire Agreement

This Agreement, together with the HCP and the Permit, constitute the entire Agreement between the Parties. It supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise, or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

13.5 Elected Officials Not To Benefit

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

13.6 Availability of Funds

Implementation of this Agreement and the HCP by FWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds.

Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that FWS will not be required under this Agreement to expend any federally appropriated funds unless and until an authorized official of FWS affirmatively acts to commit to such expenditures as evidenced in writing.

13.7 Duplicate Originals

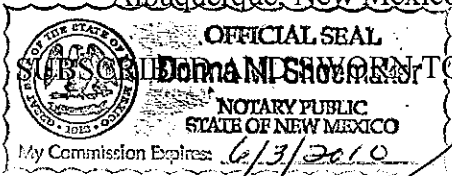
This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

13.8 Third-Party Beneficiaries

Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under existing federal or Arizona law.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

BY [Signature] Date 5-30-2008
Deputy Regional Director
United States Fish and Wildlife Service
Albuquerque, New Mexico



SUBSCRIBED AND SWORN TO BEFORE ME THIS 30th DAY OF May, 2008.
Donna M Shoemaker
Notary Public

BY [Signature] Date 5/8/08
John M. Williams, Jr., President
Salt River Project
Phoenix, Arizona



SUBSCRIBED AND SWORN TO BEFORE ME THIS 8th DAY OF May, 2008.
Margaret A Sullivan
Notary Public

ATTEST [Signature]
Terrill A. Lonon
Salt River Project, Corporate Secretary

Date 5/8/08
Reviewed by [Signature] SRP Legal Services Dept.
[Signature]
(Signed Name)
STEVE DONCASTER
(Printed Name)
Date: 5/8/08

IMPLEMENTING AGREEMENT

**By and Among
SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER
DISTRICT,
SALT RIVER VALLEY WATER USERS' ASSOCIATION, and
U.S. FISH AND WILDLIFE SERVICE**

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1.0 RECITALS

This Agreement is entered into with regard to the following facts:

WHEREAS, portions of the riparian vegetation complex located within the conservation storage space at Horseshoe and Bartlett Reservoirs in Maricopa and Yavapai counties, Arizona, are occupied and utilized as habitat by the southwestern willow flycatcher, an endangered species, the bald eagle, a threatened species, and the yellow-billed cuckoo, a candidate species; and

WHEREAS, Horseshoe Reservoir, the Verde River and portions of its tributaries above Horseshoe Reservoir, and the Verde River below Bartlett Reservoir are occupied, or may be occupied during the term of the Agreement, by the following native fish, frog, and gartersnake species: razorback sucker, an endangered species; Colorado pikeminnow, an endangered species; Gila topminnow, an endangered species; spikedace, a threatened species; loach minnow, a threatened species; and roundtail chub, longfin dace, Sonora sucker, desert sucker, speckled dace, lowland leopard frog, northern Mexican gartersnake, and narrow-headed gartersnake, which are species that may be listed; and

WHEREAS, SRP, with technical assistance from FWS, has developed a series of measures, described in the Horseshoe and Bartlett Habitat Conservation Plan ("HCP"), to minimize and mitigate to the maximum extent practicable the incidental take from SRP's continued operation of the conservation storage space at Horseshoe and Bartlett Reservoirs on the subject listed and unlisted species and their associated habitats;

THEREFORE, SRP and FWS do hereby understand and agree as follows:

2.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

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Covered Species. The term “Unforeseen Circumstances” shall not include Changed Circumstances, as that term is defined in the Permit.

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3.1 To ensure implementation of each of the terms of the HCP and its associated permit; and

3.2 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in this Agreement and the HCP.

4.0 INCORPORATION OF HCP AND PERMIT; GOVERNING LAW

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6.2 Unless the Permit is revoked or surrendered and cancelled as provided for therein, the provisions of the HCP and this Agreement requiring the acquisition and management of Compensation Lands as habitat for the Covered Species shall, if permitted by law, be permanent and extend beyond the term of this Agreement. If the Permit is revoked or surrendered and cancelled, the extent, if any, of the Permittee’s continuing obligations

under the HCP and this Agreement shall be determined in accordance with Subparagraph 6.3 hereof.

6.3 In the event that the Permit is revoked or surrendered and cancelled as provided for therein, the provisions of the HCP and of this Agreement requiring the acquisition and management of Compensation Lands as habitat for the Covered Species shall be permanent and extend beyond the term of this Agreement if permitted by law, but only to the extent necessary to mitigate for take of Covered Species that occurred pursuant to the terms of the Permit, before its revocation or surrender and cancellation, as determined by FWS in collaboration with the Permittee.

7.0 FUNDING

The Permittee commits to fully meeting the actual costs of implementing the HCP, even if actual costs exceed estimates in the HCP. For the first five years that the Permit is in effect, the Permittee shall include in its annual budget such funds as are necessary to carry out the Permittee's obligations under the HCP and this Agreement. No later than five years after the Permit is issued, the Permittee shall ensure that funding is available to meet its continuing obligations under this Agreement and the HCP through an account or accounts solely designated for this purpose. The account or accounts may be in the form of a trust account, irrevocable letter of credit, insurance, or surety bond. The account or accounts must be acceptable to FWS and must be in an amount agreed to by FWS and the Permittee that is sufficient to meet the Permittee's continuing obligations under this Agreement and the HCP.

8.0 RESPONSIBILITIES OF PARTIES IN MITIGATION PROGRAM; IMPLEMENTATION AND MONITORING RESPONSIBILITIES

8.1 Responsibilities of the Permittee

- a. The HCP will be deemed properly implemented if the commitments and provisions of the HCP, this Agreement, and the Permit have been or are being implemented in accordance with their terms.
- b. The Permittee shall undertake all activities set forth in the HCP in order to meet the terms of the HCP and comply with the Permit, including the adaptive management procedures described in the HCP, if required.
- c. As required by Subchapter V.E.3 of the HCP, for each year that the Permit is in effect, the Permittee shall submit an annual report to FWS containing a description of its activities and an analysis of whether the terms of the HCP were met for the reporting period. The report shall be submitted to FWS on or before each February 1 for the previous calendar year and shall provide all reasonably available data regarding impacts to habitat of and effects on the Covered Species and, where requested by FWS, changes to the overall population of Covered Species that occurred in the Permit Area by the Permit during the reporting period. The report shall also include the following certification from a responsible company official of the Permittee who supervised or directed the preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of

this report, the information submitted is true, accurate, and complete.

d. The Permittee will provide, within 30 days of being requested by FWS, any additional information in its possession or control related to implementation of the HCP that is requested by FWS for the purpose of assessing whether the terms and conditions of the Permit and the HCP, including the HCP's adaptive management plan, are being fully implemented.

8.2 Responsibilities of FWS

a. Upon execution of this Agreement by all Parties, and satisfaction of all applicable legal requirements, FWS shall issue the Permittee a Permit authorizing the incidental take by the Permittee of threatened or endangered Covered Species resulting from the Covered Activities.

b. After issuance of the Permit, FWS shall monitor the implementation of the terms of the Permit, this Agreement, and the HCP in order to ensure compliance by the Permittee. FWS may conduct inspections and monitoring in connection with the Permit in accordance with 50 C.F.R. § 13.47.

c. Provided that the Permittee has complied with its obligations under the HCP, this Agreement, and the Permit, FWS may require measures of the Permittee in addition to those required by the HCP only in accordance with the terms and conditions of the Permit governing Unforeseen Circumstances.

9.0 REMEDIES

9.1 Enforcement of Agreement, Remedies for Breach

Except as provided in Subparagraph 9.2 hereof, each Party shall be entitled to pursue legal action, including the filing of a suit for specific performance, declaratory or injunctive relief, to enforce the terms of this Agreement, the Permit, and the HCP, and to seek remedies for any breach hereof.

9.2 No Monetary Damages, Effect of Agreement on Pre-existing Liabilities, Enforcement Authority of FWS

a. No Monetary Damages. No Party shall be liable in monetary damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

b. Retain Liability. Except as otherwise provided in Subparagraphs 4.2 and 9.2.e hereof, the Parties shall retain whatever liability they would possess for their present and future acts or failure to act in the absence of this Agreement.

c. Land Owner Liability. All Parties shall retain whatever liability they would possess as an owner of interests in land in the absence of this Agreement.

d. Enforcement of the ESA and Other Applicable Laws by FWS. Except as otherwise provided in Subparagraphs 4.2 and 9.2.e hereof, nothing contained in this Agreement is intended to limit the authority of FWS to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA and other applicable laws.

e. Exception. Notwithstanding Subparagraphs 9.2.b and 9.2.d hereof, as long as the HCP is being properly implemented and the terms and conditions of the Permit are being met, FWS shall not be permitted to seek civil or criminal penalties or otherwise enforce the take prohibitions of the ESA and other applicable laws against the Permittee for incidental take of Covered Species that is in accordance with the terms of the Permit.

10.0 SEVERABILITY

The provisions of this Agreement shall be deemed severable, and if any portion of this Agreement shall be held invalid, illegal, or unenforceable by a federal court, after exhaustion of all available appeals, the remainder shall continue to be effective and binding upon the Parties. Notwithstanding the foregoing, in the event that any portion of this Agreement shall be held invalid, the Parties shall use their best efforts to agree upon amendments to this Agreement that are consistent with the law then existing.

11.0 PRIVATE PROPERTY RIGHTS AND LEGAL AUTHORITIES UNAFFECTED

Except as otherwise specifically provided herein, nothing in this Agreement shall be deemed to restrict the rights of the Permittee to engage in the Covered Activities, or the Permittee's use or development of those lands or water rights, or interests in lands or water rights, constituting the Permit Area; provided, however, that nothing in this Agreement shall absolve the Permittee from such other limitations as may apply to the Covered Activities, or to such lands or water rights, or interests in lands or water rights, under other laws of the United States and the State of Arizona.

12.0 AMENDMENTS TO THE AGREEMENT

12.1 In General

This Agreement may be amended consistent with the ESA and with the written consent of each of the Parties hereto.

12.2 Minor Modifications

Any Party may propose minor modifications to this Agreement by providing written notice to all other Parties. Minor modifications to this Agreement may include, but are not limited to, corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning. The notice of proposed minor modifications provided for in this Subparagraph shall include a description of the proposed minor modification and a statement of the reasons therefor. The Parties will use reasonable efforts to respond to proposed minor modifications to this Agreement within 60 days of receipt of such notice. Proposed minor modifications to this Agreement will become effective only upon all other Parties' written approval.

13.0 MISCELLANEOUS PROVISIONS

13.1 No Partnership

Except as otherwise expressly set forth herein, neither this Agreement nor the HCP shall make or be deemed to make one Party hereto the agent for or the partner of another Party.

13.2 Successors and Assigns

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

13.3 Notice

Any notice permitted or required by this Agreement shall be in writing and shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

Assistant Regional Director, Ecological Services
United States Fish and Wildlife Service
P.O. Box 1306
Albuquerque, New Mexico 87103-1306

Field Supervisor
United States Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021

Associate General Manager, Water
Salt River Project
P.O. Box 52025
Phoenix, Arizona 85072-2025

13.4 Entire Agreement

This Agreement, together with the HCP and the Permit, constitute the entire Agreement between the Parties. It supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise, or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

13.5 Elected Officials Not To Benefit

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

13.6 Availability of Funds

Implementation of this Agreement and the HCP by FWS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds.

Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that FWS will not be required under this Agreement to expend any federally appropriated funds unless and until an authorized official of FWS affirmatively acts to commit to such expenditures as evidenced in writing.

13.7 Duplicate Originals

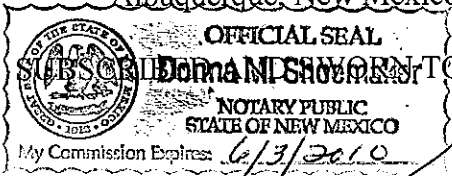
This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

13.8 Third-Party Beneficiaries

Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under existing federal or Arizona law.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

BY [Signature] Date 5-30-2008
Deputy Regional Director
United States Fish and Wildlife Service
Albuquerque, New Mexico



SUBSCRIBED AND SWORN TO BEFORE ME THIS 30th DAY OF May, 2008.
Donna M Shoemaker
Notary Public

BY [Signature] Date 5/8/08
John M. Williams, Jr., President
Salt River Project
Phoenix, Arizona



SUBSCRIBED AND SWORN TO BEFORE ME THIS 8th DAY OF May, 2008.
Margaret A Sullivan
Notary Public

ATTEST [Signature]
Terrill A. Lonon
Salt River Project, Corporate Secretary

Date 5/8/08
Reviewed by [Signature] SRP Legal Services Dept.
[Signature]
(Signed Name)
STEVE DONCASTER
(Printed Name)
Date: 5/8/08