



**Lake Mathews
Multiple Species Habitat**

**Conservation Plan and Natural Community
Conservation Plan**

**Volume 3
Agreements**

July 1995

Prepared by
The Metropolitan Water District of Southern California
and Riverside County Habitat Conservation Agency

ORIGINAL

***Lake Mathews Multiple Species Habitat
Conservation Plan and
Natural Community Conservation Plan***

Volume 3
Agreements

July 31, 1995

Prepared by
The Metropolitan Water District of Southern California
Riverside County Habitat Conservation Agency

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B. "Moose" Peterson/Wildlife Research Photography (wildlife)

Patrick Knisely/Metropolitan Water District of Southern California (Lake Mathews)

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THE LAKE MATHEWS MULTIPLE SPECIES HABITAT
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PART A

COOPERATIVE MANAGEMENT AGREEMENT

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VOLUME 3

THE LAKE MATHEWS MULTIPLE SPECIES HABITAT CONSERVATION PLAN
AND
NATURAL COMMUNITY CONSERVATION PLAN

PART A

COOPERATIVE MANAGEMENT AGREEMENT

THIS COOPERATIVE MANAGEMENT AGREEMENT ("CMA") dated for reference only as of December 5, 1995, is made and entered into by and among the DEPARTMENT OF FISH AND GAME OF THE STATE OF CALIFORNIA ("DEPARTMENT"); the FISH AND WILDLIFE SERVICE OF THE UNITED STATES DEPARTMENT OF THE INTERIOR ("SERVICE"); THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA ("METROPOLITAN"); and the RIVERSIDE COUNTY HABITAT CONSERVATION AGENCY ("RCHCA").

I. DEFINITIONS

All terms as defined and utilized in Volume 1 of the Lake Mathews Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan ("MSHCP/NCCP"), shall have the same meaning when utilized in this CMA.

II. RECITALS OF PURPOSE AND STATEMENT OF FACTS

This CMA is entered into with reference to the following facts:

A. MSHCP/NCCP:

1. METROPOLITAN and RCHCA have jointly submitted the MSHCP/NCCP to the SERVICE and the DEPARTMENT. The MSHCP/NCCP provides for the acquisition, management, operation and maintenance of certain lands located near Lake Mathews in the northwestern portion of Riverside County, California, for the conservation, protection, restoration, and enhancement of certain habitat occupied or used by various species of flora and fauna indigenous to that area, which objectives shall control over other use of such Multiple Species Reserve by the public.

2. The MSHCP/NCCP consists of:

a. The planning document (Volumes 1 and 2), which inventories the flora and fauna within the Multiple Species Reserve, and sets forth a long-term strategy for the conservation, preservation, restoration, enhancement and management of the habitat and species within the Lake Mathews-Estelle Mountain Reserve. It also complies with the requirements of a NCCP pursuant to the NCCP Act.

b. The legal agreements (Volume 3) which consist of:

i. A Lake Mathews Mitigation Banking Agreement ("Mitigation Banking Agreement") which establishes a mitigation bank for the accumulation of mitigation credits resulting from the conveyance of conservation easements to the RCHCA. The mitigation bank may be utilized by METROPOLITAN as mitigation for its Plan Area Projects, projects and activities within the Operations Area and, upon approval by the SERVICE and the DEPARTMENT, for METROPOLITAN projects located outside the Plan Area ("Outside Projects"). The mitigation bank may also be utilized by RCHCA in its Long-Term SKR HCP and, in the event it establishes a regional multiple species habitat conservation plan or NCCP in the future, in connection with such multiple species habitat conservation plan or NCCP.

ii. A Management Authorization with the DEPARTMENT pursuant to the provisions of California Fish and Game Code Sections 2081 and 2800, et. seq. ("2081/2835 Memorandum of Understanding/Permit") which acknowledges that the MSHCP/NCCP complies with the provisions of the NCCP Act and qualifies as a NCCP, and allows the incidental take by METROPOLITAN of the Listed and other Target Species and the disturbance of Coastal sage scrub habitat.

iii. A Memorandum of Understanding and Implementation Agreement with the SERVICE which acknowledges the obligations of each of the Parties under the MSHCP/NCCP as well as the right of METROPOLITAN to take Listed and Target Species.

iv. This CMA.

3. The terms of the MSHCP/NCCP are hereby incorporated herein by reference. In the event of a direct contradiction between the terms hereof and any other portion of the MSHCP/NCCP, the provisions hereof shall control. In all other cases, the provisions shall be read to be complementary to each other.

B. ENROLLMENT IN NCCP PROGRAM: METROPOLITAN and RCHCA commenced the planning process leading to this MSHCP/NCCP prior to enactment of the NCCP program. METROPOLITAN has enrolled the existing Multiple Species Reserve Lands pursuant to an August 1992 agreement, which is attached hereto, marked Exhibit 1.

C. COMBINED RESERVE LANDS: As of its effective date, this CMA applies to the following publicly-owned areas, which are more particularly set forth on Figure 4 of Volume 1 of the MSHCP/NCCP and which are collectively referred to as the "Combined Reserve."

1. The "Lake Mathews Multiple Species Reserve" consisting of 5,110.4 acres as shown on Figure 1 of Volume 1 of the MSHCP/NCCP. The Lake Mathews Multiple Species Reserve has the following two components:

a. "Existing Reserve Lands", which consist of those lands that are subject to the Previous Agreements as identified in Paragraph E of this Article II, and which are the existing Lake Mathews Ecological Reserve, as so designated by the California Fish and Game Commission, consisting of approximately 2,565.5 acres.

b. The "Mitigation Bank Lands", which consist of approximately 2,544.9 acres owned by METROPOLITAN that have been designated as mitigation lands for use by METROPOLITAN and RCHCA. Pursuant to the Lake Mathews Mitigation Banking Agreement, METROPOLITAN and RCHCA are entitled to use habitat value units occurring on the Mitigation Bank Lands.

2. The following lands within the southern portion of the Proposed Lake Mathews-Estelle Mountain Core Reserve, consisting of the following ownerships:

a. Approximately 4,598 acres owned by RCHCA.

b. Approximately 344 acres owned by the DEPARTMENT, which is the Estelle Mountain Ecological Reserve, as so designated by the California Fish and Game Commission on November 4, 1994.

c. Approximately 320 acres administered by the United States Bureau of Land Management ("BLM"), being the northern half of Section 8, T.5 S., R.5 W., S.B.B.&M.; provided, however, that management of these BLM lands pursuant to this CMA, shall not commence until such time as BLM formally assents to such management in writing submitted to the Reserve Management Committee.

D. EXCLUDED LANDS: This CMA does not apply to the following:

1. The areas, as shown in Figure 1 of Volume 1 of the MSHCP/NCCP, set aside for administrative, operational and future project purposes by METROPOLITAN and the Western

Municipal Water District and described on the legend as "Plan Area Projects" and "Operations Areas".

2. Lake Mathews, as shown in Figure 1 of Volume 1 of the MSHCP/NCCP to its maximum inundation level of 1,390 feet.

3. All public roads traversing the Combined Reserve.

E. PREVIOUS AGREEMENTS: The Existing Reserve Lands are affected by the agreement previously entered into by METROPOLITAN, the DEPARTMENT, and the Department of Water Resources of the State of California entitled "Memorandum of Agreement Regarding Mitigation of State Water Project Wildlife Losses in Southern California" and dated October 23, 1979, and the agreement previously entered into by METROPOLITAN and the DEPARTMENT entitled "Agreement for the Establishment of an Ecological Reserve at Lake Mathews" and dated September 14, 1982 (collectively, the Previous Agreements), which are attached hereto, marked Exhibits 2 and 3, respectively, and by this reference made a part hereof. The Previous Agreements remain in full force and effect and control in case of any conflict with the MSHCP/NCCP or this CMA; provided however, that notwithstanding the provisions of the Previous Agreements with respect to the obligation of the DEPARTMENT to prepare and finance a habitat development plan and to provide ongoing maintenance and operation of the Existing Reserve Lands after the expenditure of the \$500,000 payment from the Department of Water Resources, it is the intention of the Parties that the

provisions of the MSHCP/NCCP and this CMA shall control so that the DEPARTMENT shall have no further obligation under the provisions agreements to plan and finance habitat development and to provide ongoing maintenance and operation of the Existing Reserve Lands.

F. PURPOSE: The purpose of this CMA is to provide for the management of the Combined Reserve and such lands as may be later acquired by the parties and other public agencies in conformance with and to fulfill the purpose and requirements of the MSHCP/NCCP.

III. TERM

TERM: The term of this CMA shall commence upon the date of execution by all the parties and shall remain in effect until the earlier of termination by the parties or termination of the Memorandum of Understanding (Part D of Volume 3 of the MSHCP/NCCP). In the event this CMA and/or the Previous Agreements regarding the Existing Reserve Lands is terminated or expires, METROPOLITAN shall resume responsibility for the management, operation, and maintenance of its lands, but shall exercise that responsibility with respect to the Mitigation Bank Lands in accordance with the conservation easements provided for under this CMA.

IV. LANDS GOVERNED

A. COMBINED RESERVE LANDS: This CMA and each of its terms, covenants and conditions is intended to provide for the management of the Combined Reserve and each of its constituent parts.

B. ADDITIONAL LANDS: Subject to the unanimous approval of the Reserve Management Committee established in Article V ("**Management Committee**"), any party hereto, or any other public agency, person, firm or entity may, subject to such terms and conditions as the Management Committee may prescribe, agree to have lands not now governed by the terms of this CMA become subject to the provisions hereof. The Parties recognize that METROPOLITAN may add up to 1,000 acres of land to the Multiple Species Reserve to be managed using then available funds.

C. SUBSTITUTE LANDS: METROPOLITAN may, subject to the unanimous approval of, and upon such terms and conditions as the Management Committee may prescribe, substitute lands for any portion of the Multiple Species Reserve. If any lands proposed for substitution result in a loss of suitable habitat or cause impact to a sensitive species, which was not previously addressed by the MSHCP/NCCP, METROPOLITAN shall provide comparable and additional mitigation to maintain the integrity and management of the Multiple Species Reserve.

V. MANAGEMENT COMMITTEE -- ESTABLISHMENT

A. REPRESENTATIVES: The Management Committee consists of a representative of each of the parties to this CMA. Commencing as of the date hereof, the representative of each of the parties is:

DEPARTMENT ----- Its Regional Manager, Region V.

SERVICE ----- Its Field Supervisor, Carlsbad Office.

METROPOLITAN --- Its General Manager.

RCHCA ----- Its Executive Director.

Any party may change its representative at any time and from time to time during the term hereof by giving written notice to each of the other parties.

B. CHAIR: Unless changed by the Management Committee, the representative of METROPOLITAN shall serve as Chair of the Management Committee and shall prepare agendas and convene meetings.

C. PURPOSE AND OBLIGATION: The purpose of the Management Committee, and the obligation of each of its members, is to manage the Combined Reserve and the natural resources contained therein in a fashion consistent and in compliance with the terms of the MSHCP/NCCP.

VI. RESERVE MANAGER

RESERVE MANAGER: A Reserve Manager shall be selected by the Management Committee. The Reserve Manager's contract

shall be approved by the Management Committee and shall be administered by METROPOLITAN as Agreement Administrator. The Reserve Manager shall be responsible for administering, managing, protecting, and maintaining the Combined Reserve in compliance with the terms of the MSHCP/NCCP and consistent with and subject to the actions of the Management Committee.

VII. MANAGEMENT COMMITTEE -- MEETINGS

A. REGULAR MEETINGS: Regular meetings of the Management Committee shall be held at least annually, and at more frequent times as the Management Committee may from time to time determine. The Chair shall give at least thirty (30) days written notice of regular meetings to all members.

1. Notice for the regular annual meeting shall be provided by the Chair and accompanied by financial statements of receipts and expenditures for the previous year, a proposed operating budget for the ensuing year, any reports from consultants and scientists doing research upon the Combined Reserve during the previous year, and a proposed work plan for the next year.

2. At its annual meeting or at a special meeting within forty-five (45) days of the annual meeting, the Management Committee shall review and approve the annual budget and the work plan for the next year.

B. SPECIAL MEETINGS: Special meetings may be called by any member of the Management Committee upon fifteen (15) days written notice, including a proposed agenda, to each other member.

C. TELEPHONE MEETINGS: Meetings may be held telephonically by conference call or seriatim.

D. QUORUM AND VOTE REQUIREMENTS: Three members, physically present or by phone, shall constitute a quorum for the transaction of business, and no business may be conducted in the absence of a quorum. A quorum must include either the SERVICE member or the DEPARTMENT member. If the SERVICE member or the DEPARTMENT member is absent, the Chair, or any member if the Chair is absent, shall attempt to contact the absent member or members telephonically. Any member who is contacted shall be permitted to participate in the meeting telephonically. Except as otherwise required herein, all actions of the Management Committee shall require the unanimous consent of members present or participating telephonically.

VIII. MANAGEMENT COMMITTEE -- ACTIONS

A. CONSISTENCY: All actions of the Management Committee shall be consistent with the requirements of the MSHCP/NCCP.

B. ANNUAL OPERATING BUDGET AND WORK PLAN: The Management Committee shall adopt an annual operating budget

and annual work plan which will set forth specific activities to be carried on during the ensuing year to fulfill the requirements of the MSHCP/NCCP, including the agreements appended to it as Volume 3. Except as otherwise provided herein, only activities approved in the annual work plan shall be allowed within the Combined Reserve.

1. Any member wishing to propose an activity for the annual work plan shall submit an adequate description of the proposed activity, including an estimate of the expense of that activity, in writing, to the Reserve Manager at least sixty (60) days prior to the annual meeting date for the purpose of assisting the Reserve Manager in preparing a proposed annual operating budget and annual work plan.

2. The annual work plan shall consist of all the activities proposed to be carried on within the Combined Reserve, such as but not limited to, natural resource management activities, security actions, public access, natural resource interpretation activities and historical and cultural resource activities. The work plan shall designate the reserve management personnel, the personnel of a member, or any consultant who will be responsible for each activity.

3. The annual operating budget shall reflect the amount of funds then available for expenditure from all sources including, but not limited to, income from any endowment or grant created by or for a party to this CMA, annual appropriations from any member, other public funds, revenue from fees for use of any part of the Combined Reserve,

and donations. It shall also reflect in-kind services or other non-monetary support or donations received for the administration and management of the Combined Reserve.

C. ACTIVITIES NOT INCLUDED IN ANNUAL WORK PLAN:

1. In the event any member wishes to propose an activity within the Combined Reserve at a time other than at the annual meeting, that member shall call a special meeting, and shall include a description of the activity in the notice of that meeting. The description of the proposal shall be in writing, be in sufficient detail to allow members to make an informed judgment regarding the proposal and the competence of the person, firm or entity that will conduct the activity, together with an estimate of the cost of the activity. The proposal shall also suggest the source of the funds to carry on the activity. The Management Committee may not, without unanimous consent of the Management Committee, authorize any activity pursuant to this Paragraph if any member has objected to the activity either in writing or in person at the special meeting.

2. As more particularly set forth in Article XIV hereof and the Conservation Easement to be granted by METROPOLITAN, METROPOLITAN has retained the rights to close the Multiple Species Reserve to the public; maintain, use and operate existing facilities, and to construct, operate and maintain its Plan Area Projects and Operation Areas. Those activities are not subject to the provisions hereof regarding the annual work plan. Any actions contemplated and undertaken

by METROPOLITAN outside its Plan Area Projects and Operation Areas and within the Multiple Species Reserve shall be governed by the terms of the Conservation Easement, Section 3.C.3 of Volume 1 of the MSHCP/NCCP and be subject to applicable state and federal laws.

D. EMERGENCIES: Notwithstanding the provisions of Paragraphs B and C of this Article VIII, the Reserve Manager and/or any member may respond immediately to any emergency which presents an imminent threat to habitat values, structures or facilities located on the Combined Reserve or damage to or interference with the natural resources of the Combined Reserve or which presents an immediate threat to public safety. Any member taking any such emergency action shall promptly notify each of the other members. Activities undertaken by METROPOLITAN in regard to its water service obligations and operations shall not be considered an emergency. Any response to an emergency on the Lake Mathews Multiple Species Reserve shall be coordinated with METROPOLITAN. Nothing in this paragraph obligates a member to respond to an emergency.

IX. MANAGEMENT COMMITTEE -- RESPONSIBILITIES

A. ATTENDANCE: Each member of the Management Committee shall attend and participate in the meetings of the Committee.

B. RULES, REGULATIONS, AND ORDINANCES: Each owner of land within the Combined Reserve may, subject to its

respective legal or regulatory authority, adopt such rules, regulations or ordinances deemed necessary to govern the use of, and permissible activities upon the Combined Reserve in a fashion consistent with the MSHCP/NCCP. The Rules and Regulations of the DEPARTMENT and/or the Fish and Game Commission applicable to its lands within the Combined Reserve in effect as of the date hereof are hereby deemed to be consistent with the MSHCP/NCCP.

C. PROTECTION OF RESOURCES: Each member of the Management Committee shall conduct its respective programs and otherwise exercise its authority in a manner designed to protect the natural, historical and cultural resources of the Combined Reserve and in a manner consistent with the MSHCP/NCCP.

D. RESPONSIBILITY OF METROPOLITAN: METROPOLITAN shall:

1. Furnish, at its own cost, personnel and equipment for grading, and otherwise keeping in good repair, firebreaks and principal service roads and installing gates, fixed barriers, and locks within the Mitigation Bank Lands and Existing Reserve Lands. Grading trails and purchasing and installing and maintaining new fencing are not included in this responsibility.
2. Maintain existing fencing, gates, fixed barriers and locks on Mitigation Bank Lands and Existing Reserve Lands.
3. Subject to availability, furnish any water which may be required for use on the Lake Mathews Multiple

Species Reserve, which water shall not be deemed delivered by any METROPOLITAN member public agency; provided, however, that the Combined Reserve shall pay for any water so delivered.

4. Grant to the RCHCA one or more conservation easements in substantially the same form as that set forth in Exhibit 4 attached hereto and by this reference made a part hereof, affecting the Mitigation Bank Lands.

5. Notwithstanding any other provision of this CMA, METROPOLITAN's responsibilities shall be limited to only those obligations specified in the Plan. Specifically, it shall be responsible only for those Lake Mathews Multiple Species Reserve Lands it holds fee ownership to and then as such are expressly provided for in this CMA, except that METROPOLITAN shall exercise its responsibilities as a member of the Management Committee throughout the Combined Reserve.

6. Manage funds in the endowment provided by RCHCA pursuant to Article IX, Paragraph G.2, as well as exercise best efforts to obtain funds to be provided by the Department of Water Resources pursuant to the Previous Agreements referred to in Article XII, Paragraph A.2 and Article II, Paragraph E, and any other funds provided for the Combined Reserve.

7. Prepare the financial statement referred in Article XII, Paragraph E.

E. RESPONSIBILITY OF DEPARTMENT: The DEPARTMENT shall:

1. Exercise all of its powers as trustee over the fish and wildlife resources of the State of California to

manage the species located upon the Combined Reserve and in a manner consistent with the MSHCP/NCCP.

2. Review research proposals and issue, subject to applicable laws and regulations, permits to properly qualified persons to conduct research upon the Combined Reserve.

3. Consult with other members of the Management Committee regarding biological issues upon the Combined Reserve, and participate in carrying out the purposes of this CMA.

4. Conduct law enforcement activities in furtherance of the purposes of this CMA.

5. Provide recommendations to the Management Committee regarding activities to be allowed within the portions of the Combined Reserve owned by the DEPARTMENT.

F. RESPONSIBILITY OF SERVICE: The SERVICE shall:

1. Consult with other members of the Management Committee regarding biological issues upon the Combined Reserve, and participate in carrying out the purposes of this CMA, subject to the availability of appropriated funds.

2. Review research proposals and issue, subject to applicable rules and regulations, permits to properly qualified persons to conduct research upon the Combined Reserve.

3. Whenever federal laws administered by the SERVICE are involved, the SERVICE may supplement law enforcement activities upon the Combined Reserve in a manner consistent with the MSHCP/NCCP.

G. RESPONSIBILITY OF RCHCA: The RCHCA shall:

1. Participate on the Management Committee and assure that the Combined Reserve is managed in conformance with the terms of the conservation easements granted to the RCHCA and the Stephens' Kangaroo Rat Habitat Conservation Plan, as it exists, or may hereafter be amended.

2. Be responsible for providing recommendations to the Management Committee regarding activities to be allowed within the portions of the Combined Reserve owned by RCHCA.

3. Pay to METROPOLITAN the sum of \$5,000,000, to acquire 2,544.9 acres of conservation easements in the Mitigation Bank Lands. METROPOLITAN shall hold this sum to be invested as a perpetual endowment to be used exclusively for conserving, protecting, restoring and enhancing the Combined Reserve in accordance with the MSHCP/NCCP. The purchase price shall be paid as follows: 1) \$2,500,000 within sixty (60) days after execution of this CMA, the Lake Mathews Mitigation Agreement (Volume 3, Part B), the 2081/2835 Memorandum of Understanding/Permit (Volume 3, Part C), and the Memorandum of Understanding and Implementation Agreement (Volume 3, Part D), as well as issuance of the permits and opinions provided for therein, and 2) \$2,500,000 no later than five years after payment of the first amount is required.

Upon receipt of the first payment, METROPOLITAN shall transfer a conservation easement over at least 75 percent of the land to be encompassed by conservation easements. As soon as practicable after receipt of the second

payment, METROPOLITAN shall transfer one or more conservation easements over the remaining acreages. If RCHCA fails to make the second payment as required, the funds previously paid shall be utilized to fund the management of the Multiple Species Reserve alone, and RCHCA shall be solely responsible for management of the remainder of the Combined Reserve. Furthermore, in such event, RCHCA shall not be entitled to any reimbursement for payments previously made, shall forfeit any rights to a refund of any remaining funds upon termination of this CMA, any rights to utilize Multiple Species Credits then remaining and otherwise available pursuant to Article III of the Mitigation Banking Agreement, as well as any rights under SERVICE or DEPARTMENT issued permits relying upon compliance with this CMA. METROPOLITAN shall have no responsibility to add to funds furnished by RCHCA and shall have no responsibility to individually act in the event of RCHCA's failing to furnish funds. RCHCA's failure to furnish funds shall not adversely affect rights obtained by METROPOLITAN under this or any related agreement. The other parties may individually or collectively take appropriate steps to compel RCHCA to comply with its obligations in this regard.

X. RESERVE MANAGER -- RESPONSIBILITIES IN GENERAL

A. CONTRACT: The contract with the Reserve Manager shall incorporate this CMA by reference.

B. MINUTES: The Reserve Manager shall prepare and circulate minutes of all meetings of the Management Committee.

C. REPORTS: The Reserve Manager shall receive and circulate to all members, at least thirty (30) days prior to the annual meeting, any reports from consultants, scientists and researchers conducting activities upon the Combined Reserve.

D. ADMINISTER CONTRACTS: The Reserve Manager shall enter into and administer all contracts relating to the discharge of the Management Committee's responsibilities pursuant to this CMA.

E. GENERAL ADMINISTRATION: The Reserve Manager shall carry out and administer the MSHCP/NCCP annual operating budgets, annual work plan, project site-specific plan, and facilitate the activities of biologists.

F. INTERPRETATION: In the event that a question of interpretation arises among the parties concerning a provision of the MSHCP/NCCP, an annual work plan, or a project or site-specific plan, METROPOLITAN shall make a determination. If METROPOLITAN's determination does not resolve the question to the satisfaction of all parties, the parties shall attempt to remove or correct the unclear or ambiguous provision, in accordance with the procedure set forth in Article XV (Amendment Process). If the parties are unable to agree, then the matter shall be resolved in accordance with the dispute resolution procedure set forth in Article XIII (Dispute Resolution).

XI. RESERVE MANAGER -- OPERATIONAL DUTIES

The Reserve Manager shall have the following operational duties in fulfillment of conserving, protecting, restoring and enhancing the Combined Reserve:

A. Provide, or contract for the provision of, the day to day operation and maintenance of the Combined Reserve at the direction of the Management Committee including, but not limited to, patrol, law enforcement, litter control, and maintenance of the Combined Reserve fences and other improvements except for improvements that are METROPOLITAN'S responsibility.

B. Except as provided in Article XI, Paragraph D, prohibit or restrict access to any area of the Combined Reserve by the general public.

C. Provide, if sufficient funds from other sources are available, for the interpretation of the natural, cultural, and historical resources of the Combined Reserve and the special needs of sensitive or fragile environments thereon.

D. Allow, subject to the direction of the Management Committee, public access to the Combined Reserve. Public access shall be subservient to, and compatible with the natural resource objectives of the Combined Reserve and Article XIV (Rights Retained by METROPOLITAN). The Management Committee shall have the sole right to determine forms of public access which are compatible with the natural resources objectives subject to METROPOLITAN'S rights to restrict public

access on the Lake Mathews Multiple Species Reserve. An admission fee may be required. Any proceeds shall be used exclusively for natural resources management within the Combined Reserve. A special fee may be charged for interpretive programs conducted on the Combined Reserve. All costs associated with such programs shall be the responsibility of the party conducting them and any surplus proceeds from special fees collected shall be deposited within the funds on deposit for management of the Combined Reserve.

XII. FINANCIAL MANAGEMENT

A. RESERVE MANAGEMENT FUNDS: All funds appropriated by any party pursuant to this CMA or received as revenues, grants or donations for the administration, protection, management, operation, and maintenance of the Combined Reserve shall be administered by METROPOLITAN. The Management Committee may substitute another entity to administer and manage the funds. Initially, the funds shall consist of the following:

1. All fees for access to, or use of the Reserve.
2. Funds appropriated for the administration, protection, management, operation and maintenance of the Combined Reserve, including the \$5,000,000 provided by RCHCA pursuant to Article IX, Paragraph G.2.
3. The \$500,000 payable to METROPOLITAN from the Department of Water Resources provided for in Section 8 of the 1979 Agreement upon amendment of that agreement.

4. Any other funds subsequently made available for use by the Management Committee on all or any portions of the Combined Reserve.

B. INVESTMENTS: The funds on deposit shall be separately accounted for and managed, invested and reinvested by METROPOLITAN in accordance with its Statement of Investment Policy as the same exists, as set forth on Exhibit 5, attached hereto and by this reference made a part hereof, and as the same may be amended from time to time.

C. MANAGEMENT OF FUNDS: The funds on deposit shall be managed with the objective of producing annual income to provide additional funds to finance the activities described in the MSHCP/NCCP. In the course of preparing future annual operating budgets, the Management Committee shall, whenever it is feasible to do so without jeopardizing natural resource management, provide for the retention in the account of any income that is not needed in the succeeding year for operations on the Combined Reserve.

D. AUDIT: The Management Committee may, from time to time, audit the funds on deposit for management of the Combined Reserve. The cost of the audit shall be met from the funds on deposit.

E. FINANCIAL REPORTS: The Reserve Manager shall prepare the proposed annual operating budget and work plan for the Combined Reserve for review and approval by the Management Committee. The proposed annual operating budget and work plan shall be circulated to the members at least thirty (30) days

prior to the annual meeting. The proposed operating budget shall be accompanied by a financial statement prepared by METROPOLITAN providing a full accounting of all income and disbursements from the funds on deposit for the management of the Combined Reserve for the preceding 12-month period. At the request of any member, and upon thirty (30) days' written notice, METROPOLITAN shall provide an interim financial statement covering income and disbursements since adoption of the operating budget; provided, however, that METROPOLITAN shall not be required to provide financial statements more frequently than once each quarter.

XIII. DISPUTE RESOLUTION

A. In the event of a dispute arising under the CMA that does not involve the SERVICE on a matter for which unanimous or individual consent or approval is required, the parties, other than the SERVICE, shall endeavor to resolve the dispute by using the services of a mutually acceptable consultant.

B. If a consultant cannot be agreed upon, or if the consultant's recommendations are not accepted by those parties, they agree to be bound by the majority decision of a three-member panel, to be selected as follows:

1. One member shall be appointed jointly by those parties who agree with the proposed action.

2. One member shall be appointed by the party who disagrees, or jointly by those parties who disagree, with the proposed action.

3. The third member shall be selected by the other two members of the panel.

C. If a member cannot be appointed or selected, any of those parties may petition a court to appoint the member pursuant to section 1281.6 of the Code of Civil Procedure.

D. This dispute resolution process shall be governed by the California Arbitration Act (Part 3 [commencing with §1280], Tit. 9, Calif. Code Civ. Proc.). Each party shall be responsible for any fees and expenses of the member of the panel appointed by that party, and the fees and expenses of the third member of the panel shall be shared equally among the parties participating in the dispute resolution process.

E. This Article XIII shall not be applied to deprive a party of any right created by or arising pursuant to the CMA nor shall it be applied to reduce the DEPARTMENT's statutory authority.

XIV. RIGHTS RETAINED BY METROPOLITAN

METROPOLITAN shall, pursuant to Article IX, Paragraph D (Responsibility of METROPOLITAN), convey one or more conservation easements to RCHCA in substantially the same form as set forth in Exhibit 4 to this CMA. These conservation easements recognize the obligation and right of METROPOLITAN

to conduct its water service operations upon the Mitigation Bank Lands and Existing Reserve Lands. Specifically, subject to the provisions set forth in Volume 1, Section 3.C.3 of the MSHCP/NCCP, the parties acknowledge and agree that METROPOLITAN has the right to:

A. CLOSE TO PUBLIC: Close or otherwise restrict public access at any time to the Multiple Species Reserve, and remove persons from the Multiple Species Reserve, whenever it determines it is necessary to do so in the interest of its water service obligation or operations, public safety, or national security.

B. USE EXISTING FACILITIES: Maintain and use existing roads, water pipelines, and ancillary improvements.

C. CONSTRUCTION AND USE: In accordance with Title 14, California Code of Regulations (CCR) Section 630(b)(49) as in effect on the date of this CMA, carry out management activities necessary to ensure water quality and the proper operation and maintenance of Lake Mathews as a water supply facility and natural area. (Authorized operation and maintenance activities shall include, but shall not be limited to, use of chemicals, vegetation control, water control, rodent control and use of associated equipment.) Collect fish pursuant to Title 14, CCR Section 630(b)(49), as in effect on the date of this CMA, for the purpose of water quality testing. Designate, construct and use or authorize the use of rights-of-way for roads, trails, firebreaks, irrigation works, flood control structures and channels, utility corridors,

sewers, facilities for metering of natural water inflow into the Reservoir, structures for the diversion or detention of water, pipelines and ancillary improvements, and telephone and electric power lines across the Lake Mathews Multiple Species Reserve. Any such designation, construction and use shall occur only after, to the extent feasible, receiving timely suggestions from the Management Committee.

D. AUTHORIZE OTHERS: Authorize its directors, officers, employees, licensees, agents and contractors to enter on, pass over, and egress from the Lake Mathews Multiple Species Reserve as necessary to protect any right of or carry out METROPOLITAN's water service obligations or operations including, but not limited to, activities relating to the protection of water quality. Boats, aircraft or motor vehicles may be utilized.

E. DEMOLITION: Remove or demolish any unauthorized structure or other improvement located on the Lake Mathews Multiple Species Reserve that may conflict with METROPOLITAN's water service obligations or operations.

XV. AMENDMENT PROCESS

A. UNANIMOUS CONSENT: This CMA may be amended only by a written instrument executed by all of the parties hereto.

B. PROPOSED AMENDMENTS: Any member of the Management Committee may propose an amendment to this CMA by providing a written copy of the proposed amendment to each other member at

least forty-five (45) days prior to the meeting at which the proposed amendment is to be considered.

XVI. INDEMNIFICATION

PARTIES OTHER THAN SERVICE: Except for the SERVICE, each party hereto, unless otherwise prohibited by law, shall indemnify and hold harmless each other party hereto, and their officers, agents, employees, subcontractors, and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of that party, its directors, officers, agents, employees, subcontractors or independent contractors, for property damage, bodily injury or death or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities of that party pursuant to this CMA, except for, and to the extent that, such damage, injury or death is caused by the sole negligence of the other party or parties or their officers, agents, employees, subcontractors or independent contractors; and each party shall defend, at its expense, including attorney fees, each other party, their officers, agents, employees, subcontractors, and independent contractors in any legal action based upon such alleged acts or omissions.

XVII. RESERVE AREA LAND MATTERS

COVENANT RUNNING WITH THE LAND: This CMA and all of its provisions shall inure to the benefit of, and apply to and bind the successors and assigns of the parties, and to the extent permitted by law shall constitute a covenant running with the land.

XVIII. MISCELLANEOUS

A. APPLICABILITY OF LAW: Notwithstanding any other provision in this CMA, this CMA is subject to, shall be carried out in accordance with, and shall not be interpreted to be inconsistent with, any requirement of the federal Endangered Species Act (16 U.S.C. §1531 et seq.), the California Endangered Species Act (Cal. Fish & G. Code, §2050 et seq.), the Natural Community Conservation Planning Act (Cal. Fish & G. Code, §2800 et seq.) or any other applicable federal or state law or regulation. Nothing in this CMA shall prejudice, waive or impair any right, remedy or defense the DEPARTMENT may have as a statutory trustee. Moreover, this CMA is also subject to, shall be carried out in accordance with, and shall not be interpreted to be inconsistent with any requirement of any permit issued under authority of the federal or California Endangered Species Acts. In exercising any of these authorities, the DEPARTMENT shall, to the extent consistent with such exercise, notify the Management Committee

before undertaking activities not otherwise provided for in this CMA. The obligations expressed in this CMA are contractual and do not otherwise require METROPOLITAN to exceed its legal obligations under applicable natural resource protection laws and regulations.

B. LIMIT ON PARTICIPATION BY SERVICE: Participation by the SERVICE pursuant to the terms of this CMA shall be subject to the availability of appropriated funds. However, the unavailability of funding shall not operate to suspend, terminate or nullify in whole or in part any provision of this CMA.

C. OFFICIALS NOT TO BENEFIT: No member of or delegate to the Congress or resident commissioner shall be entitled to any share or part of this CMA, or to any benefit that may arise from it.

D. SEVERABILITY: If any provision of this CMA is determined or held to be invalid for any reason, that invalidity shall not be imputed to any other provision hereof that was not so determined or held to be invalid.

E. CONFLICT: In the event of any conflict between the terms of this CMA and the remainder of the MSHCP/NCCP, this CMA shall prevail.

F. ENTIRE AGREEMENT: This CMA consists of the principal document executed by the parties (in which this sentence occurs) as well as all exhibits. This CMA incorporates the full and complete understanding of the parties. Any oral or written understanding not incorporated

herein or in the MSHCP/NCCP shall not be effective to modify the terms hereof nor be utilized for the purpose of interpreting any provision hereof.

G. NOTICE: Any notice which may or shall be given as provided in this CMA shall be in writing and either personally delivered to the persons set forth below or shall be deemed delivered three (3) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows or at such other address which any party hereto from time to time shall notify each other party:

The Metropolitan Water District of Southern California

P.O. Box 54143
Los Angeles, California 90054
Attention: General Manager

Riverside County Habitat Conservation Agency

4080 Lemon Street, 12th Floor
Riverside, California 92501
Attention: Executive Director

California Department of Fish and Game

330 Golden Shore, Suite 50
Long Beach, California 90802
Attention: Regional Manager, Region V

United States Fish and Wildlife Service

2730 Loker Avenue West
Carlsbad, California 92008
Attention: Field Supervisor

H. LITIGATION: The DEPARTMENT, the SERVICE, the RCHCA, and METROPOLITAN shall cooperate in the defense of any litigation that challenges the validity of this CMA, the MSHCP/NCCP, or any action taken by the parties pursuant to it, to the extent permitted by law.

I. OPINIONS AND DETERMINATIONS: Where the terms of this CMA provide for action to be based upon the opinion,

judgment, approval, review, or determination of any party, those terms are not intended to be and shall not be construed as permitting the opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

J. CAPTIONS: The captions on Articles and Paragraphs in this CMA are solely for the convenience of the parties, and no meaning shall be ascribed to them in interpreting this CMA.

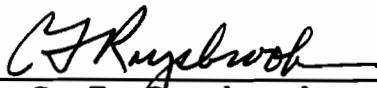
K. SUCCESSORS AND ASSIGNS: This CMA and all of its provisions and exhibits shall apply to and bind the successors and assigns or the parties to this CMA.

L. EXECUTION: This CMA may be executed in any number of counterparts, each of which shall be deemed an original.

M. EFFECTIVE DATE: This CMA shall become effective upon execution by all parties and shall be recorded in the office of the County Recorder of the County of Riverside.


WITNESS OUR HANDS AND SEALS effective on the date executed by all of the parties and recorded in the Office of the County Recorder of Riverside County, California.

**DEPARTMENT OF FISH AND GAME
OF THE STATE OF CALIFORNIA**

By 
C. F. Baysbrook
Acting Director

Date 15 Nov. 1995

Approved as to form

By 
Craig Manson
General Counsel

Date 15 Nov 1995

**FISH AND WILDLIFE SERVICE OF
THE UNITED STATES DEPARTMENT
OF THE INTERIOR**

By 
Deputy Regional Director

Date 12/5/95

Approved as to form

By _____

Date _____

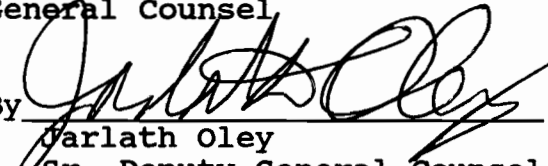
**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By 
Joan R. Wodraska
General Manager

Date NOV 14 1995

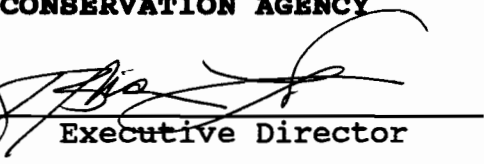
Approved as to form

N. Gregory Taylor
General Counsel

By 
Jarlath Oley
Sr. Deputy General Counsel

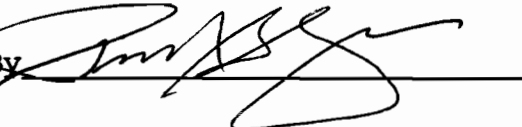
Date 6 NOVEMBER 1995

**RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY**

By 
Executive Director

Date _____

Approved as to form

By 

Date 10/27/95

EXHIBIT /

NATURAL COMMUNITY CONSERVATION PLANNING (NCCP) / MULTI-SPECIES - COASTAL SAGE SCRUB PROGRAM

ENROLLMENT AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT OF FISH AND GAME AND THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

This Agreement, dated as of August __, 1992, is made and entered into by the Department of Fish and Game of the State of California ("DEPARTMENT") and The Metropolitan Water District of Southern California ("METROPOLITAN"), and is based on the following recitals:

RECITALS

A. Comprehensive Planning The parties recognize the need for comprehensive wildlife habitat conservation planning in areas of environmental concern. Such planning can be accomplished through Multi-Species Habitat Conservation Plans ("MSHCPs") or their equivalent, Natural Community Conservation Plans ("NCCPs").

B. Southwestern Riverside County MSHCP

Introduction The Southwestern Riverside County MSHCP meets the requirements for an On-going MSHCP. The planning process was underway prior to the effective date of The Natural Community Conservation Planning Act ("Act"), Fish and Game Code ("Code") Sections 2800 - 2840.

Planning Process The planning process began in 1988 with biological surveys of the Domenigoni and Crown Valleys and Skinner Reservoir area as part of METROPOLITAN's efforts to identify suitable mitigation sites for its Eastside Reservoir Project. The survey methodology was developed in cooperation with, and was approved, by both the United States Fish and Wildlife Service ("Service") and the DEPARTMENT.

Funding METROPOLITAN and the Riverside County Habitat Conservation Agency ("RCHCA") have been funding biological surveys of these areas since 1989. In addition, with the creation of the Shipley Reserve, which encompasses substantial portions of the Multi-Species Reserve contemplated by the Southwestern Riverside County MSHCP, a trust fund of \$1,521,000 for the management and preservation of the area and a \$479,000 endowment to the University of California at Riverside to monitor native plants were created. Finally, in September 1991, METROPOLITAN, in cooperation with the RCHCA, funded the preparation of a Habitat Conservation Plan ("HCP") for species which may become endangered during the construction of the Domenigoni Valley Reservoir. The HCP is intended to constitute an NCCP for purposes of the Act upon approval by DEPARTMENT. The HCP/NCCP includes protection and enhancement of habitats for the California gnatcatcher as well as a number of other species. Funding for the first eleven years of management and research will be \$13,886,000.

Protection of Sage Scrub The scope of work for the plan includes protection of almost 5,600 acres of coastal sage scrub, as well as other plant communities, and mitigation measures for those areas which cannot be protected.

The Eastside Reservoir Final Environmental Impact Report, certified in October 1991, provides for full mitigation of impacts to coastal sage scrub. The HCP/NCCP sets aside an additional 5,500 acres, almost 3,500 of which are coastal sage scrub. Previously METROPOLITAN had set aside 2,100 acres of coastal sage scrub. Thus, almost 5,600 acres of coastal sage scrub are protected.

This protection is ensured by the Management Committee for the area which is composed of representatives of DEPARTMENT, Service, RCHCA, Riverside County Regional Park and Open Space District and METROPOLITAN.

Survey methodologies employed in the development of this MSHCP/NCCP are those accepted by the DEPARTMENT and the Service.

Timing requirements for the construction of facilities for the maintenance of essential public water service to people of Southern California require that the MSHCP/NCCP be approved at the earliest possible date. Initial contracts for the construction of the project have been let following the certification of the Final Environmental Impact Report.

C. Lake Mathews MSHCP/Reserve Plan (collectively "MSHCP")

Planning Process Planning activities for METROPOLITAN's Lake Mathews property, undertaken by METROPOLITAN and RCHCA, meet the DEPARTMENT's requirements for an On-going MSHCP. The Lake Mathews MSHCP also is intended to constitute an NCCP, or a component part of a larger subregional NCCP, for purposes of the Act, upon approval by the DEPARTMENT.

The planning process was underway prior to the effective date of the Act.

Protection and Further Planning Process In 1982, pursuant to a 1979 Memorandum of Understanding, METROPOLITAN conveyed an easement to the DEPARTMENT over 2,565 acres of METROPOLITAN's 8,776 acres of Lake Mathews Property within the fence enclosing the reservoir for an Ecological Reserve.

The RCHCA placed virtually all of the METROPOLITAN's Lake Mathews property within the boundaries of the Lake Mathews Reserve Study Area under its HCP for Stephens' Kangaroo Rats which was approved in October 1990 pursuant to an environmental impact report certified on April 17, 1990. The RCHCA has been conducting studies and planning for the ultimate establishment of a permanent reserve at the Lake Mathews location continuously since 1990.

The County of Riverside included all of METROPOLITAN's Lake Mathews property within one of its study areas in the County's proposed MSHCP, the final draft of which was completed

in January 1991, and has been continuing these planning efforts from that date.

Commencing May 7, 1990, METROPOLITAN retained the Chambers Group, Inc. to begin planning studies for the use of Lake Mathews property to mitigate the adverse effects of proposed projects and in the intervening time has retained additional biological consultants to further assess biological values of METROPOLITAN's Lake Mathews property for this purpose.

Funding Process Both METROPOLITAN and RCHCA have continuously funded the planning efforts since the commencement of their respective activities. Both agencies are working toward the completion of a MSNCP for the Lake Mathews area which would be funded on a permanent on-going basis. It is anticipated that the DEPARTMENT will be the Multi-Species Reserve Manager to ensure preservation and protection of the area's environmental values.

Protection of Sage Scrub The scope of work for the plan includes protection of coastal sage scrub, as well as other plant communities, and mitigation measures to compensate for loss of such habitat elsewhere.

Lake Mathews is one of the historically prime areas for coastal sage scrub and California gnatcatcher. One Thousand Nine Hundred acres of coastal sage scrub will be protected within the Lake Mathews area. This has become degraded over the years due to repeated range fires. However, it remains rich in species of environmental concern.

In addition to planning for the Lake Mathews area as a Reserve Area for Stephens' Kangaroo Rats, the RCHCA has also planned for the preservation of species within the boundaries of the reserve to the maximum extent possible. Although no research has been done, Lake Mathews may also be an exceptional opportunity for translocating pronghorn antelope to part of its historic range.

METROPOLITAN has contemplated from the beginning of its studies that the preservation and protection of coastal sage scrub at this location would be accomplished to mitigate for the effects of its projects.

D. Adoption of MSHCPs Survey methodologies being used are those accepted by the DEPARTMENT and the Service. These studies which have been on-going for several years are now virtually complete and the adoption of the MSHCP is contemplated within the next few months.

Time is of the essence in adopting the proposed MSHCPs because of the deadlines for the development of a permanent long-term plan for the Stephens' kangaroo rat and the immediate need to proceed with essential public works projects for METROPOLITAN, the Riverside County Flood Control District and Western Municipal Water District of Riverside County.

It is agreed as follows:

METROPOLITAN hereby agrees to the following:

1. a. Southwestern Riverside County MSHCP

Exhibit A identifies property owned by METROPOLITAN which is included within the Southwestern Riverside County MSHCP. The property is shown as Domenigoni Valley Reservoir and Lake Skinner and includes the connecting property. Exclusive of the areas identified as "recreation area", "MWD operational area", "school area", "excluded area", "post-construction reserve", and "post-construction corridor" in Exhibit A, and reserving the right to conduct related water service operations upon its property, METROPOLITAN offers for enrollment the remaining owned property in the California Natural Communities Conservation Planning (NCCP) Program which constitutes approximately 8,400 to 8,600 acres to be placed in a Reserve.

b. Lake Mathews MSHCP

Exhibit B identifies property owned by METROPOLITAN which is included within the Lake Mathews MSHCP. Exclusive of the Reservoir area at maximum inundation, operations areas, proposed Western Municipal Water District improvements, exceptions and active reverse leases depicted in Exhibit B, and reserving the right to conduct related water service operations upon its property, METROPOLITAN offers for enrollment the remaining owned property in the NCCP Program. The operations areas include a METROPOLITAN owned detention basin and future

operations facilities of Western Municipal Water District of Riverside County.

2. Covenants that it will take no action inconsistent with the then applicable draft or final MSHCP plans during the term of this Agreement.

3. Agrees to diligently pursue completion of the Southwestern Riverside County MSHCP and the Lake Mathews MSHCP, including necessary funding for the completion of this work.

4. Agrees to supply the DEPARTMENT with the scientific data gathered from the proposed reserve areas commencing from the beginning date of the studies.

The State hereby agrees to the following:

5. Accepts METROPOLITAN's offers of enrollment in the NCCP, as described in paragraph 1 and accepts the Southwestern Riverside County MSHCP draft and work performed to date on the Lake Mathews MSHCP draft as constituting On-going Multi-Species Plans. The final MSHCPs will constitute individual NCCPs or component parts of larger subregional NCCPs upon final DEPARTMENT certification that the plans meet standards for natural community conservation. Agrees that the review of these plans shall continue to be only by the staffs of the DEPARTMENT and the Service using the criteria applied by those agencies.

6. Shall expedite the review of the MSHCPs in order to insure their prompt approval.

7. Agrees that the MSHCPs, upon approval by the DEPARTMENT, shall constitute HCPs and NCCPs.

8. Agrees that METROPOLITAN will be granted appropriate permits to take species identified in and consistent with the approved plans.

Both parties agree that:

9. This Agreement will be effective when signed by the parties.

10. This Agreement shall terminate eighteen calendar months from its date. If one of the HCP/NCCPs is approved earlier, then this Agreement shall terminate as to that HCP/NCCP upon the date of approval.

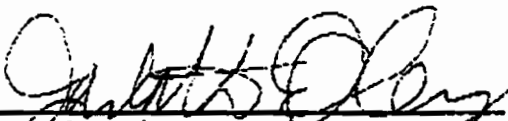
THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Carl Boronkay
General Manager

By 
Assistant General Manager

APPROVED:

Fred Vendig
General Counsel

By 
Sr. Deputy General Counsel

STATE OF CALIFORNIA, acting by and
through its Department of Fish and Game

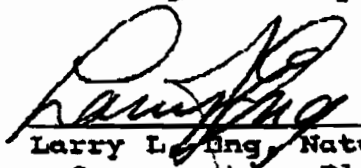

Larry Leung, Natural Community
Conservation Plans Director



EXHIBIT 2

MEMORANDUM OF AGREEMENT REGARDING MITIGATION OF STATE WATER PROJECT WILDLIFE LOSSES IN SOUTHERN CALIFORNIA

This Memorandum of Agreement (hereinafter referred to as "MOA") is entered into this 23rd day of October, 1979, by and between the State of California, acting by and through its Department of Water Resources (hereinafter referred to as "DWR"), the State of California, acting by and through its Department of Fish and Game (hereinafter referred to as "DFG"), and The Metropolitan Water District of Southern California (hereinafter referred to as "Metropolitan").

Recitals

1. In accordance with the requirements of the Davis-Dolwig Act obliging DWR to preserve wildlife impacted by the construction of the State Water Project (hereinafter referred to as "SWP"), DWR, DFG, and Metropolitan have explored mitigation measures that will satisfy the preservation obligations arising out of construction of the SWP facilities on lands formerly under private ownership in Southern California. As used in this MOA "Southern California" refers to that portion of California served by the SWP southerly of the A. D. Edmonston Pumping Plant.

2. This MOA outlines the provisions to be included in definitive agreements covering the various parcels of land, sums of money, and operating agreements to carry out the preservation obligations referred to in paragraph 1.

3. The parties agree that the responsibilities for "full and close coordination of * * * planning for the preservation and enhancement of * * * wildlife" with respect to federal agencies has been previously accomplished.

Substantive Provisions

4. DWR, DFG, and Metropolitan agree to exercise their best efforts to execute definitive agreements on substantially the terms outlined in this MOA.

5. The definitive agreements shall have a term expiring on the date of expiration of the contract between DWR and Metropolitan for a water supply dated November 4, 1960.

6. The following acreage of SWP lands in Southern California shall be designated and made available for wildlife mitigation purposes. Uses of these lands for other purposes will not be allowed if such use impinges upon the maintenance

of wildlife populations, except as needed for SWP operations. If DWR requires any of these lands for SWP operations, DWR will replace such lands taken with other lands acceptable to DFG.

a. Lake Perris	800 acres
b. San Jacinto borrow site	650 acres
c. Bifurcation	50 acres
d. Peace Valley and other west branch	
	<u>1,533.5 acres</u>
TOTAL	<u>3,033.5 acres</u>

Such lands shall be located approximately as shown on the maps attached hereto as Exhibit 1.

Use of any portion of the above lands included in Federal Energy Regulatory Commission (FERC) License No. 2426 for wildlife mitigation purposes will be subject to the approval of FERC.

7. Metropolitan will dedicate at Lake Mathews for wildlife mitigation purposes approximately 2,565 acres. Uses of these lands for other purposes will not be allowed if such use impinges upon the maintenance of wildlife populations, except as needed for Metropolitan's operations. If Metropolitan requires any of these lands for its operations, Metropolitan, in cooperation with DWR, will replace such lands taken with other lands acceptable to DFG. Such lands shall be located approximately as shown on the map attached hereto as Exhibit 2.

DFG will prepare a plan conceptually describing the kinds and types of habitat development it anticipates carrying out on the Lake Mathews mitigation lands. These habitat development plans, if implemented, will be financed by DFG and implemented by Metropolitan. Any habitat development must be consistent with water quality standards and the operational functions of Lake Mathews as a water supply reservoir.

8. Metropolitan will carry out the operation and maintenance functions on the habitat developments undertaken by DFG on the 2,565 acres at Lake Mathews. The maximum operations and maintenance expenditure on the lands of Lake Mathews through the term of the definitive agreements, to be reimbursed by DWR, shall not exceed \$500,000. After this amount has been expended, operations and maintenance costs will be reimbursed by DFG. Personnel of Metropolitan and DFG shall meet prior to each new year to develop an annual maintenance schedule. At the end of each year, Metropolitan will prepare an annual report on its operations and maintenance activities and related expenditures.

9. DWR will provide flows in Peace Valley Creek below Quail Lake in sufficient quantities to create and maintain a riparian corridor from the closest point to the California Aqueduct outlet at Quail Lake, to a point on Gorman Creek where proposed fish enhancement is to be made (approximately two miles in length).

10. The financial obligation of DWR to DFG shall be limited to the following:

a. An interest-bearing account with a one-time cash settlement of \$5.5 million, to be provided by DWR, will be established to be used exclusively by DFG for wildlife mitigation purposes. DFG shall utilize these funds for the acquisition and improvement, of lands for wildlife mitigation purposes in the San Jacinto area, or for improving and maintaining wildlife habitat on the lands acquired or designated herein for wildlife purposes.

b. DWR also agrees to provide DFG \$1.5 million in SWP funds to be reimbursed through the project-purpose allocation to recreation, fish and wildlife enhancement. These funds will be deposited in the interest-bearing account established pursuant to subparagraph a.

c. DWR will assign to DFG \$0.5 million of its share of allocations from the Land and Water Conservation Fund.

d. DWR and DFG will cooperate in seeking an appropriation by the Legislature of \$0.5 million from the funds allocated to DWR under the State, Urban, and Coastal Park Bond Act of 1976.

11. DFG shall be lead agency in complying with the provisions of the California Environmental Quality Act in implementing any wildlife mitigation features.

12. None of the parties shall be committed to take steps which require CEQA compliance until an opportunity has been provided them to consider and take such action as they, in their discretion, deem desirable based on any relevant CEQA documentation.

13. The definitive agreements shall be submitted by the parties to those agreements to all other interested non-federal agencies in such manner as to assure compliance with Section 11910 of the Water Code.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES

By *[Signature]*
Director

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

By COPY ORIGINAL SIGNED BY
E. E. FULLERTON
Director

Approved as to legal form
and sufficiency:

[Signature]
Chief Counsel, Department
of Water Resources

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

By *[Signature]*
General Manager

T4S,R3W,S.

RIVERSIDE CO.

PUMPING STATION

600 Acres

DAM OF AXIS

PERRIS RESERVOIR

Scale: 0 1000' 2000'



BRADLEY ROAD

MARTIN STREET

4 3 / 10

3 2 / 11

FOR THIS AREA SEE SHEET B (200 Acres)



BERNASCONI HILLS

LAKE PERRIS AREA SHEET A

LANDS CHOSEN FOR MITIGATION

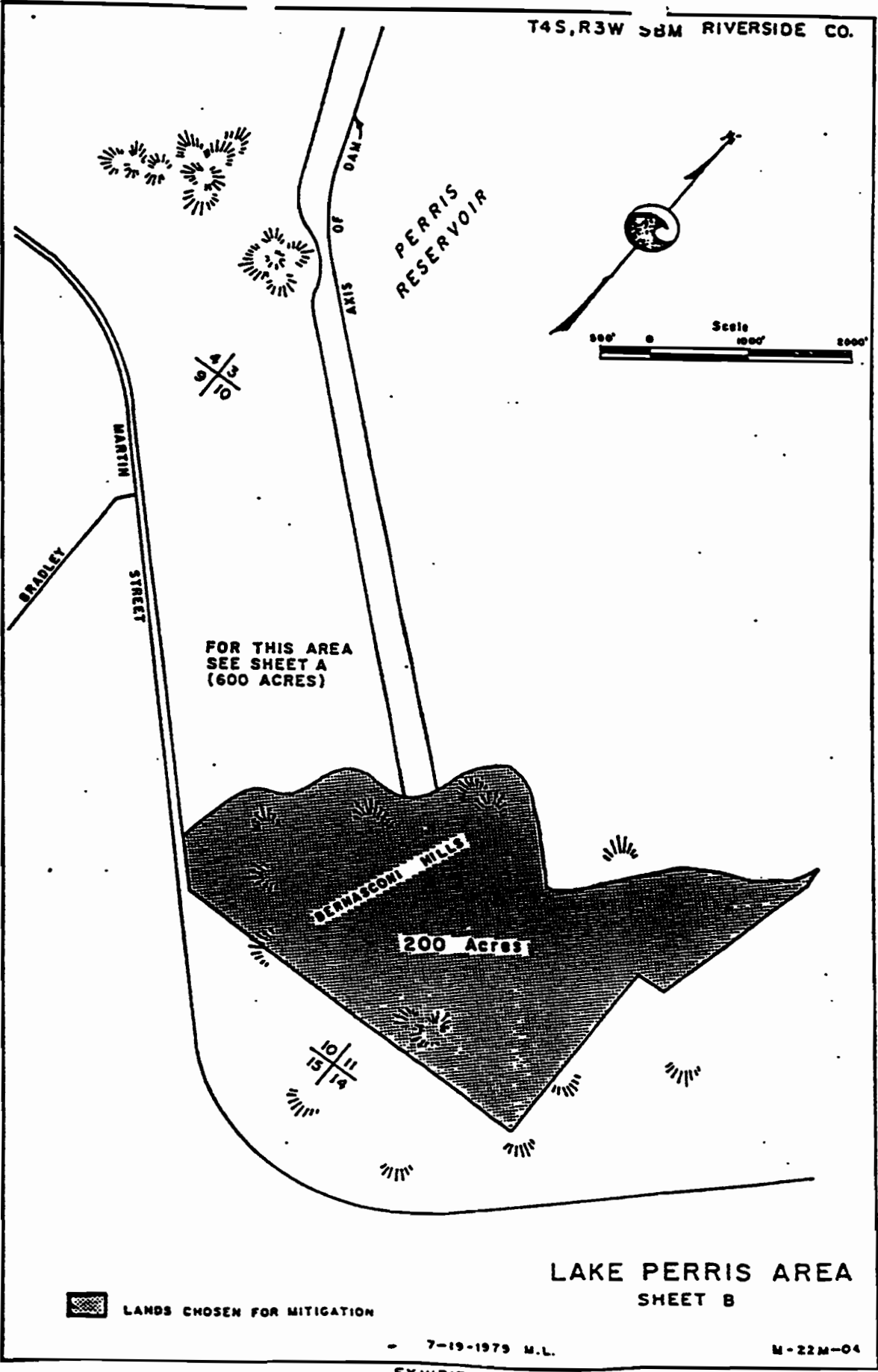
7-17-79 M.L.

M-22M-03

EXHIBIT I

Sheet I

T4S,R3W 58M RIVERSIDE CO.



FOR THIS AREA
SEE SHEET A
(600 ACRES)

BERNASCONI HILLS

200 Acres

 LANDS CHOSEN FOR MITIGATION

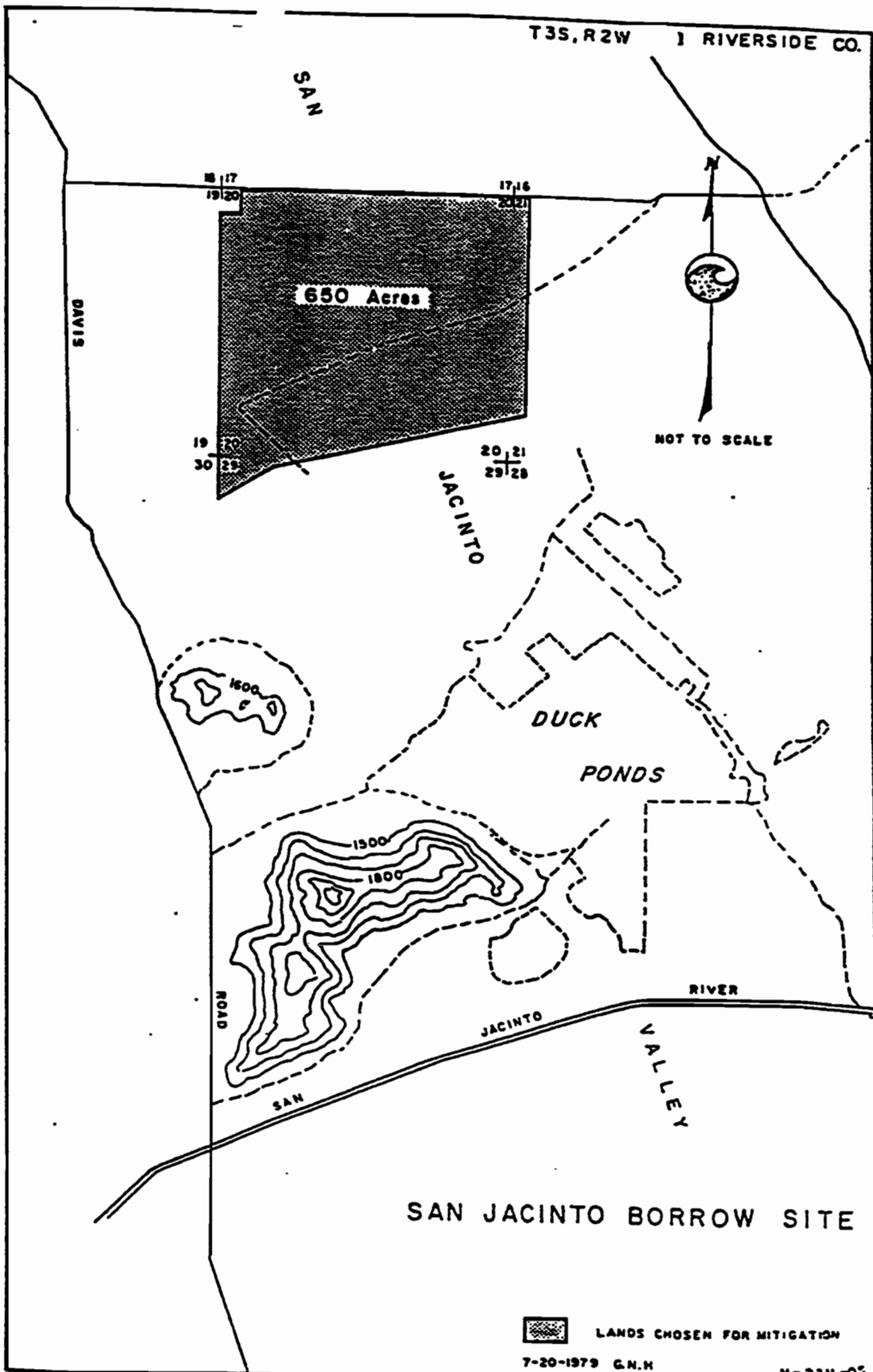
LAKE PERRIS AREA
SHEET B

7-19-1979 M.L.

M-22M-04

EXHIBIT 1

Sheet 2



SAN JACINTO BORROW SITE



LANDS CHOSEN FOR MITIGATION

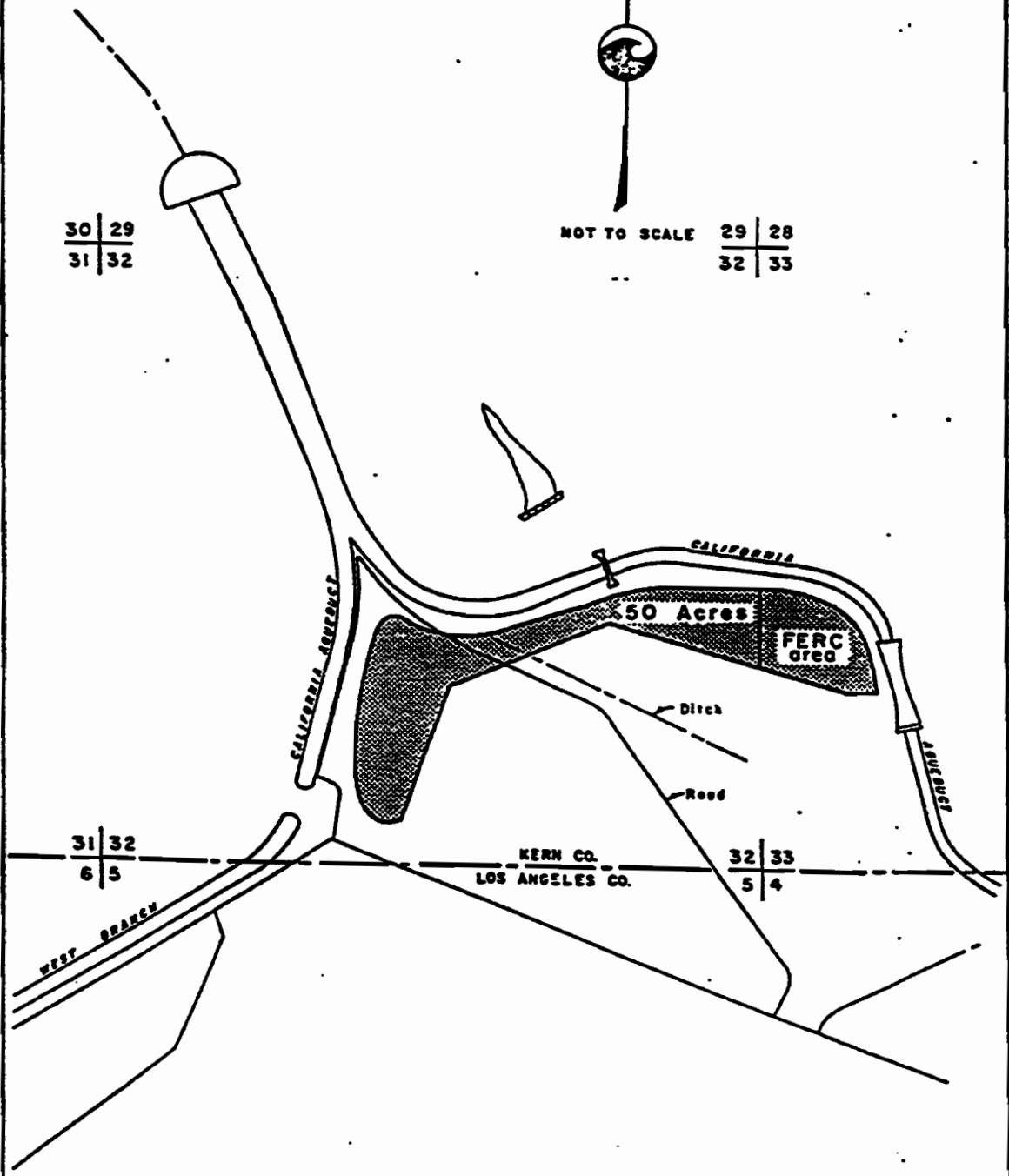
7-20-1979 G.N.H

M-22M-C5



NOT TO SCALE 29 | 28
32 | 33

30 | 29
31 | 32



31 | 32
6 | 5

KERN CO.
LOS ANGELES CO.

32 | 33
5 | 4

BIFURCATION AREA

 LANDS CHOSEN FOR MITIGATION

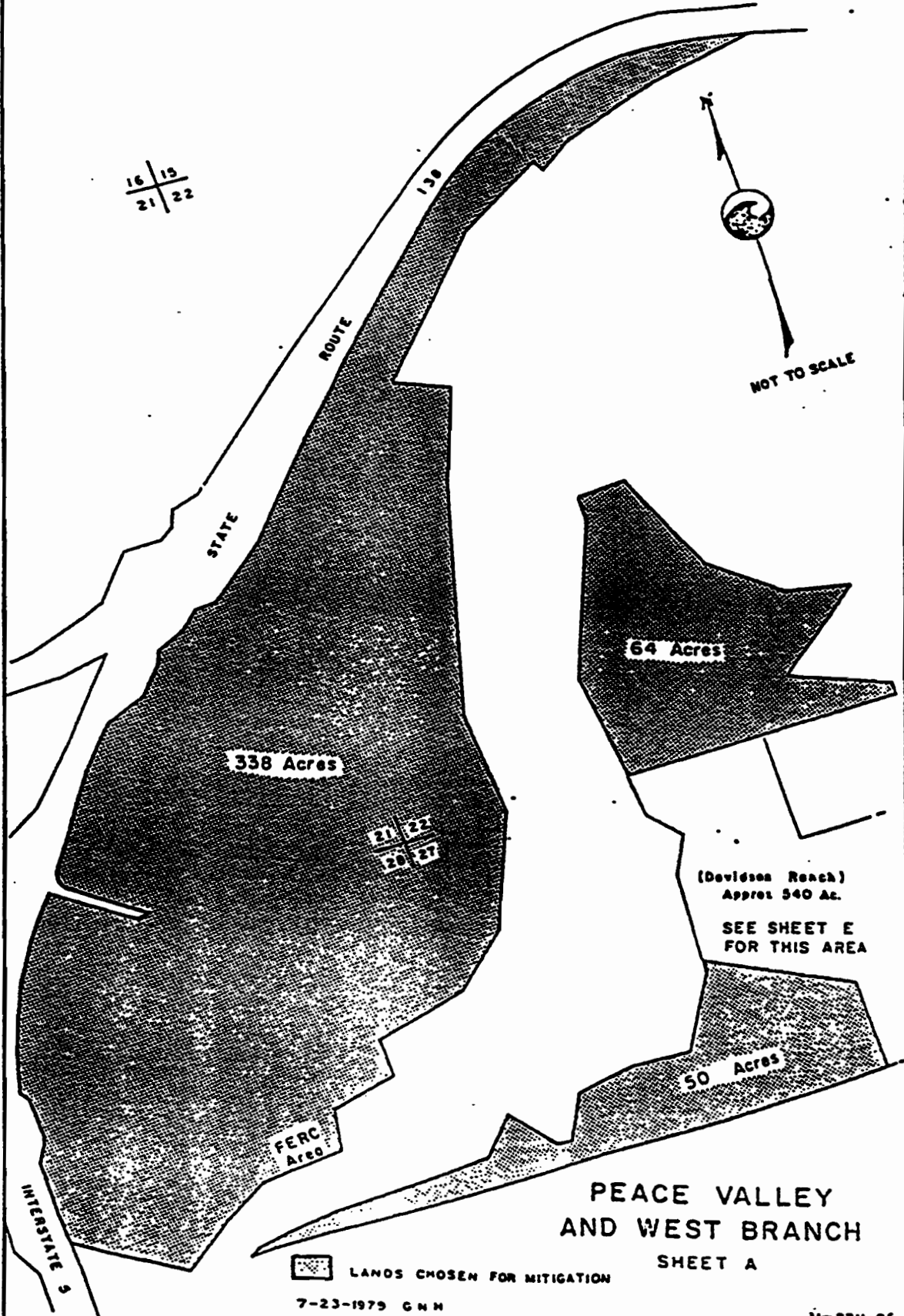
7-20-1979 M.L.

M-22M-02

16 | 15
21 | 22



NOT TO SCALE



LANDS CHOSEN FOR MITIGATION

7-23-1979 GNM

PEACE VALLEY AND WEST BRANCH

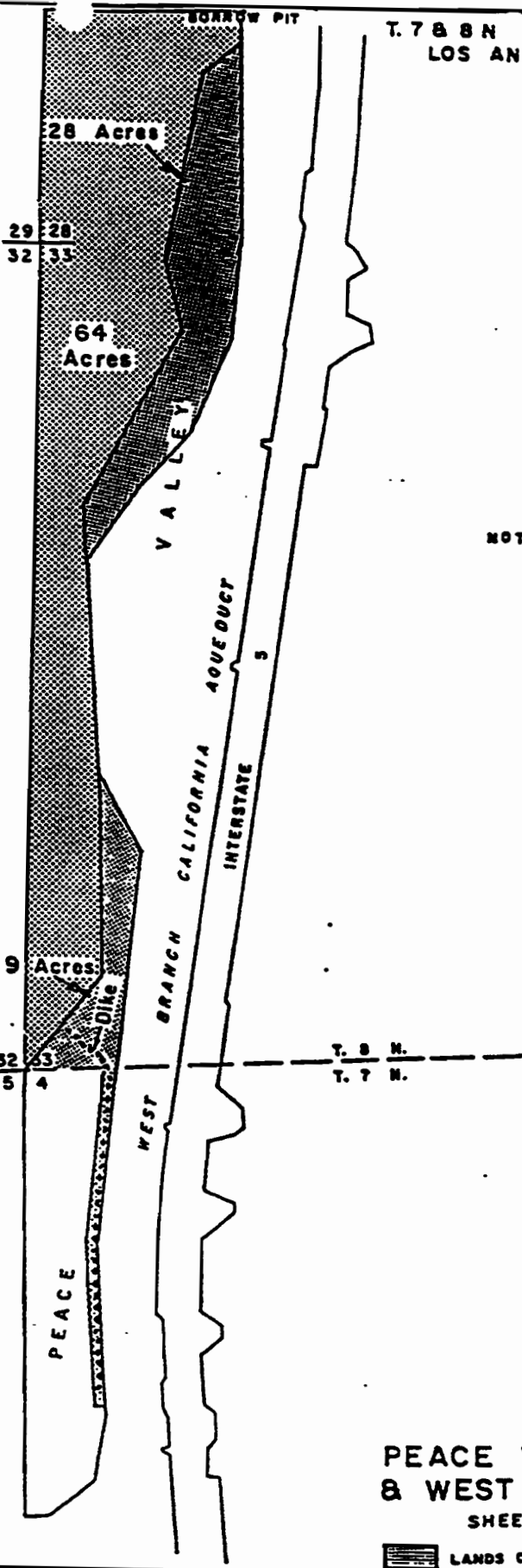
SHEET A

M-22M-06

T. 7 & 8 N. 18 W., S. B. M.
LOS ANGELES CO.



NOT TO SCALE



TRAILER
PARK

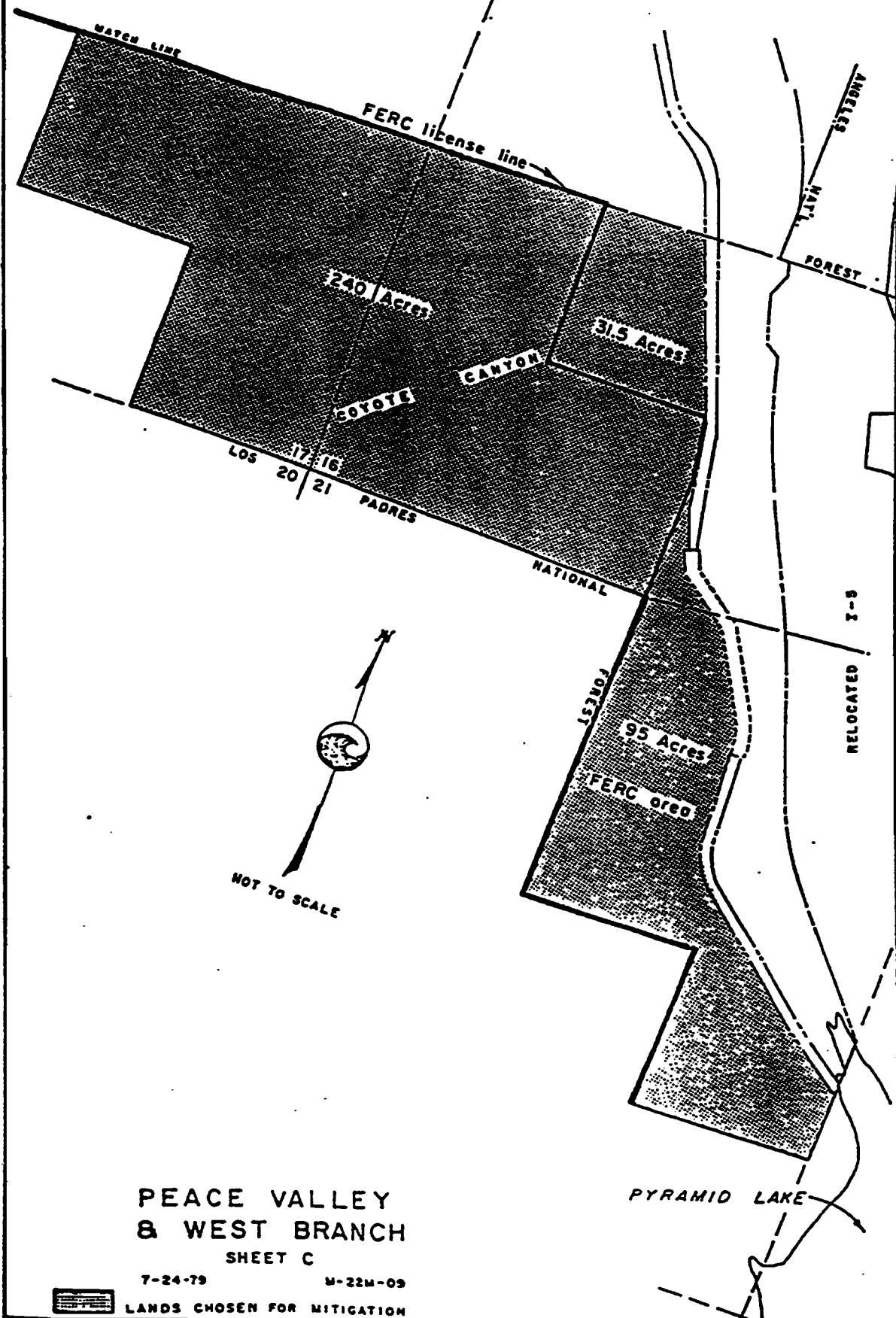
PEACE VALLEY & WEST BRANCH

SHEET B M-22N-07

 LANDS CHOSEN FOR MITIGATION

7-10-79 M.L.

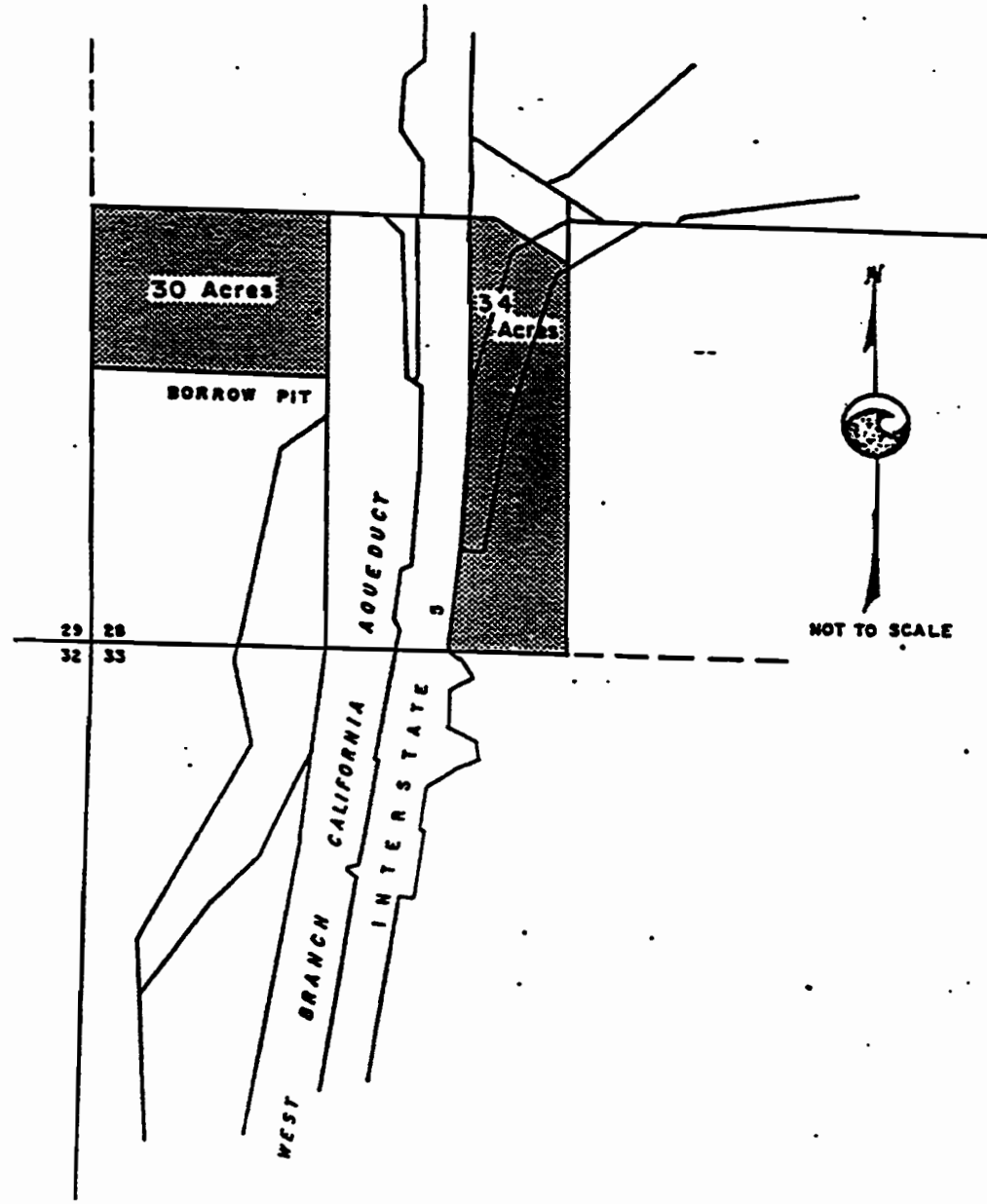
T7N, R18W, S8M, S ANGELES CO.



PEACE VALLEY
 & WEST BRANCH
 SHEET C

7-24-79 M-22M-09

LANDS CHOSEN FOR MITIGATION



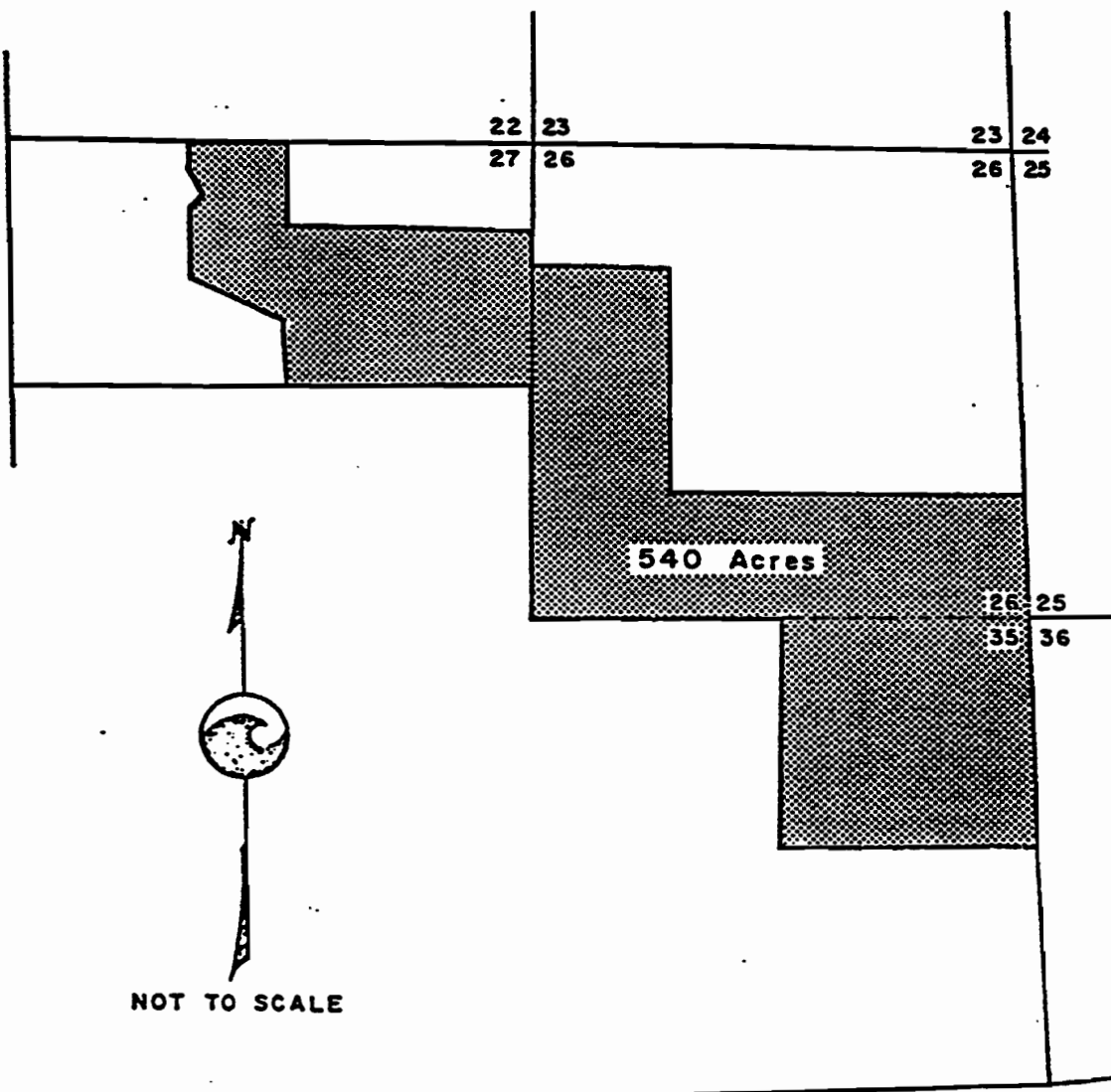
PEACE VALLEY & WEST BRANCH SHEET 0



LANDS CHOSEN FOR MITIGATION

8-9-79 M.L.

T. 8 N., R. 18 W., S. B. M., L. 1 ANGELES CO.



NOT TO SCALE

 LANDS CHOSEN FOR MITIGATION

PEACE VALLEY
& WEST BRANCH
SHEET E

8-9-79

M-22M-14

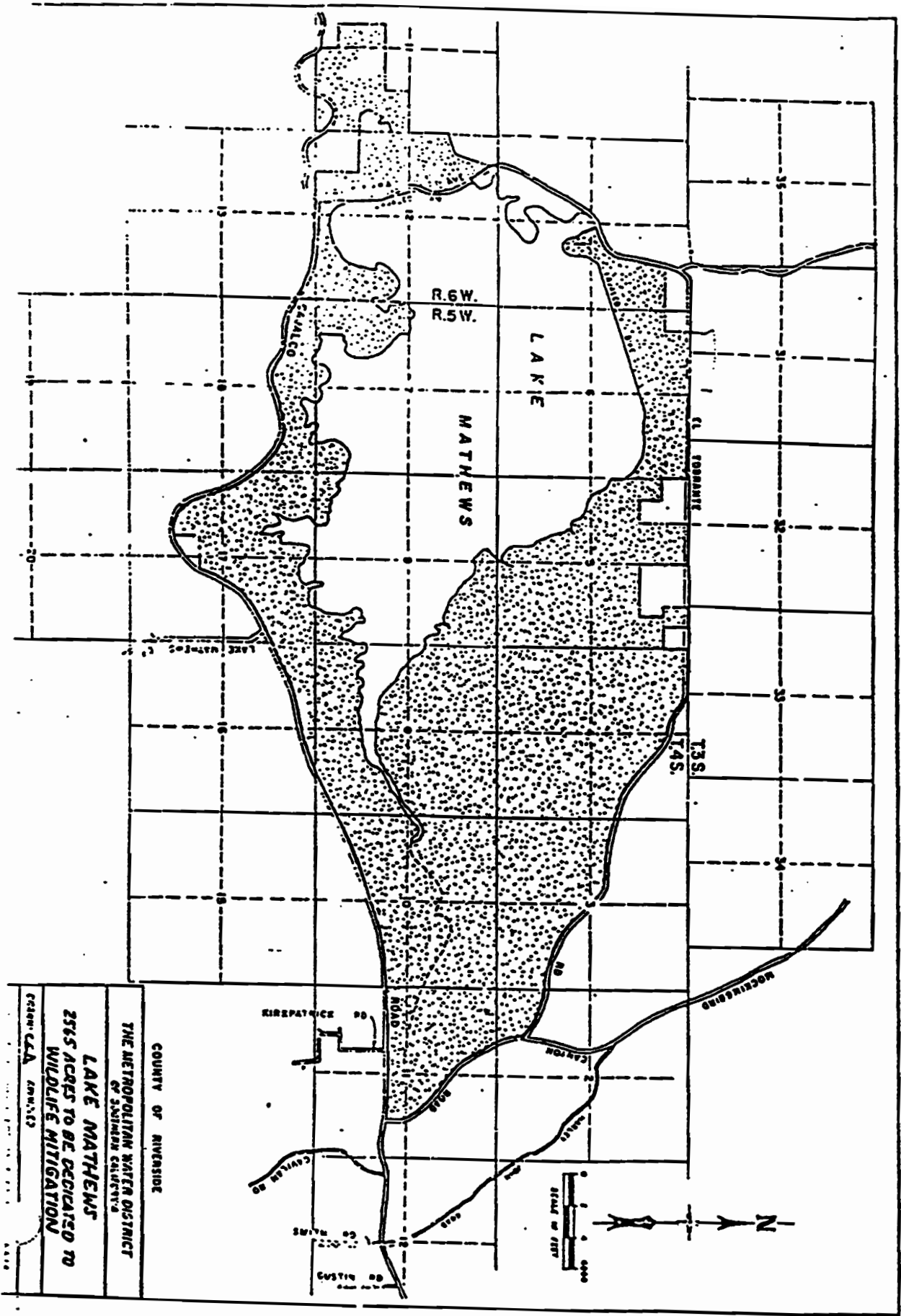


EXHIBIT 2

COUNTY OF RIVERSIDE

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

**LAKE MATHEWS
2565 ACRES TO BE DESIGNATED TO
WILDLIFE MITIGATION**

PREPARED BY
CALIFORNIA CWA

AGREEMENT FOR THE ESTABLISHMENT
OF AN ECOLOGICAL RESERVE AT LAKE MATHEWS

This AGREEMENT is entered into this 14th day of September, 1982, by and between THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a metropolitan water district organized and existing under the Metropolitan Water District Act of the State of California (Stats. 1969, Ch 209, as amended) hereinafter referred to as "Metropolitan", and the STATE OF CALIFORNIA, acting by and through its Department of Fish and Game, hereinafter referred to as "DFG".

Recitals

1. Metropolitan in accordance with the MEMORANDUM OF AGREEMENT REGARDING MITIGATION OF STATE WATER PROJECT WILDLIFE LOSSES IN SOUTHERN CALIFORNIA, dated October 23, 1979, has described approximately 2,565 acres of land to be dedicated for wildlife mitigation purposes at Lake Mathews, Riverside County, California.

2. DFG desires to request the State Fish and Game Commission to designate the wildlife mitigation lands within Metropolitan's perimeter fence at Lake Mathews a State Ecological Reserve. The reserve will be subject to California Administrative Code Sections 630 et seq. which establish general rules and regulations adopted by the State Fish and Game Commission governing ecological reserves.

3. DFG acknowledges that Metropolitan is the owner of Lake Mathews and all of the property described as mitigation land and that this Agreement conveys no ownership of said lands to DFG.

4. DFG acknowledges that Lake Mathews is a water supply reservoir subject to customary maintenance requirements and that Metropolitan supplies water from Lake Mathews that is used for human consumption without additional treatment. The establishment of the ecological reserves at Lake Mathews by the California Fish and Game Commission will not interfere with delivery of potable water by Metropolitan.

Nothing in this Agreement or in the rules and regulations governing the ecological reserve at Lake Mathews is intended to affect or affects Metropolitan's ability or right to utilize the reservoir as part of its water distribution system or for purposes of hydroelectric power generation in accordance with Metropolitan's customary practices, which may include modification or removal of existing facilities or construction of new facilities.

5. DFG has statutory responsibility for the management of State Ecological Reserves, and is responsible for the enforcement of the rules and regulations governing reserves.

IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. DFG shall propose for inclusion in Section 630, Division 1, Title 14, California Administrative Code the following special regulations for the Lake Mathews Ecological Reserve; these will supersede the general rules and regulations governing State ecological reserves.

a. No person except as provided in subsection (a) (10) of Section 630, Division 1, Title 14, California Administrative Code, and employees and consultants of Metropolitan and member public agencies of the District, in the performance of customary reservoir maintenance activities or other official duties, may enter or utilize boats, aircraft, or motor vehicles within this reserve.

b. All fishing is prohibited.

c. Collections may be made by the DFG for the purposes of fish and wildlife management, or by Metropolitan for the purpose of water quality testing.

d. The DFG and Metropolitan may carry out management activities necessary to ensure water quality and the proper operation and maintenance of Lake Mathews as a water supply facility and natural area. Authorized operation and maintenance activities shall include, but shall not be limited to, use of chemical vegetation control, water control, rodent control and use of equipment.

2. There shall be no public use of the reserve unless it is agreed upon in advance by both parties to this Agreement that such public use will (1) not be harmful to the water service obligations of Metropolitan (2) and not be inconsistent with the management objectives of the reserve.

3. DFG shall furnish, in a timely manner, to Metropolitan, copies of all public documents prepared and issued relating to the special regulations referred to in paragraph 1 and any proposed changes to any regulations which may affect Lake Mathews.

4. Metropolitan shall have the right to control the level of water in the reservoir in order to meet operation and maintenance needs.

5. Metropolitan may exercise reasonable vegetative control for the purposes of water quality maintenance, Rodent control may also be exercised on the dam and dike, as necessary, to ensure the integrity of these structures.

6. Metropolitan shall retain the right to provide security measures to protect the integrity of its water supplies such as, but not confined to, the construction of fences, the placing of alarms, and the use of patrols.

7. All authorized persons entering the Lake Mathews reserve shall be required to observe all established safety practices.

8. Metropolitan will maintain and repair as necessary the existing perimeter fence surrounding the ecological reserve at Lake Mathews.

9. DFG will erect appropriate signs and post the perimeter fence at Lake Mathews in order to publicly identify the mitigation land as a State Ecological Reserve.

10. Each party agrees to accept to the extent authorized by law the legal liability and financial responsibility, including any duty to indemnify the other party, for any of its activities and conduct under this Agreement which cause damage or injury to either party or any other person, or property. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a party.

11. DFG and Metropolitan shall put forth their best efforts in order to ensure that the operation and maintenance of Lake Mathews as a water supply facility and as a significant natural area are not impaired.

12. This Agreement shall be effective on the date hereinabove first written and shall expire on the date of expiration of the contract between the Department of Water Resources and Metropolitan for a water supply dated November 4, 1960. This Agreement may be terminated by written notice on or after 15 years after the effective date of this Agreement. Such written notice for termination may be given by either party to the other party and must be given at least five years prior to the effective date of such termination. This Agreement may be terminated earlier upon 30 days notice in the event that terms or conditions of this Agreement or the ecological reserve designation of Lake Mathews affects Metropolitan's ability or power to use the reservoir for the purpose referred to in paragraph 4. If this condition should occur and upon notice from Metropolitan, the DFG will request the Fish and Game Commission to revoke the ecological reserve designation at Lake Mathews.

ATTEST:

By *Doreen E. Duff*
Executive Secretary

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

James H. ...
for General Manager

(SEAL)

APPROVED AS TO FORM:

DEPARTMENT OF FISH AND GAME

Carl Boronkay
General Counsel

By *EC Fullerton*
Director

By *[Signature]*
Deputy General Counsel

FORM	POLICY	BUDGET
Department of General Services		
APPROVED		
NOV 22 1982		
BY	<u><i>[Signature]</i></u>	
	Asst. Chief Counsel	

I hereby certify that all conditions for exemption set forth in State Administrative Manual Section 1702 have been complied with and this document is exempt from review by the Department of Finance.

By *Carl R. ...*

EXHIBIT 4

to

COOPERATIVE MANAGEMENT AGREEMENT

CONSERVATION EASEMENT GRANT

THIS CONSERVATION EASEMENT GRANT (this "**EASEMENT**") is made this ____ day of _____, by THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, a public entity ("**GRANTOR**"), in favor of the RIVERSIDE COUNTY HABITAT CONSERVATION AGENCY, a public entity ("**GRANTEE**").

WITNESSETH:

WHEREAS, GRANTOR is a public entity organized and existing under the Metropolitan Water District Act of the State of California (stats 1969, ch. 209, as amended) for purposes including acquiring, developing, storing, transporting, providing and delivering water, ("**Water Service**") and is the sole owner in fee simple of certain real property located in the County of Riverside, State of California, more particularly depicted on the map attached as the Exhibit hereto (the "**Protected Property**") (this map shows land subject to conservation easement and separately shows land, part of reserve, but not subject to conservation easement. The execution copy of the conservation easement shall have legal descriptions attached as the exhibit); and

WHEREAS, the GRANTEE is a public entity formed under the laws of the State of California for the purpose of acquiring,

administering, operating and maintaining land and facilities for protecting habitat required to maintain ecosystems essential for the preservation of species of plants and animals and is authorized to hold conservation easements for these purposes; and

WHEREAS, the Protected Property possesses significant ecological and native habitat values (Collectively, **"Conservation Values"**) of great importance to GRANTOR and GRANTEE; and

WHEREAS, significant portions of the Property, consisting of approximately _____ acres, have been presently identified as being occupied by species of native plants and wildlife which GRANTOR and GRANTEE desire to conserve, protect, restore, and enhance in accordance with that certain Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan for the Lake Mathews properties of The Metropolitan Water District of Southern California dated for reference as of _____ (**"MSHCP/NCCP"**).

WHEREAS, GRANTOR intends to convey to GRANTEE the right to conserve, protect, restore, and enhance the conservation values of the property.

WHEREAS, GRANTEE agrees by accepting this grant to honor the intentions of GRANTOR stated herein and to conserve, protect, restore, and enhance in perpetuity the conservation values of the Protected Property in accordance with the terms of this EASEMENT and the MSHCP/NCCP.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and Civil Code section 815 et seq., GRANTOR hereby voluntarily grants and conveys to GRANTEE a conservation easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth.

1. PURPOSE

It is the purpose of this EASEMENT to assure that the Protected Property will be retained forever in an open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Protected Property. GRANTOR intends that this EASEMENT (i) will assure that the Protected Property will be used for such activities as are consistent with the purpose of this EASEMENT, and (ii) shall be implemented consistently with the MSHCP/NCCP.

2. RIGHTS OF GRANTEE

To accomplish the purpose of this EASEMENT, the following rights are conveyed to GRANTEE by this EASEMENT:

(a) To conserve, protect, restore, and enhance the Protected Property in a manner consistent with the MSHCP/NCCP.

(b) To enter upon and traverse all portions of the Property at all times in order to have access to the Protected Property and to monitor GRANTOR's compliance with and otherwise enforce the terms of this EASEMENT; provided that such entry shall not unreasonably impair or interfere with

GRANTOR's use and quiet enjoyment of the Property or unreasonably disturb natural resources on the Property; and

(c) To prevent any activity on or use of the Protected Property that is inconsistent with the purpose of this conservation easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use.

3. PROHIBITED USES

Subject to the provisions of Paragraph 4 herein, any activity on or use of the Protected Property inconsistent with the purposes of this EASEMENT is prohibited. Without limiting the generality of the foregoing, the following acts are prohibited: unseasonal watering, use of herbicides or biocides not authorized pursuant to the MSHCP/NCCP, surface mining and oil exploration, incompatible fire protection activities, introduction of exotic plant species, and any and all other incompatible uses which may adversely affect the conservation values of the Protected Property.

4. RESERVED RIGHTS

GRANTOR reserves to itself, and to its personal representative, heirs, successors, assigns, agents and present and potential future lessees, including, but not limited to, Western Municipal Water District, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Protected Property that are not expressly prohibited herein and are not inconsistent with the purpose of this EASEMENT. Without in

any way limiting the foregoing GRANTOR hereby reserves the right to do all of the following:

(a) To close or otherwise restrict public access at any time to the Protected Property whenever GRANTOR determines it is necessary to do so in the interest of its Water Service obligations or operations, public safety or national security.

(b) To maintain and use existing roads, and water pipelines and ancillary improvements, construct, maintain and use facilities for metering of natural water inflow into GRANTOR's Lake Mathews Reservoir and, subject to the prior written approval of the Department, and the Fish and Wildlife Service United States Department of the Interior ("**SERVICE**"), which approval shall not be unreasonably withheld, to designate, construct, and use or authorize rights of way for roads, trails, irrigation works, flood control structures and channels, utility corridors, sewers, water pipelines, firebreaks, and ancillary improvements, telephone and electric power lines, across the Protected Property.

(c) To authorize its directors, officers, employees licensees, agents and contractors to enter on, pass over, and egress from the Protected Property as necessary to protect any right or carry out GRANTOR's Water Service obligations or operations, including, but not limited to, the protection of water quality.

(d) To remove or demolish any unauthorized structure or other improvement located on the Protected

Property that may conflict with GRANTOR's Water Service obligations or operations.

(e) To carry out any other right reserved under the CMA included in the MSHCP/NCCP.

5. REMEDIES

If either party determines that the other party is in violation of the terms of this EASEMENT or that a violation is threatened, such party shall give written notice to the other party of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this EASEMENT, to restore the portion of the Protected Property so injured. If a party fails to cure a violation within sixty (60) days after receipt of notice thereof from the other party, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, or fails to continue diligently to cure such violation until finally cured, the aggrieved party may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this EASEMENT, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this EASEMENT or injury to any conservation values protected by this EASEMENT, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Protected Property to the condition that

existed prior to any such injury. If a party, in its good faith and reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, such party may pursue its remedies under this paragraph without prior notice to the other party or without waiting for the period provided for the cure to expire. Each party's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this EASEMENT, and each party agrees that the other party's remedies at law for any violation of the terms of this EASEMENT are inadequate and that such party shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which such party may be entitled, including specific performance of the terms of this EASEMENT, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Each party's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of Civil Code section 815 et seq., are incorporated herein by this reference and this grant is made subject to all of the rights and remedies set forth therein. If at any time in the future either party or any subsequent transferee or assignee uses or threatens to use such lands for purposes not in conformance with the provisions of this EASEMENT, or releases or abandons

this EASEMENT in whole or in part, notwithstanding Civil Code section 815 et seq., the DEPARTMENT, the California Attorney General, the SERVICE or any entities organized for conservation purposes shall have standing as interested parties, and as third party beneficiaries in any proceeding affecting this EASEMENT.

(a) Costs of Enforcement. Any costs incurred by either party in enforcing the terms of this EASEMENT against the other, including, without limitation, costs of suit and attorneys fees, and any costs of restoration necessitated by a violation of the terms of this EASEMENT shall be borne by the breaching party. If a party prevails in any action to enforce the terms of this EASEMENT, such party's costs of suit including, without limitation, attorneys fees, shall be borne by the other party.

(b) GRANTEE's Discretion. Enforcement of the terms of this EASEMENT shall be at the discretion of GRANTEE, and any forbearance by GRANTEE to exercise its rights under this EASEMENT in the event of any breach of any term of this EASEMENT by GRANTOR shall not be deemed or construed to be a waiver by GRANTEE of such term or of any subsequent breach of the same or any other term of this EASEMENT or of any of GRANTEE's rights under this EASEMENT. No delay or omission by GRANTEE in the exercise of any right or remedy upon any breach by GRANTOR shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond GRANTOR's Control. Nothing contained in this EASEMENT shall be construed to entitle GRANTEE to bring any action against GRANTOR for any injury to or change in the Property resulting from causes beyond GRANTOR's control, including, without limitation, fire, drought, flood, storm, and earth movement, or from any prudent action taken by GRANTOR under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

6. ACCESS

GRANTEE, its successors, assigns, agents, invitees and licensees shall have the right-of-access to the Property at all times subject to such rules and regulations as may be approved by the parties.

7. COSTS AND LIABILITIES

Except as set forth in this EASEMENT, the MSHCP/NCCP or as otherwise agreed in writing between the parties hereto, GRANTOR retains all responsibilities related to the ownership, operation, upkeep, and maintenance of the Property.

8. ASSIGNMENT

This EASEMENT is transferable, but GRANTEE shall give GRANTOR, the Department of Fish and Game of the State of California ("DEPARTMENT"), and the SERVICE at least thirty (30) days prior written notice of the transfer. GRANTEE may assign its rights and obligations under this EASEMENT only to an organization that is 1) approved by the DEPARTMENT and the SERVICE; 2) a public agency or a qualified organization at the

time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder; and, 3) authorized to acquire and hold conservation easements under Civil Code section 815 et seq. (or any successor provision then applicable). As a condition of such assignment or transfer, the Assignee or Transferee shall agree in writing that the conservation purposes that this grant is intended to advance shall continue to be fulfilled. In the event of the termination of GRANTEE'S corpportate existence, the rights and obligations of GRANTEE hereunder shall ipso facto, and without any further action on the part of any entity, be deemed assigned to the DEPARTMENT.

9. SUBSEQUENT TRANSFERS

GRANTOR agrees to incorporate the terms of this EASEMENT in any deed of other legal instrument by which GRANTOR divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. GRANTOR further agrees to give written notice to GRANTEE of the transfer of any interest at least fifteen (15) days prior to the date of such transfer. The failure of GRANTOR to perform any act required by this paragraph shall not impair the validity of this EASEMENT or limit its enforceability in any way.

10. ESTOPPEL CERTIFICATES

Upon request by GRANTOR, GRANTEE shall within fifteen (15) days execute and deliver to GRANTOR any document,

including an estoppel certificate, which certifies GRANTOR's compliance with any obligation of GRANTOR contained in this EASEMENT and otherwise evidences the status of this EASEMENT as may be requested by GRANTOR.

11. NOTICES

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor: The Metropolitan Water District
 of Southern California
 P. O. Box 54153
 Los Angeles, California 90054
 Attention: General Manager

To Grantee: Riverside County Habitat
 Conservation Agency
 4080 Lemon Street, 12th Floor
 Riverside, California 92501
 Attention: Executive Director

or to such other address or the attention of such other officer as either party from time to time shall designate by written notice to the other.

A copy of such notice shall also be sent by the party to the SERVICE and the DEPARTMENT at the respective addresses provided for in the CMA.

12. RECORDATION

GRANTEE shall promptly record this instrument in the official records of Riverside County, California and may re-record it at any time as may be required to preserve its rights in this EASEMENT.

13. GENERAL PROVISIONS

(a) Controlling Law. The interpretation and performance of this EASEMENT shall be governed by the laws of the State of California.

(b) Construction. Any general rule of construction to the contrary notwithstanding, this EASEMENT shall be construed in favor of the grant to effect the purpose of this EASEMENT and the policy and purpose of Civil Code section 815 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this EASEMENT that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this EASEMENT, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this EASEMENT, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the EASEMENT and supersedes all prior discussions, negotiations, understandings, or agreements relating to the EASEMENT.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of GRANTOR's title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this EASEMENT shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as servitude running in perpetuity with the Property.

(g) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction of interpretation.

(h) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

IN WITNESS WHEREOF, GRANTOR and GRANTEE have entered into this EASEMENT the day and year first above written.

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By _____
John R. Wodraska
General Manager

Approved as to form
and legality

N. Gregory Taylor
General Counsel

By _____
Jarlath Oley
Sr. Deputy General Counsel

**THE RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY**

By _____

Title _____

Approved as to form
and legality

BEST, BEST & KRIEGER

By _____
Paul T. Selzer, Esq.

EXHIBIT 5

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

STATEMENT OF INVESTMENT POLICY January 11, 1994 *

1. Investment Authority

In accordance with Section 53600 et seq. of the Government Code of the State of California, the authority to invest public funds is expressly delegated to the Board of Directors for subsequent redelegation to the Treasurer. Investments by the Treasurer are limited to those instruments specified by the Board in Chapter 5101 of the MWD Administrative Code, and further defined in this Statement of Investment Policy.

2. Basic Policy and Statement of Objectives

In order of importance, three fundamental criteria shall be followed in the investment program:

- a. Safety of Principal - investments shall be undertaken in a manner which first seeks to ensure the preservation of principal in the portfolio. The Treasurer shall evaluate or cause to have evaluated each potential investment, seeking both quality in issuer and in underlying security or collateral, and shall diversify the portfolio to reduce exposure to loss.
- b. Liquidity - investments shall be made whose maturity date is compatible with cash flow requirements and which will permit easy and rapid conversion into cash without a substantial loss of value.
- c. Return on Investment - investments shall be undertaken to produce an acceptable rate of return after first considering safety of principal and liquidity.

3. Prudent Person

As an investment standard, any investment shall be made as if it is one which would be purchased by a prudent person using the same discretion and intelligence that a person would use in managing his own affairs and certainly not for speculation.

* Supersedes Statement of Investment Policy dated March 17, 1992

4. Portfolio

Any reference to portfolio shall mean the total of Metropolitan's cash and securities under management by the Treasurer, excluding cash and securities held in escrow or trust on behalf of Metropolitan.

5. Securities

The Treasurer may invest in any security authorized for investment under the State law, subject to the limitations described below:

a. Maturity Limitations

- (i) The Treasurer is authorized to invest District fund balances up to a maximum term of five years except for moneys in the Employees' Deferred Compensation Fund, Water Revenue Bond Reserve Funds, and the Iron Mountain Landfill Closure/Postclosure Maintenance Fund which may exceed a five year term.
- (ii) For certain instruments, the term of the investment is limited by market convention or as otherwise prescribed herein.
- (iii) Not more than 10% of the portfolio shall consist of securities with a term to maturity in excess of three years, after deducting those Funds noted in a(i).

b. Time Deposits

For purposes of this policy, collateralized time deposits shall be considered investments.

The following criteria will be used in evaluating financial institutions and form of collateral to determine eligibility for deposits:

- (i) The financial institution must have been in existence for at least five years.
- (ii) Eligibility for deposits shall be limited to those financial institutions which maintain a rating equivalent to Thompson Bank Watch Service of "C" or better.
- (iii) The deposit shall not exceed the shareholders' equity of any depository bank. For the purposes of this constraint, shareholders' equity shall be deemed to include capital notes and debentures. (Government Code Section 53638(a))

- (iv) The deposit shall not exceed the total of the net worth of any depository savings and loan association, except that deposits not exceeding a total of five hundred thousand dollars (\$500,000) may be made to a savings and loan association without regard to the net worth of that depository, if such deposits are insured or secured as required by law. (Government Code Section 53638(b))
- (v) The total deposits shall not exceed the Shareholders' equity of any depository bank.
- (vi) When conditions so warrant, the Treasurer may waive the first \$100,000 of collateral security for such deposits if the financial institution is insured pursuant to federal law.
- (vii) In order to secure such deposits, the financial institution shall maintain in the collateral pool, securities having a market value of at least 10 percent in excess of the total amount deposited.
- (viii) Promissory notes secured by real estate mortgages or deeds of trust may not be accepted as collateral.
- (ix) When other factors are equal, appropriate consideration will be given to a financial institution that either individually or as a member of a syndicate bids on or makes a substantial investment in Metropolitan's bonds; contributes service to the District or a member public agency; offers significant assistance to Metropolitan, so as to provide for distribution of total deposits among eligible financial institutions.
- (x) The maximum term for time deposits shall be one year.

c. Repurchase Agreements

A repurchase agreement is a purchase of authorized securities (other than commercial paper) with terms including a written agreement by the seller to repurchase the securities on a later specified date for a specified amount. Restrictions are as follows:

- (i) The percentage limit for investment in repurchase agreements shall be 30 percent of the total portfolio;

- (ii) Repurchase agreements shall not exceed one year in length;
- (iii) Repurchase agreements shall be made only with primary dealers in government securities or financial institutions with a Moody's Investors Service, Inc., or equivalent, rating of A or better;
- (iv) Such investments with maturities of less than six months, or six months to one year, shall provide for purchased securities with a market value at least 101 percent and 102 percent, respectively, of the amount of the invested funds;
- (v) Purchased securities are limited to those covered by the Bankruptcy Act amendments of 1984;
- (vi) Such investments shall provide for transfer of ownership and possession of the purchased securities either to the District directly or to a custodian depository institution which shall take record title and shall establish and maintain a subaccount in its financial records for the securities in the District's name, and such custodian shall not be the dealer from which the securities were purchased;
- (vii) Each repurchase agreement shall provide a contractual right to liquidation of the purchased securities upon the bankruptcy, insolvency or other default of the counterparty; and
- (viii) Purchased securities shall have maturities within sixty months of the date of investment.

d. Reverse Repurchase Agreements

A reverse repurchase agreement is a sale by the Treasurer of securities in the portfolio with terms including a written agreement to repurchase the securities on or before a specified date for a specified amount.

- (i) Subject to the approval of the Director of Finance, the Treasurer may enter into a reverse repurchase agreement provided that the proceeds are invested solely to supplement the income normally received from the securities involved in the agreement.

- (ii) No more than 10 percent of the portfolio may be subject to reverse repurchase agreements at any time.

e. Local Agency Investment Fund Deposits

Deposits for the purpose of investment in the Local Agency Investment Fund of the State Treasury may be made up to the maximum amount permitted by State Treasury policy.

f. Metropolitan Water District Federal Credit Union Deposits

Deposits for the purpose of investment of funds held pursuant to the District's deferred compensation plans in the Metropolitan Water District Federal Credit Union shall be limited to the maximum amount insured by the National Credit Union Share Insurance Fund.

g. Negotiable Certificates of Deposit

Restrictions are as follows:

- (i) Investments in negotiable certificates of deposit shall not exceed 20 percent of the total portfolio in effect immediately after any such investment is made.
- (ii) To be eligible, a certificate of deposit must be issued by a nationally or state-chartered bank, a state or federal savings and loan association or savings bank, or by a state-licensed branch of a foreign bank. (Government Code Sections 53601(h) and 53635(h))
- (iii) The investment shall not exceed the shareholders' equity of any depository bank. For the purpose of this constraint, shareholders' equity shall be deemed to include capital notes and debentures. (Government Code Section 53638(a))
- (iv) The investment shall not exceed the total of the net worth of any depository savings and loan association, except that investments a total of five hundred thousand dollars (\$500,000) may be made to a savings and loan association without regard to the net worth of that depository, if such investments are insured or secured as required by law. (Government Code Section 53638 (b))

(v) The total investment in an eligible financial institution shall not exceed 25 percent of the total portfolio available for investment in this investment category.

(vi) The maximum maturity shall be limited to 180 days:

h. Bankers' Acceptances

Restrictions are as follows:

- (i) Investments in prime bankers' acceptances shall not exceed 30 percent of the portfolio in effect immediately after any such investment is made.
- (ii) Eligibility shall be limited to those financial institutions which maintain a rating equivalent to Thompson Bank Watch Service of "C" for domestic bank and "III/III" for foreign banks if a rating service is utilized.
- (iii) No more than 25 percent of this category of investments may be invested in any one commercial bank's acceptances.
- (iv) The maximum maturity shall be limited to 270 days. (Government Code Sections 53601(f) and 53635 (f))

i. Commercial Paper

Restrictions are as follows:

- (i) Only commercial paper of prime quality of the highest ranking or of the highest letter and numerical rating as provided by Moody's Investors Service, Inc., or Standard and Poor's Corporation may be purchased. (Government Code Sections 53601(g) and 53635 (g))
- (ii) Eligible paper is further limited to issuing corporations that are organized and operating within the United States and having total assets in excess of \$500,000,000. (Government Code Sections 53601(g) and 53635(g))
- (iii) Eligible issuer's debt must carry Moody's or Standard and Poor's rating of "A" or higher. (Government Code Sections 53601(g) and 53635(g))

- (iv) Investments in commercial paper shall not exceed 30 percent of the portfolio in effect immediately after any such investment is made, providing that the dollar-weighted average maturity of the entire amount does not exceed 31 days. "Dollar-weighted average maturity" means the sum of the amount of each investment multiplied by the number of days to maturity, divided by the total amount of outstanding commercial paper. (Government Code Sections 53601(g) and 53635(g))
- (v) Investments in commercial paper totalling 15 percent or less of the portfolio in effect immediately after any such investment is made shall not be subject to the dollar-weighted average maturity limitation. Each investment shall, however, not exceed 180 days maturity. (Government Code Sections 53601(g) and 53635(g))
- (vi) No more than 10 percent of the outstanding commercial paper of an issuing corporation may be purchased. (Government Code Sections 53601(g) and 53635(g))
- (vii) The total investment in the commercial paper of an issuer shall not exceed 25 percent of the total portfolio available for investment in this investment category.

j. U.S. Government and Agencies

- a. The concentration of investments in federal agency obligations shall not exceed one-third of all investments in effect immediately after any such investments is made.

Investments in U.S. Treasury obligations shall not be subject to any limitations. Investments in direct obligations of the U.S. Government shall not be subject to any limitations.

k. Securities Related to the State Water Project

Investments in State of California securities shall be limited to one registered bond or note, in the minimum denomination available, of any series of bonds or notes issued for purposes related to the State Water Project.

1. Shares of Beneficial Interest

The Treasurer may invest in shares of beneficial interest issued by eligible diversified management companies investing exclusively in investments authorized by this Statement of Investment Policy and specified by the State Government Code as authorized investments for such diversified management companies. To be eligible, any such company shall attain the highest ranking or the highest letter and numerical rating provided by at least two of the three largest nationally recognized rating services. The purchase price of the shares of beneficial interest purchased shall not include any commission, and the total amount of the investment in such companies shall not exceed 15 percent of the portfolio.

m. Medium Term Notes

Medium-term notes of a maximum of five years maturity issued by corporations organized and operating within the United States or be depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated in a rating category of "A" or its equivalent or better by a nationally recognized rating service. Maturities greater than two years must be rated "AA" or better. Purchases of medium-term notes may not exceed 20 percent of the portfolio.

n. Mortgage Obligations and Asset Backed Securities

Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond of a maximum of five years maturity. Securities eligible for investment shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AAA" by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 10 percent of the portfolio.

6. Exchange of Securities

An exchange of securities is a shift of assets from one instrument to another and may be done for a variety of reasons, such as to increase yield, lengthen or shorten maturities, to take a profit, or to increase investment

quality. In no instance shall an exchange be used for speculative purposes. Any such exchange shall be simultaneous (same day execution of sale and purchase), and shall require the approval of the Director of Finance.

7. Safekeeping

- a. All securities purchased shall be delivered against payment and held in safekeeping pursuant to a safekeeping agreement.
- b. All financial institutions who provide safekeeping services for the District shall be required to provide reports or safekeeping receipts directly to the Controller to verify securities taken into their possession.

8. Portfolio Adjustments

- a. Should an investment percentage-of-portfolio limitation be exceeded due to an incident such as a fluctuation in portfolio size, the affected securities may be held to maturity to avoid losses.
- b. When no loss is indicated, the Treasurer shall consider reconstructing the portfolio basing his decision in part on the expected length of time the portfolio will be imbalanced.
- c. Should a security held in the portfolio be downgraded below the minimum criteria included in this Statement of Investment Policy, the Treasurer shall sell such security in such a manner to minimize losses on the sale of such security. If the security is downgraded to a level that is less than investment grade and the term to maturity is greater than one year, the Treasurer shall sell such affected security within sixty days of the rating change.

9. Purchase and Sale of Securities

- a. Information concerning investment opportunities and market developments will be gained by maintaining contact with the financial community together with information provided by the District's financial consultant.
- b. The purchase of any investment other than those purchased directly from the issuer shall be, to the extent possible, from a firm designated as a Primary Dealer by the Federal Reserve Bank of New York.

- c. All dealers will be required to provide confirmations of all purchases or sales directly to the Controller for audit.
- d. Annually the Treasurer shall transmit a copy of the current Statement of Investment Policy to all approved dealers. The dealer is required to return a signed statement indicating receipt and understanding of the District's investment policies.
- e. When practicable, the Treasurer shall solicit more than one quotation on each trade.
- f. Each day's listing of market indices and quotations shall be transmitted by the Treasurer to the Controller for filing.

10. Reporting Requirements

In accordance with Administrative Code Section 5114, the Treasurer shall submit a monthly report to the Executive Secretary of the Board of Directors via the General Manager indicating the types of investment by fund and date of maturity, and shall provide the current market value of all securities with a maturity of more than 12 months, rates of interest, and expected yield to maturity. The Treasurer shall also submit a monthly summary report to the Board of Directors via the General Manager showing investment activity, including yield and earnings, and the status of cash by depository.

11. Monitoring Safety and Liquidity of District Funds

The Treasurer shall monitor or cause to be monitored the extent to which financial institutions with which the District maintains deposits or investments are consistent with Metropolitan's policies regarding business activities within countries that may jeopardize the safety and liquidity of District funds or violate other Metropolitan policies. Such matters shall be periodically reported to the Finance and Insurance Committee.

12. Investment Policy Administration

The Treasurer may, at any time, further restrict the securities approved for investment as deemed appropriate.

Mitigation Banking Agreement

VOLUME 3

THE LAKE MATHEWS MULTIPLE SPECIES HABITAT
CONSERVATION PLAN
AND
NATURAL COMMUNITY CONSERVATION PLAN

PART B

MITIGATION BANKING AGREEMENT

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VOLUME 3

THE LAKE MATHEWS MULTIPLE SPECIES HABITAT CONSERVATION PLAN
AND
NATURAL COMMUNITY CONSERVATION PLAN

PART B

MITIGATION BANKING AGREEMENT

This MITIGATION BANKING AGREEMENT ("Mitigation Banking Agreement") is made and entered into this 5th day of December, 1995, by and among The Metropolitan Water District of Southern California ("METROPOLITAN"), the Riverside County Habitat Conservation Agency, a public agency ("RCHCA"), the Fish and Wildlife Service of United States Department of the Interior ("SERVICE"), and the Department of Fish and Game of the State of California ("DEPARTMENT"), and is based on the following representations and statements of purpose:

RECITALS

A. METROPOLITAN intends to develop and operate new elements of its water delivery, treatment, and storage facilities in western Riverside County and adjacent service areas, as well as to continue operation of existing facilities, which are referred to as "Plan Area Projects" for projects within the plan area of the Lake Mathews Multiple Species Habitat Conservation Plan and Natural Community

Conservation Plan (MSHCP/NCCP) of which this Mitigation Banking Agreement is a part, Operation Area Project for projects within the Operations Area and Outside Projects for projects outside of the MSHCP/NCCP Plan Area. The aforesaid terms, including the word "Project" are sometimes collectively referred to as "Projects" in this Mitigation Banking Agreement. METROPOLITAN is pursuing these Projects in a manner to avoid or minimize as many impacts to natural habitats and plant and wildlife species as possible, but some impacts will be unavoidable. METROPOLITAN intends to provide for the management and protection of 2,544.9 acres owned by METROPOLITAN in the vicinity of Lake Mathews ("Mitigation Bank Lands"), as a mitigation site for the Projects.

B. As a result of the 1979 and 1982 Agreements among DEPARTMENT, METROPOLITAN and the California State Department of Water Resources, some 2,565.5 acres of land at Lake Mathews currently are designated as an Ecological Reserve shown as ("Existing State Ecological Reserve" on Figure 1 of Volume 1 of the MSHCP/NCCP, referred to hereafter as "Existing Reserve") and are subject to Title 14, California Code of Regulations Section 630(b)(49). The Existing Reserve adjoins the Mitigation Bank Lands as shown on Figure 1 of Volume 1 of the MSHCP/NCCP, which will be managed and protected together as a single ecological unit designated the Lake Mathews Multiple Species Reserve or Multiple Species Reserve. The Lake Mathews Multiple Species Reserve will be managed conjunctively with other nearby lands lying within the Lake

Mathews-Estelle Mountain Core Reserve designated by RCHCA for the conservation of Stephens' Kangaroo Rat (SKR) habitat. The Lake Mathews Multiple Species Reserve, identified as "MWD ownership in Core Reserve" and the other lands shown on Figure 4 of Volume 1 of the MSHCP/NCCP constitute the Combined Reserve.

C. The parties, other than RCHCA, have previously entered into an agreement for the use of lands on the Santa Rosa Plateau in Mitigation of Habitat Losses Resulting from Facilities of The Metropolitan Water District of Southern California to be Constructed in western Riverside County and Environs, and in doing so, stated their intention to enter into similar agreements as future mitigation plans are proposed and agreed upon, including sites currently owned by METROPOLITAN. The Lake Mathews Multiple Species Reserve is such a site.

D. Initiation of mitigation well in advance of completing all phases of environmental review of the Projects confers a number of advantages, including:

1. Providing adequate time to identify mitigation sites of regional biological significance, to take advantage of the availability of such sites and to seek concurrence from all parties.

2. Having in place methods for inventorying the plants, wildlife, and their habitats on both the impact and mitigation sites that are already fully understood and agreed to by all parties and will be available for

use in the habitat mitigation process under applicable resource protection statutes.

3. Determining the extent and suitability of the habitat for sensitive species found on the mitigation sites.

4. Assigning responsibility for financing and carrying out particular managerial duties at the mitigation site pursuant to a specific management plan. The Plan in this case is the MSHCP/NCCP.

5. Agreeing to the manner in which available mitigation credits are to be utilized for mitigation purposes, including the form attached as Exhibit "A" (Notice of Use of Habitat Value Units). Recognizing, however, that the SERVICE, DEPARTMENT, METROPOLITAN and/or RCHCA may substitute a collectively acceptable alternative means of accounting for available mitigation credits.

E. Substantial public benefits will result from the protection, restoration, and maintenance of natural habitats that will occur as a result of the implementation of this Mitigation Banking Agreement and the management of lands pursuant to it and the MSHCP/NCCP. This Mitigation Banking Agreement complements and assists in the implementation of regional open space and habitat conservation plans, including the long-term Stephens' Kangaroo Rat Habitat Conservation Plan ("HCP") and other plans being prepared by RCHCA.

F. METROPOLITAN is conveying conservation easements in exchange for the firm assurances of the SERVICE and the DEPARTMENT that, subject to the requirements of applicable law and regulations, this Mitigation Banking Agreement, and the MSHCP/NCCP, METROPOLITAN's habitat value units existing on the METROPOLITAN Mitigation Lands within the Mitigation Bank Lands will be credited to METROPOLITAN and will be available under this Mitigation Banking Agreement for METROPOLITAN's use to mitigate Projects and other impacts. RCHCA's habitat value units existing on the RCHCA Mitigation Lands within the Mitigation Bank Lands and certain associated vegetation types and/or species will be available under this Mitigation Banking Agreement for RCHCA's use in connection with its SKR HCP as well as future multiple species plans which it may propose. METROPOLITAN intends, when in-kind exchanges between habitat located on the METROPOLITAN Mitigation Lands and the impact sites are no longer available under this Mitigation Banking Agreement, to utilize out-of-kind exchanges between and among the Uplands and Wetlands of the METROPOLITAN Mitigation Lands and the Uplands and Wetlands of the impact site, to the extent allowed under this Mitigation Banking Agreement and applicable resource protection statutes.

G. Notwithstanding any other provision herein, this Mitigation Banking Agreement is subject to, and shall not be interpreted to be inconsistent with any requirement of the federal Endangered Species Act, 16 U.S.C. section 1531 et seq., Clean Water Act, 33 U.S.C., section 1251 et seq. the

California Endangered Species Act, Fish & Game Code section 2050 et seq., the Natural Communities Conservation Planning Act, Fish and Game Code section 2800 et seq., or any other applicable federal or state law or regulation; provided, that the obligations expressed herein are contractual and do not otherwise require METROPOLITAN to exceed its legal obligations under applicable resource protection laws and regulations.

H. The Combined Reserve and its management pursuant to the MSHCP/NCCP and all of the agreements in Volume 3 of the MSHCP/NCCP are consistent with, and in furtherance of, state policy encouraging and enabling the protection and propagation of plants and wildlife and their habitats and the conservation of other natural resources through public ownership, care, and management of suitable lands in their essentially natural state, as set forth in, among other places, sections 1580 and 1802 of the California Fish and Game Code. The DEPARTMENT is authorized to enter into this Mitigation Banking Agreement pursuant to sections 1580 and 1802 of the California Fish and Game Code, and section 21153 of the Public Resources Code.

I. The SERVICE is authorized to enter into this Mitigation Banking Agreement pursuant to the federal Fish and Wildlife Coordination Act (16 U.S.C. § 661 et seq.); and the federal Fish and Wildlife Act of 1956, 16 U.S.C. § 742f.

WHEREFORE, the parties mutually agree as follows:

ARTICLE I - GENERAL PROVISIONS

A. All terms as defined and utilized in Volume 1 of the MSHCP/NCCP, shall have the same meaning when utilized in this Mitigation Banking Agreement.

B. Exhibit "B" ("Mitigation Methodology") sets forth the method for calculating habitat value units occurring on the METROPOLITAN Mitigation Bank Lands within the Lake Mathews Multiple Species Reserve. In the alternative, METROPOLITAN may propose another methodology to the DEPARTMENT and the SERVICE which, upon their approval, may be utilized.

ARTICLE II - METROPOLITAN

HABITAT VALUE UNITS--METROPOLITAN

A. Recognition of Habitat Value Units.

1. Pursuant to the calculation method and inventory set forth in Exhibit "B" (Mitigation Methodology), the habitat value units ("HVUs") presently existing on the METROPOLITAN Mitigation Lands shall be available for subsequent use by METROPOLITAN, at its discretion. Once values are agreed upon, METROPOLITAN may proceed to use such values in accordance with this Mitigation Banking Agreement.

2. Any part of the METROPOLITAN Mitigation Lands as shown on Figure 14 of Volume 1 of the MSHCP/NCCP that is occupied, or is potentially suitable for occupation, by a species listed in Table S-2 in Volume 1 of the MSHCP/NCCP shall, subject to the terms of this Mitigation Banking Agreement, be available for use by METROPOLITAN, at its sole initiation, to offset all or portions of impacts of the Projects to such species.

3. The HVUs presently existing on the METROPOLITAN Mitigation Lands shall be available for use by METROPOLITAN for the life of this Mitigation Banking Agreement, pursuant to the terms hereof.

4. The detailed inventory of HVUs at the Lake Mathews Multiple Species Reserve, as set forth in Exhibit "D" (Detailed Inventory of Habitat Values for Lake Mathews under the Lake Mathews Mitigation Banking Agreement), is accepted by the DEPARTMENT and the SERVICE.

B. Allocation of HVUs.

1. METROPOLITAN shall be entitled to utilize the HVUs which occur on METROPOLITAN Mitigation Lands. Specifically, METROPOLITAN has designated in Exhibit "D" (Detailed Inventory of Habitat Values for Lake Mathews Under the Mitigation Banking Agreement) the acreage of particular HVUs which are to be reserved for subsequent use by METROPOLITAN in mitigating for HVUs lost as a result of Projects.

2. When METROPOLITAN desires to use available HVUs to mitigate for Projects, it shall prepare a written inventory of the HVUs existing on the Project site, using the calculation method and field study scope set forth in Exhibit "B" (Mitigation Methodology) and Exhibit "C" (Scope of Environmental Studies to be Conducted to Evaluate Natural Resource Value Under the Mitigation Banking Agreement), and a designation of the HVUs it proposes to use to mitigate the Project's impacts. In the alternative, METROPOLITAN may propose another methodology to the DEPARTMENT and the SERVICE which, upon their approval, may be utilized. METROPOLITAN may, at any time, request approval of the inventory by giving written notice to the DEPARTMENT and the SERVICE. If the inventory is not approved by the DEPARTMENT and the SERVICE within 60 days, it shall be deemed approved. If disapproved within the 60-day period, the inventory shall be submitted for dispute resolution pursuant to the following procedure. The Mitigation Banking Agreement Administrators for the DEPARTMENT, the SERVICE and METROPOLITAN shall endeavor to resolve the dispute among themselves. If unsuccessful they may use the services of a mutually acceptable facilitator. If a facilitator cannot be agreed upon or if the facilitator's recommendations are not accepted by the DEPARTMENT, the SERVICE and METROPOLITAN, the dispute shall be submitted to the Director of the DEPARTMENT, the Regional Director of the SERVICE and to the General Manager of METROPOLITAN for

resolution. If resolution cannot be obtained, the DEPARTMENT, the SERVICE and METROPOLITAN are free to seek judicial relief.

3. As specified in the MSHCP/NCCP, HVUs and/or habitat acreages may be used by METROPOLITAN and any assignees for more than one species for a given Project or outside Project, to the extent such HVUs and/or habitat acreages constitute appropriate habitat for such species.

C. Notice of Use.

Each use of a portion of the total available HVUs by METROPOLITAN shall be accomplished by METROPOLITAN notifying the DEPARTMENT and the SERVICE in writing of the usage. Notice shall be given in substantially the same form as set forth on Exhibit "A" attached hereto and by this reference made a part hereof.

D. Excess Assignment of HVUs.

METROPOLITAN may, at any time, assign excess HVUs that will not be needed to mitigate the Projects, and METROPOLITAN may make those values available for mitigating HVUs lost, or to be lost, because of one or more Projects of one or more third parties, which may be public agencies, nonprofit organizations, or natural or corporate persons. The assignment shall be subject to California law. The consideration, if any, paid by the third party to METROPOLITAN shall be subject to the sole determination of METROPOLITAN. The use of the HVUs thus assigned for any specific project shall be subject to the approval of the SERVICE and the DEPARTMENT and the transfer requirements specified in Volume 1

of the MSHCP/NCCP. Each unit of excess HVUs may be utilized to fulfill mitigation required under the Federal and State Endangered Species Acts to offset loss of equivalent habitat of one or more of any of the target species identified in the MSHCP/NCCP.

ARTICLE III - RCHCA

HABITAT VALUES--RCHCA

A. General.

RCHCA shall be, in accordance with this article, permitted to utilize HVUs for those lands occupied by SKR designated as RCHCA Mitigation Lands (Figure 14 of Volume 1 of the MSHCP/NCCP).

B. Stephens' Kangaroo Rat ("SKR").

Pursuant to the provisions of the Agency Agreement/California Endangered Species Permit entered into by and among the RCHCA, et al. and the DEPARTMENT, dated October 4, 1990, and Federal Fish and Wildlife Permit ("PRT 739678") issued by the SERVICE to Riverside County or any long-term SKR Section 10(a) Permit hereafter issued, RCHCA shall receive credit for the acquisition of 1,269.3 acres of occupied SKR habitat upon conveyance to it of the conservation easement by METROPOLITAN.

C. California Gnatcatcher/Multiple Species.

1. The land occupied by SKR which is subject to the conservation easement to be conveyed from METROPOLITAN to

RCHCA contains various vegetation types including, but not limited to Coastal Sage Scrub, and is occupied by various other species including, but not limited to Coastal California Gnatcatcher.

2. RCHCA is committed to prepare a Multiple Species Habitat Conservation Plan or a MSHCP/NCCP for western Riverside County upon completion of its Long-Term SKR HCP pursuant to the terms of a Memorandum of Understanding among the SERVICE, the DEPARTMENT, the United States Bureau of Land Management and RCHCA dated February 24, 1995. In the event such plan or plans provide for mitigation in the form of acquisition of lands, RCHCA shall be given full credit for the vegetation types and/or species on the acres of occupied SKR habitat, plus vegetation types and/or species occurring on lands which may, from time to time, be acquired by RCHCA or others pursuant to the SKR HCP or MSHCP/NCCP for western Riverside County to be added to the Combined Core Reserve.

3. RCHCA may sell, transfer or convey its values and rights to use such values, upon such terms as it shall, in its discretion, decide; provided, however, that in such event, unless another method is accepted by the SERVICE and the DEPARTMENT, the habitat values shall thereafter be measured in HVUs and the assignee of such be required to follow the procedures set forth in Article II (METROPOLITAN--Habitat Value Units) hereof in order to utilize such HVUs.

ARTICLE IV - MISCELLANEOUS

A. Date and Term.

1. **Effective Date.** This Mitigation Banking Agreement shall be effective upon execution by all parties.

2. **Term.** The term of this Mitigation Banking Agreement shall be until all of METROPOLITAN's and RCHCA's HVUs have been used or until termination of all of the other agreements in this Volume 3 of the MSHCP/NCCP, whichever is earlier.

B. Captions.

The captions on articles and paragraphs are solely for the convenience of the parties, and no meaning shall be ascribed to them in interpreting this Mitigation Banking Agreement.

C. Agreement Administrators.

Until such time as all parties are notified of a change, the following persons are designated as Agreement Administrators:

The Metropolitan Water District of Southern California:

General Manager
P. O. Box 54153
Los Angeles, California 90054

Riverside County Habitat Conservation Agency:

Executive Director
4080 Lemon Street, 12th Floor
Riverside, California 92501

Department of Fish and Game:

Regional Manager, Region 5
330 Golden Shore, Suite 50
Long Beach, California 90802

U. S. Fish and Wildlife Service:
Field Supervisor
2730 Loker Avenue West
Carlsbad, California 92008

D. Amendment.

This Mitigation Banking Agreement may be amended at any time by written agreement of all the parties.

E. Copies.

This Mitigation Banking Agreement is executed in three copies, each of which is to be considered an original.

F. Opinions and Determinations.

Where the terms of this Mitigation Banking Agreement provide for action to be based upon the opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

G. Successors and Assigns Obligated.

This Mitigation Banking Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto.

H. Litigation.

The DEPARTMENT, the SERVICE and the RCHCA warrant that they will cooperate with METROPOLITAN in the defense of any litigation that challenges the validity of this Mitigation Banking Agreement or any action taken by the parties pursuant thereto, to the extent permitted by law.

I. Impossibility of Performance.

If any occurrence prevents construction of Projects for which HVUs available pursuant to this Mitigation Banking Agreement are to be used, and the impacts of the Projects sought to be mitigated have not occurred or if other mitigation, acceptable to the SERVICE and DEPARTMENT is provided, METROPOLITAN may upon 5 days' written notice to the DEPARTMENT cancel the Usage of Credits.

J. Content of Agreement.

This Mitigation Banking Agreement consists of the principal document executed by the parties (in which this sentence occurs) as well as all exhibits and other ancillary documents now or subsequently appended to the principal document by agreement of the Administrators. It incorporates the full and complete understanding of the parties. Neither any oral nor any written understanding not incorporated herein shall modify the terms of this Mitigation Banking Agreement or be utilized for the purpose of interpreting any provision herein.

K. Availability of Funds.

Implementation hereof by the SERVICE shall be subject to the availability of appropriated funds.

L. Elected Officials Not to Benefit.

No member of or delegate to Congress or resident Commissioner shall be entitled to any share or part of this

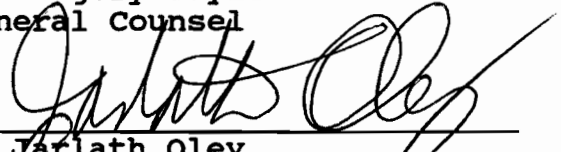
Mitigation Banking Agreement, or to any benefit that may arise from it.

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

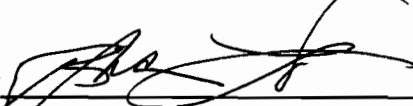
By 
John R. Wodraska
General Manager

Approved as to form

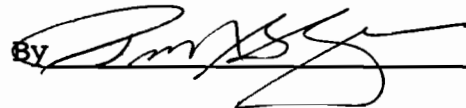
N. Gregory Taylor
General Counsel

By 
Jarlath Oley
Sr. Deputy General Counsel

**RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY**

By 
Title Executive Director

Approved as to form

By 

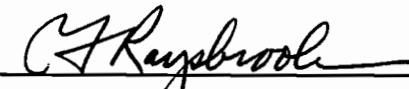
**U.S. FISH AND WILDLIFE SERVICE,
U.S. Department of Interior**

By 
Title Deputy Regional Director

Approved as to form

By _____

**DEPARTMENT OF FISH AND GAME,
an Agency of the State of
California**

By 
Title INTERIM DIRECTOR

Approved as to form

By 
Craig Manson
General Counsel

EXHIBIT A

to

**THE LAKE MATHEWS MULTIPLE SPECIES HABITAT CONSERVATION PLAN
AND
NATURAL COMMUNITY CONSERVATION PLAN
MITIGATION BANKING AGREEMENT**

NOTICE OF USE OF HABITAT VALUE UNITS

METROPOLITAN holds a right to certain Habitat Value Units ("HVUs") on the Metropolitan Mitigation Lands that have previously been recognized by the DEPARTMENT as containing HVUs pursuant to that certain Lake Mathews Mitigation Banking Agreement dated _____, and METROPOLITAN now desires to use _____ of those HVUs to mitigate _____ or offset HVUs lost because of [name the project], as more particularly described in [cite the EIR or other document]. This Notice and the use of the HVUs is subject to the terms and conditions of the Lake Mathews Mitigation Banking Agreement.

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By _____

EXHIBIT B

MITIGATION BANKING AGREEMENT MITIGATION METHODOLOGY

General Method for Calculating and Exchanging Habitat Values

This Exhibit sets forth the methodology to be used in calculating the habitat values of Metropolitan's interest in properties established for mitigation purposes in Riverside County and environs and the habitat values at sites which may be impacted by future Metropolitan projects within the region defined below. The methodology set forth herein is based almost entirely upon the methodology established as part of the May 1991 "Agreement for the use of the Shipley Ranch, Bailey Property, and certain Lands at Lake Skinner in mitigation of Habitat Losses Resulting from Facilities of the Metropolitan Water District of Southern California to be Constructed in Western Riverside County and Environs."

The objective of this calculation method is to ensure that project impacts are fully mitigated by quantitatively accounting for the factors which generally influence evaluations of mitigation requirements: habitat quality, the inherent value of different habitats within a region, and the ecological relationships of the habitat to others in the region. The general method will be applied to both in-kind and out-of-kind mitigation. The method described gives approximately equal weight to three factors, listed below and described in detail in later sections:

- 1) Habitat quality, a measure of the value of each habitat relative to a unit of "prime" habitat of the same type.
- 2) Inherent value of habitat within the region in which impacts and mitigation of impacts are being considered, based on factors such as scarcity of the habitat and biological importance of the habitat to the overall regional environment.
- 3) The relationship of the habitat to other habitats in the region. There are a number of macro-ecological considerations which may affect an evaluation of habitat value. For instance, two examples of the same habitat type of equivalent habitat quality may have different ecological value depending on their size, location, and spatial relationship to other habitats.

For purposes of quantification of impacts and the mitigation value of the resources at a site, habitat values are to be determined

using a Habitat Value Equation:

HV = HQ x IHV x REHV, where

HV = a dimensionless index of biological habitat value

HQ = and index of habitat quality based on a quantitative analysis of significant species, species richness, density, vegetation structure, and proportion of native species (significant species are defined as species of local, state, or federal concern, ranging from species of local concern to state and federally-listed endangered species)

IHV = a fixed "inherent habitat value" assigned to each type of habitat covered by this agreement on the basis of legal status and the biological importance of preserving each habitat unit in the region

REHV = an index of the overall regional ecological habitat value, the ecological importance of a particular habitat within the region, based on an evaluation of a number of overall regional biological/ecological factors

Unless modified by an amendment by written agreement of all of the parties, the calculated HV index for impact and mitigation sites covered by this Mitigation Agreement will be the basis for determining the number of acres of mitigation lands required in mitigation for 1 acre of impact, with the following conditions:

- 1) For in-kind mitigation actions, the calculated HV ratio of the impact site and mitigation site will be compared to establish a mitigation ratio (MR), defined as the number of acres at the mitigation site required to mitigate for one impacted acre at the impact site:

$$MR = \frac{HV \text{ Impact Site}}{HV \text{ Mitigation Site}}$$

This ratio may be less than, equal to, or greater than 1.0. For example, if the calculated HV at the mitigation site is higher than that at the impact site, the mitigation ratio (MR) would be less than 1:1:

$$\begin{aligned} HV \text{ Impact Site} &= 1.5 \\ HV \text{ Mitigation Site} &= 2 \\ MR &= \frac{1.5}{2.0} = 0.75:1 \end{aligned}$$

In this example, only 0.75 acres of mitigation lands would be required in mitigation for 1 acre of impact.

In contrast, if the calculated HV at the impact site was higher than that of the mitigation site, the MR for this particular mitigation action would be greater than 1:1.

The purpose of this variable Mitigation Ratio is to encourage avoidance of impacts to high habitat value sites and to encourage selection of high habitat value mitigation sites.

- 2) For the out-of-kind mitigation that is permitted under this Mitigation Agreement, Mitigation Ratios of less than 1:1 are not permitted. Out-of-kind mitigation ratios will be on a 1:1 basis for projects within the Lake Mathews Plan Area. Out-of-kind mitigation ratios for projects outside the Plan Area will be calculated:

$$MR_{\text{ook}} = \frac{1.5 \text{ (HV Impact Sites)}}{\text{HV Mitigation Sites}}$$

If the resulting MR is less than 1:1, it will be raised to 1:1. If it is greater than 1:1, the greater MR value will be used. This mitigation calculation method recognizes that out-of-kind mitigation is of concern to resource managers for a number of reasons:

- a) Out-of-kind mitigation results in loss of one type of habitat within a region. Particularly where the impacted habitat is in decline in the region, this loss may be greater than if it were to be mitigated for by acquisition and preservation of similar threatened habitat.
- b) Different types of habitat have different seasonal plant and wildlife abundance; field surveys taken at the same time may therefore count the resources of one habitat type at peak abundance and the resources of another habitat type at less than peak abundance. This increases the potential margin of field survey error.
- c) Two different habitat types with identical HV scores may be different in a number of ways: the type of animal species using the habitat, the nature of use, the abundance and density of animal

and plant species, and the diversity of species. The appropriateness of a given out-of-kind exchange is therefore less certain.

- d) Field survey errors are potentially greater. Field surveys on the same kind of habitats involve similar research techniques and can be expected to have similar kinds and magnitudes of error. As a result, there is a degree of confidence that errors in in-kind mitigation are similar at both impact and mitigation site.

Survey of different kinds of habitat involve different field survey methods. Therefore, in out-of-kind exchanges, there is a lower degree of confidence that errors are similar at both impact and mitigation site.

The purpose of this out-of-kind adjustment to the MR calculation method is to account for these uncertainties, to encourage avoidance of impacts at high habitat-value sites, and to encourage selection of high habitat-value mitigation sites.

Mitigation Exchanges

Where in-kind mitigation is available under this agreement, it will be pursued as a first option. When in-kind mitigation credits available under this agreement are exhausted, out-of-kind mitigation is permitted in accordance with the priorities identified on Table B-1 and in the manner described above. Note that Table B-1 is intended to apply to impact and mitigation sites identified to date and to as-yet-unsurveyed sites which may be covered by this agreement.

Mitigation Region

This methodology is intended for transactions concerning mitigation credits occurring on the Metropolitan Mitigation Bank lands within the Lake Mathews Multiple Species Reserve, and it applies to the general geographic and climatic region described as follows:

Commencing at the point where the common boundary between the Counties of Ventura and Los Angeles meet the Pacific Ocean near Sequit Point; thence northerly and easterly along that boundary to its intersection with the highest elevation ridge of the Santa Susana Mountains; thence southeasterly along the highest elevation ridge of the Santa Susana Mountains; thence southeasterly along the highest elevation ridge of the Santa Susana Mountains to the

junction of Interstate Highway 5 and State Route 14; then easterly along the crest of the San Gabriel Mountains to Cajon Canyon; then easterly along the crest of the San Bernardino Mountains to the summit of San Gorgonio Mountain; thence southeasterly down the North Fork and the main stem of the Whitewater River to Whitewater, on Interstate Highway 10; thence southerly and southeasterly along the crest of the San Jacinto Mountains to Vandeventer Flat, on State Route 74; thence southeasterly to the summit of Santa Rosa Mountain; thence due south to the point of intersection with the northern boundary of Anza-Borrego Desert State Park; thence westerly, northerly, and southerly, following the various meanders of the boundary of Anza-Borrego Desert State Park, to the point of intersection of the state park boundary and the common boundary of the Counties of Riverside and San Diego; thence westerly along the common boundary of the counties of Riverside and San Diego to the point of intersection with the common boundary of the Counties of Orange and San Diego; and thence southerly and southwesterly along the common boundary of the counties of Orange and San Diego to the point where it meets the Pacific Ocean at San Mateo Point.

Additions to this exchange region may be defined for additional mitigation areas at such time as they are recognized by appropriate amendments to the Lake Mathews Mitigation Banking Agreements or by new mitigation banking agreements.

Table B-1. Approved mitigation exchanges for in-kind and out-of-kind mitigation. Habitats used for mitigation of projects impacts will be of equal or better habitat type, according to the priority shown below. This table may be amended as described in this Exhibit.

Significant Impacts to Habitat	May be mitigated by acquisition and preservation or restoration and preservation of the following habitat values
Wetlands	Restoration and/or re-creation of new wetlands habitat followed by preservation of the wetlands, consistent with the policy of no net loss of wetland acreage or value.
Endangered or Threatened . Species Habitat or habitat of other sensitive species (not listed)	Occupied, suitable or appropriate potential habitat of the specified species.
Sycamore Riparian Woodlands.	<ol style="list-style-type: none"> 1. Sycamore Riparian Woodlands 2. Other Riparian and/or wetland habitat
Oak Woodlands	<ol style="list-style-type: none"> 1. Sycamore Riparian Woodlands 2. Other Riparian and/or wetland habitat
Southern Willow Scrub . . .	<ol style="list-style-type: none"> 1. Southern Willow Scrub 2. Other Riparian and/or wetland habitat.

Continued next page

Table B-1, continued.

Impacts to Habitat	Mitigation Options
Mule Fat Scrub	<ol style="list-style-type: none"> 1. Mule Fat Scrub 2. Other Riparian and/or wetland habitat
Juniper Woodlands	<ol style="list-style-type: none"> 1. Juniper Woodlands 2. Other Riparian and/or wetland habitat
Chaparral	<ol style="list-style-type: none"> 1. Riversidian Sage Scrub 2. Juniper Woodlands 3. Riparian and/or wetland habitat
Riversidian Sage Scrub . .	<ol style="list-style-type: none"> 1. Riversidian Sage Scrub 2. Juniper Woodlands 3. Riparian and/or wetland habitat
Coastal Sage Scrubs	<ol style="list-style-type: none"> 1. Riversidian Sage Scrub 2. Juniper Woodlands 3. Riparian and/or wetland habitat
Native Grasslands	<ol style="list-style-type: none"> 1. Native Grasslands 2. Juniper Woodlands 3. Riparian and/or wetland habitat
Non-native Grasslands . . .	<ol style="list-style-type: none"> 1. Non-native Grasslands 2. Sage Scrub habitat 3. Juniper Woodlands 4. Riparian and/or wetland habitat
Riversidian Alluvial Scrub	<ol style="list-style-type: none"> 1. Riversidian Alluvial Scrub 2. Riversidian Sage Scrub 3. Juniper Woodlands 4. Riparian and/or wetland habitat

Scope of this Exhibit

In addition to setting forth the general Habitat Value Equation to be used under this agreement, this Exhibit covers:

- 1) Principles to be used in determining permitted mitigation exchanges,
- 2) A listing of exchanges permitted and a method for determining acceptability of future exchanges,
- 3) A method for determining the three indices included in the Habitat Value Equation (HQ, IHV, and REHV)
- 4) Results of habitat quality evaluations for the Lake Mathews Mitigation Bank
- 5) Worksheets for calculating HVs, for determining mitigation ratios, and for displaying the results of mitigation exchanges.

Principles

The methodology described herein is based on the following principles. Exceptions to these general principles may be made by unanimous agreement of the agreement administrators.

- 1) As provided for under the "No Net Loss" policy for wetlands, significant impacts to riparian and/or wetlands habitat may only be mitigated by acquisition, restoration and preservation of equivalent acreage and biological value riparian or wetland habitat. Other impacts will be mitigated in accordance with requirements of applicable protection statutes. However, with the approval of the MANAGEMENT COMMITTEE, significant impacts to upland habitat may be mitigated by restoration and preservation of riparian or wetland habitat.
- 2) With approval of the MANAGEMENT COMMITTEE, significant impacts to other habitats may be mitigated by acquisition and preservation of endangered species habitat.
- 3) Where in-kind mitigation is available at the Lake Mathews Mitigation Bank, it will be pursued until all in-kind habitat values have been credited to Metropolitan. Out-of-kind mitigation priority should be given to habitat types which are similar in ecological characteristics to the habitat type impacted.

- 4) In no case will an out-of-kind mitigation transaction result in the exchange of lesser value mitigation habitat for more scarce or "higher" value habitat found at an impact site. All out-of-kind transactions will result in a trading up of habitat type.
- 5) Areas designated for recreation or other non-preserve purposes at a mitigation site shall not be used for mitigation purposes.
- 6) Consistent with Paragraph 4 of the Mitigation Agreement (Allocation of Habitat Values), in the event that restoration activities affecting grassland, and degraded Riversidian sage scrub result in greater mitigation value in those habitats than anticipated, no additional habitat values shall accrue at the mitigation site.

Moreover, as provided in subparagraph (c) of Paragraph 3 of the Mitigation Agreement (Recognition of Habitat Values), in the event that restoration activities affecting grassland, juniper woodlands, and degraded Riversidian sage scrub do not result in the level of mitigation value in those habitats originally anticipated or in the event that there is any diminution in mitigation value arising from causes for which METROPOLITAN was not responsible, habitat values shall nonetheless retain the levels originally calculated.

However, if in addition to RCHCA's endowment to provide funds for management costs, METROPOLITAN also elects to finance the cost of restoration of riparian areas, or other wetlands at Lake Mathews, the additional habitat values resulting from that restoration shall accrue at the mitigation site and shall be available to METROPOLITAN for its future use to mitigate project impacts.

- 7) Not all habitat at an impact site may require mitigation action. Mitigation will be required only for project impacts determined to be significant under applicable state and/or federal environmental law and policy at the time of project approval, or otherwise legally requiring mitigation action.
- 8) Where two or more special status species occur on the same parcel, mitigation will occur on a habitat basis, and will not require separate mitigation for each species. The use of a habitat basis will apply irrespective of whether different entities are seeking to

mitigate for harm to different special status species.

- 9) In the event that subsequent governmental action changes the legal status of the species or habitat type listed in Table B-1 of this exhibit, the parties shall, in a timely fashion, review the applicable evaluation formula in this Exhibit and make adjustments as required by this methodology to reflect the changed status before proceeding with the transaction affecting that species or habitat type.

Calculation of Habitat Value: Habitat Quality (HQ)

Habitat Quality (HQ) is the first factor in the Habitat Value Equation. To determine HQ, a set of measurable biological variables were chosen, in cooperation with Service and Department biologists, as quantitative indicators of habitat quality. These variables reflect ecological principles generally accepted as important in the evaluation of habitat quality. Using these biological variables, habitat quality will be assessed separately for each type of habitat.

For each type of habitat evaluated, the indicators of habitat quality will be quantified on the basis of field surveys of the habitat unit. Data for each indicator will then be compared to the data from available habitat surveys for the particular type of habitat at the impact site.

Since the studies done for this agreement were limited to the Lake Mathews area, areas to be designated as "prime" habitat will be at Lake Mathews and will be the basis for comparison of all other habitats evaluated. The designated prime habitat will then be given a nominal index value of 1. All other values will then be expressed as fractions of 1 and ranked.

All habitat areas evaluated will therefore receive an index value of from 0 to 1:

$$HQ = \frac{(SSC + SpR + SpD + VS + NS)}{1} \quad (\text{Study Area})$$

Where:

SSC = Species of special concern index, the sum of a series of calculations involving the number of species of special concern weighted according to their official status, using the values shown on Table B-2. Biologists from the Service and Department have agreed that these values may be used to indicate the relative importance of different categories of rare and endangered species. For example, a site with one Federally endangered species and one Federal Category 2 species would have an index of 15:

$$SSC = (1 \times 10) + (1 \times 5) = 15$$

SpR = Species richness index, the weighted sum of the number of species of plants, mammals, birds, and reptiles/amphibians at a site.

SpD = Species density index, the weighted sum of the density (number per unit area) of plants, mammals, birds, and reptiles/amphibians at a site.

VS = Vegetation structure index, an index of the percent cover of tree canopy, shrub layer, cover of terrestrial surface, and number of tree boles, each given equal weight in the VS index.

NS = Proportion of native species index, equal to the number of native species on site divided by the total number of species (native and non-native) on site:

$$NS = \frac{\# \text{ native species}}{\# \text{ native species} + \# \text{ non-native species}}$$

Table B-2 Relative Values of "significant" species.

Species Status	Relative Value*
Federal Endangered	10
Federal Threatened	10
State Endangered	10
Federal Proposed	9
State Candidate for Listing	9
Federal Category 1	9
Federal Sensitive Species	6
California Native Plant Soc. List 1	6
(CNPS)	5
Federal Category 2	4
CNPS List 2	4
California Species of Special concern	3
CNPS List 3	2
CNPS List 4	2
Local Species of Special Concern	1
Non-Listed, but highly restricted	

* Relative values were reviewed and approved by environmental services staff of the USFWS and the California Department of Fish and Game (As per the Santa Rosa Plateau Mitigation Agreement and the Shipley Mitigation Agreement).

The resulting index will be used as the Habitat Quality index in the Habitat Value Equation.

The five categories of habitat quality indicators used in this evaluation reflect both current environmental law and policy and currently accepted ecological principles. They are discussed briefly below. The weightings of each indicator in the overall HQ index were developed by consulting field biologists familiar with the habitats in the region. They reflect judgment of the importance of each indicator in overall habitat quality in the region.

- 1) Significant species. The presence of significant species was evaluated in terms of the number of such species using a habitat unit, the relative degree of rarity, and the degree of their usage of the habitat unit (i.e., permanent occupation, breeding, feeding, etc). The number of individuals of each rare or endangered species using the habitat unit was also considered. The value of different levels of species sensitivity for calculating the index for this habitat quality indicator is shown on Table B-2.

- 2) **Species Richness.** The number of species within a habitat was evaluated. Within the category, plants, large mammals, small mammals, birds, and reptiles/amphibians were evaluated separately. Birds were given the highest weight in this evaluation (varying, depending on the habitat type) primarily because (a) they are often used as indicators of habitat quality and (b) data from field surveys were more complete for birds than for other animals.
- 3) **Density.** The number of individuals per unit area will be determined for wildlife groups: birds, small mammals, large mammals, and reptiles/amphibians. Higher densities will receive higher index scores; high densities are an indicator of the general robustness of the habitat being evaluated. Birds received a higher weight in this index because of their documented value as indicator species.
- 4) **Vegetation Structure.** Vegetation structure has been used as an indicator of habitat quality because it is an indicator of the way in which wildlife species may partition habitat resources. More complex vegetation structures, characterized by larger numbers of vegetation layers present, the number of tree boles present, and the percent cover of each vegetative layer, may have higher ecological value.
- 5) **Proportion of Plant Species which are Native.** The percentage of plant species which are native species is a measure of the degree of "naturalness" or degree of degradation of a community. Communities with a higher percentage of native plant species are generally considered to be more valuable to native wildlife species than communities dominated by exotic species.

The weight given to each of the HQ indicators was determined by Metropolitan's biological consultants with concurrence by SERVICE and DEPARTMENT biological staff. Initially, the five categories of indicators were assigned equal weight in the evaluation (20 percent each). The weight given to the category "Proportion of Native Species" was later reduced to reflect the fact that this indicator category was co-linear to the category "Species of Special Concern."

Re-distribution of weights to the other four categories resulted in the following weighting system:

<u>Measure</u>	<u>Percent Weight</u>
Species of Special Concern:	22.22
Species richness:	
Plants:	5.56
Large mammals:	2.78
Small mammals:	2.78
Birds:	11.11
Reptiles and amphibians:	5.56
Species diversity:	
Large mammals:	2.78
Small mammals:	2.78
Birds:	11.11
Reptiles and amphibians	5.56
Vegetation structure:	
% cover tree canopy:	5.56
% cover shrub layer:	5.56
% cover terrestrial surface:	5.56
Tree boles:	5.56
Proportion of Native Species:	5.56

The apparent precision of the weighting shown above was a result of re-distributing the weight taken from Proportion of Native Species to the other indicators and the decision to give species richness a higher overall category weight.

When an inidicator or element of an indicator was determined to be meaningless for a habitat being evaluated, it was assigned a zero weight in the analysis and weights were then distributed equally among other indicators within each category.

Habitat Quality Analyses for Lake Mathews

In this Exhibit, habitat quality analyses for the MULTIPLE SPECIES RESERVE are presented, reflecting recent biological field work and mapping of this area. Data supporing these analyses are presented in Volume 2, Biological Technical Report and are on file at Metropolitan. The calculated habitat quality indices shown on Table B-3 will be used as the Habitat Quality component of the Habitat Value Equation for mitigation exchanges covered by this agreement. The weighing of the 15 HQ measures listed above will also be used as the basis for evaluation of the same types of habitat areas which may be impacted by future Metropolitan projects and for which Metropolitan would seek to redeem mitigation credits at The Lake Mathews Mitigation Bank covered by this agreement.

New Habitat quality index weights may be required if future projects involve significant impacts to habitat types not covered in Table B-3. If this occurs, the category and indicator weightings for the new habitat shall be determined by Metropolitan's biological resource experts with concurrence by the MANAGEMENT COMMITTEE, as appropriate.

Table B-3 Calculated Habitat Quality Indices for Lake Mathews Mitigation Bank.

Key: RSSG = Riversidian Sage Scrub, suitable gnatcatcher habitat
 RSS = Riversidian Sage Scrub, potential gnatcatcher habitat
 NNG = Non-Native Grasslands
 JW = Juniper Woodlands
 SRW = Sycamore Riparian Woodland
 SWS = Southern Willow Scrub
 MFS = Mule Fat Scrub
 AG = Agriculture¹

Site	Habitat Type	Acres	HQ Index
Lake Mathews Mitigation Bank	RSSG	355	1.0
	RSS	61	1.0
	NNG	394	1.0
	JW	10	1.0
	SWS	20	1.0
	SRW	2	1.0
	MFS	27	1.0
	AG	316	not evaluated
	Total	1185	

¹ The agricultural lands presently leased for dry land farming are suitable for occupation by Stephens' kangaroo rat.

Calculation of Habitat Values: Inherent Habitat Value (IHV)

Method

Inherent Habitat Value (IHV) is the second element of the Habitat Value Equation. Because out-of-kind mitigation is provided for under this agreement, and because the habitat quality index is not comparable among different habitats, it was necessary to include a factor in the Habitat Value Equation which would reflect current concerns regarding the importance of different types of habitat within the region.

Judgements regarding relative habitat value are generally made on a case-by-case basis and only after the sites being evaluated have been fully analyzed. A generalized inherent habitat value is necessary in this instance because this mitigation agreement provides for mitigation of significant impacts to habitats not yet identified. Therefore an inherent habitat value was assigned to each type of habitat. The factors taken into account in making this value judgement were:

- 1) Legal and policy considerations. Habitats legally protected were given higher inherent habitat values than those without such legal protection. Legal protection of a habitat is an indicator of general consensus that it has high biological value within the region.
- 2) Scarcity. Relatively scarce habitats or habitats becoming scarce due to development pressure or other factors were given higher ratings than common habitats and habitats not currently in significant decline.

IHVs were assigned to each type of habitat based on an evaluation of these two factors for habitats. The IHVs shown on Table B-4 were developed by Metropolitan's biological experts and have been accepted by SERVICE and DEPARTMENT biologists for use within the region defined below.

The habitat values to be used are shown on Table B-4, along with the factors most responsible for their rating.

Table B-4. Inherent habitat values to be used as the second element of the Habitat Value Equation. Values apply only to this agreement and the region defined herein.

Habitat Type	IHV	Factors Involved in Rating
Vernal Pools	2.5	Vernal pools are not located at Lake Mathews, but are shown on this table to indicate the highest possible IHV. This high ranking results from their unique value and characteristics and scarcity in the region.
Cottonwood Riparian Forest	2.0	This habitat type is both legally protected and relatively scarce, as well as being a robust and diverse habitat supporting a wide variety of wildlife.
Sycamore Riparian Woodlands, Willow Riparian Woodlands, Southern Willow Scrub,	1.8	In this region, these habitats are protected but generally of lower overall robustness than Cottonwood Riparian Forest.
Freshwater March and Mule Fat Scrub Wetlands	1.8	In this region, few high-value marshlands are found. Thus, while legally protected, they generally have lower value than other forms of riparian and wetland habitat in the region.
Oak Woodlands	1.7	Oak woodlands are relatively more common in the region than riparian woodlands. They are robust habitats supporting a wide variety of species. They are also threatened in many areas by development.
Native Grasslands	1.7	Native grasslands are rare in the region primarily due to heavy grazing by introduced species over the last 250 years.
Juniper Woodlands	1.6	Juniper Woodland are relatively scarce in this region.

Table B-4, continued.

Habitat Type	IHV	Factors Involved in Rating
Riversidian Sage Scrub and Coastal Sage Scrub . .	1.6	All types of sage scrub are in decline due to development pressure in the region although there are still significant quantities of this habitat in the region.
Riversidian Alluvial Scrub	1.6	This form of scrub is relatively scarce, found only on the alluvial floodplains of rivers and streams. Although it is subject to periodic disturbance by flooding in some locations, it has value due to its scarcity and its relationship to riparian habitats.
Chaparral	1.2	Chaparral is still relatively common in the region and is not presently threatened, but it has considerable value as wildlife habitat.
Non-native Grasslands .	1.0	Non-native grasslands were given a baseline habitat value of 1 due to their commonness within the region. Non-native grasslands with special characteristics, such as Stephens' kangaroo rat habitat or extensive use by raptors may, by unanimous agreement, be given a higher IHV.

Habitat Value Calculations: Regional Ecological Habitat Value (REHV)

The value of resources at a site is affected by the relationship of the site to the surrounding ecosystem, as well as by the quality of the surrounding ecosystem itself. For example, a riparian corridor which runs through a developed area and provides the only wildlife corridor between two large wildlife areas could be considered more valuable to wildlife than a riparian corridor in an area with many wildlife migration routes or within a major wildlife area. At the same time, the parcel surrounded by development could be considered less valuable because of its relative isolation from other natural resources.

Evaluations of such issues have historically been accomplished in a qualitative manner by resource managers, reflecting differing perspectives. For example, one ecologist may view the isolation of a site as a negative factor in evaluation of the habitat value while another may view isolated sites as more important on a unit area basis because of their potential to preserve genetic diversity within an overall region. Both perspectives have legitimacy and need to be considered in determining habitat value.

Under this agreement, these overall ecological factors have been addressed using a number of regional ecological value indicators and assigning an additive weight to each factor. The factors were developed in discussions with Metropolitan's biological resources consultants and have been reviewed and approved by all parties to this agreement for use under this Mitigation Agreement only.

The objective of including an REHV element in the Habitat Value Equation is to encourage selection of project sites with low ecological value and encourage selection of mitigation sites with high regional ecological value.

To calculate REHV, each site considered is initially given a nominal REHV of 1 (all sites were assumed to be of equal regional ecological value unless they were found to have special characteristics). Points are then added to this base score to reflect positive ecological characteristics of the site and subtracted from the score to reflect negative ecological characteristics. Points awarded to the site are then added to or subtracted from the nominal value.

The REHV's assigned to the habitat types in the Lake Mathews Mitigation Bank are shown in Table B-5. The positive and negative regional ecological habitat value factors used in calculating REHV for purposes of this agreement are shown on Table B-6. In reviewing this table, note that not all factors apply to all types of habitat. Where a factor does not apply, a "0" value is assigned (neither adding to the value of the site nor subtracting from it). The summed REHV index is therefore a reflection of only those

ecological value factors which apply to each site. Note also that the index has been scaled to prevent this third element of the overall Habitat Value Equation from outweighing the other elements of the equation (habitat quality index and relative habitat value).

Table B-5 The Regional Ecological Habitat Values to be used as the third element of the Habitat Value Equation.

Habitat Type	REHV
Non-Native Grassland	1.10
Riversidian Sage Scrub (gnatcatcher)	1.15
Riversidian Sage Scrub	1.15
Mule Fat Scrub	1.05
Southern Willow Scrub	1.10
Juniper Woodland	1.00
Sycamore Riparian Woodland	1.10
Freshwater Marsh	1.05

Table B-6

Factors to be considered in calculation of regional ecological habitat value (REHV) under this agreement. For purposes of this analysis a site is considered as a specific habitat area of impact or an area being considered for mitigation of impacts.

Site Characteristic	Point Value
Nominal Value, all sites:	1.0
Positive Factors	
1. Site is one of the largest, or part of one of the largest, examples of this habitat type in the region	+0.05
2. Site is an important wildlife corridor between wildlife habitats of regional significance or functions as part of a migratory flyway . . .	+0.05
3. Site has significant ecotonal relationships with adjacent natural resources	+0.05
4. Site is an important reservoir of rare species within the region, regardless of site size . .	+0.05
5. Site is an integral part of a large, relatively undisturbed natural ecosystem which is legally preserved for its ecological value	+0.05
6. Site is within the watershed of an important ecological area and runoff from the site affects habitat quality downstream	+0.05
7. Site is isolated from human disturbance and can be protected from significant human disturbance in perpetuity	+0.05

Table B-6, continued.

Site Characteristic	Point Value
Negative Factors	
1. Site's Resources are separated by a major freeway, concrete flood control channel, fencing or other hand of human development which limits wildlife movement significantly .	-0.05
2. Site is isolated form other natural environments in the region by significant development and does not have significance as reservoir of rare species in the region . . .	-0.05
3. Introduced/exotic species in the region are known to threaten the integrity of the native plant and wildlife community at the site. . .	-0.05
4. Site has recently been or is subject to significant human disturbance such as grazing, agriculture, industrial dumping, off-road traffic, or other human-caused disturbance . .	-0.05

REHVs for sites evaluated as a part of this agreement (Exhibit C, Part 2) have been approved by the Service and Department. If additional sites are evaluated in the future, Service and/or Department biologists would cooperate in developing REHVs for these sites. Disputes would be resolved in the manner described in the main Mitigation Agreement.

Habitat Value Calculations: Using the Habitat Value Equation to Determine Mitigation Ratio

The Habitat Value Equation permits objective description of habitat values so that reasonable and defensible judgments can be made concerning the relative value of two different sites. To calculate HV for a site requires:

- 1) Literature Survey, records searches, and field investigations for each site to collect data for calculating the HQ and REHV indices (See Exhibit B for scope of field studies)
- 2) Determination of the habitat category which applies to the site's resources, and therefore determination of the IHV index.

The Habitat Value calculations shown in Exhibit D reflect the results of extensive literature and field studies, and are accepted by the parties to this Mitigation Agreement as the factual basis for mitigation exchanges under this Mitigation Agreement.

This Mitigation Agreement provides for Metropolitan's use of the Lake Mathews Mitigation Bank and other mitigation sites which may be added to this agreement to mitigate for impacts from the Cajalco Dam and Detention Basin and other Metropolitan projects in the region. For impact or mitigation sites not studied during these studies, future field surveys necessary to ensure reasonable accuracy in calculating HVs will be conducted (See Exhibit C). For the project and mitigation areas surveyed to date for the Lake Mathews Mitigation Bank, it is agreed that field survey data collected to date are acceptable to calculate HVs.

Future Habitat Values for impact or mitigation sites will be calculated using the methods described above and in Exhibit B by Metropolitan's biologists familiar with the sites being evaluated in cooperation with biologists from the Department and/or the Service, as the case may be, depending upon their respective jurisdiction over the proposed project. Disputes will be resolved through negotiation of the parties with jurisdiction over proposed project lands, with disputes resolved as provided for under the Mitigation Agreement. When a consensus has been reached by the biological staff involved in coordinated effort, it is agreed that these values will be accepted by Metropolitan and by the resource agencies with jurisdiction over the sites involved.

Metropolitan will maintain records (mitigation ledger) of all approved mitigation actions, supplying a copy of these records to all parties to this agreement following approval by the agencies with jurisdiction over the mitigation action. Approved ledgers of mitigation available at each mitigation site, and of each approved mitigation action, will be displayed in Exhibit D.

**Mitigation Calculation Worksheet B-1:
Site Habitat Value Calculation**

1. Site: _____
2. Habitat Type: _____
3. Out-of-kind Mitigation Permitted: Yes _____ No _____
4. If yes, list out-of-kind trades permitted:
 - 1.
 - 2.
 - 3.
 - 4.
 - 5.
5. Habitat Quality (HQ): _____ (from table below)
(Use Habitat Quality Index from table 3 or develop new HQ Index for new habitat using field data. Use table below to display results of any new HQ index calculations.)

Criteria Weighted	<u>Available Data</u>			<u>Ranking</u>
	Weighting Study	Prime	<u>%SA</u>	
	Area	Area	<u>%Pr</u>	
Species of Sp. Concern	_____	_____	_____	_____
Species Richness				
Plants	_____	_____	_____	_____
Large mammals	_____	_____	_____	_____
Small mammals	_____	_____	_____	_____
Birds	_____	_____	_____	_____
Reptiles/Amphibians	_____	_____	_____	_____
Species Density				
Large mammals	_____	_____	_____	_____
Small mammals	_____	_____	_____	_____
Birds	_____	_____	_____	_____
Reptiles/Amphibians	_____	_____	_____	_____
Vegetative Structure				
% cover of canopy	_____	_____	_____	_____
% cover terrestrial	_____	_____	_____	_____
% tree boles	_____	_____	_____	_____
Proportion of Native Plant Species	_____	_____	_____	_____
Index				_____

**Mitigation Calculation Worksheet B-1
(Page 2)**

6. IHV from Table B-4: _____
7. Relative Ecological Habitat Value (REHV): _____
(Enter the REHV from the table below on line 6.)

Site Characteristics	Point Value
Nominal value, all sites:	1.0
Positive Factors (Score +0.05 for each REHV indicator which is appropriate for the site, except for item 5, critical habitat designation)	
1. Site is none of the largest, or part of one of the largest, examples of this habitat type in the region	_____
2. Site is an important wildlife corridor between wildlife habitats of regional significance or functions as part of a migratory flyway . . .	_____
3. Site has significant ecotonal relationships with adjacent natural resources	_____
4. Site is an important reservoir of rare species within the region, regardless of site size	_____
5. Site is an integral part of a large, relatively undisturbed natural ecosystem which is legally preserved for its ecological value	_____
6. Site is within the watershed of an important ecological area and runoff from the site affects habitat quality downstream	_____
7. Site is isolated from human disturbance and can be protected from significant human disturbance in perpetuity	_____

**Mitigation Calculation Worksheet B-1
(page 3)**

Site Characteristics	Point Value
Negative Factors (Subtract 0.05 for each characteristic which applies to the site)	
1. Site's resources are separated by a major freeway, concrete flood control channel, fencing or other band of human development which limits wildlife movement significantly	_____
2. Site is isolated from other natural environments in the region by significant development and does not have significance as a reservoir of rare species in the region . . .	_____
3. Introduced/exotic species in the region are known to threaten the integrity of the native plant and wildlife community at the site	_____
4. Site has recently been or is subject to significant human disturbance such as grazing, agriculture, industrial dumping, off-road traffic, or other human-caused disturbance	_____
Total (REHV), nominal value plus all positive and negative points	_____

8. Habitat Value for this site/habitat type: _____

HQ (line 5) X IHV (Line 6) X REHV (line 7) = HV
 _____ X _____ X _____ =

**Mitigation Calculation Worksheet B-2:
Calculating Mitigation Exchanges**

1. Impact Site _____
2. Habitat Type _____
3. Calculated HV _____
4. Mitigation Site _____
5. Habitat Type _____
6. Calculated HV _____

7. Mitigation Ratio (in-kind):

$$MR = \frac{HV \text{ Impact Site}}{HV \text{ Mitigation Site}} = \frac{\quad}{\quad} = \quad : \quad$$

8. Mitigation Ratio (out-of-kind):

$$MR = \frac{1.5(HV \text{ Impact Site})}{HV \text{ Mitigation Site}} = \frac{\quad}{\quad} = \quad : \quad$$

if less than 1:1, increase to 1:1

9. Mitigation Exchange:

_____ acres impacted for _____ acres at
mitigation site

Record each mitigation exchange on a summary table similar to the one shown on Worksheet B-3.

Mitigation Calculation Worksheet B-3
Summary of Mitigation Plan, _____ Project.

Habitat Type	Impacted Acres	Mitigation Location	"Exchange" Type	Acres
-----------------	-------------------	------------------------	--------------------	-------

Totals

Remaining Mitigation Acreages at _____ Mitigation Site:

Habitat Type	(HV)	Acres
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EXHIBIT C

SCOPE OF ENVIRONMENTAL STUDIES TO BE CONDUCTED TO EVALUATE NATURAL RESOURCE VALUE UNDER THE MITIGATION BANKING AGREEMENT

Introduction

Under this agreement, the Metropolitan Water District of Southern California (METROPOLITAN), by preservation of high value resources in western Riverside County, will establish a mitigation bank of Habitat Values to be used to offset future project impacts. The mitigation exchanges proposed for Lake Mathews and Cajalco Dam and Detention Basin sites have been calculated using the results of the Habitat Value Equation explained in Exhibit B. The Habitat Values for future project sites and mitigation sites have not been calculated.

The methodology for calculating Habitat Values and determining appropriate mitigation actions is described in Exhibit B. The purpose of this Exhibit C is to outline the scope of biological resource studies which will be required in order to ensure that data are available to permit these calculations for future impact sites.

General Policies Governing Study Scope

It is intent of METROPOLITAN that, as appropriate, future studies of project impacts and impact sites will be carried out at a level comparable to those which were conducted for the establishment of the Lake Mathews Mitigation Bank. Where necessary, METROPOLITAN will direct its biological resources consultants to conduct studies at impact sites, or at sites being considered as additional mitigation banking sites, which will be comparable to those conducted for the Lake Mathews Mitigation Bank.

METROPOLITAN recognizes that new study methodologies may be developed which will permit better or more efficient study of biological resources. Therefore, this Exhibit C does not specify study methodology. Rather, it describes the subjects to be studied and the data elements to be collected. METROPOLITAN and the other parties to this agreement recognize that if available data are

adequate to address portions of the required study, that these data may be used. As a general principle, however, METROPOLITAN will direct its biological resources consultants to collect adequate data to confirm that data in the literature present a valid picture of conditions at the study site.

Baseline Biological Resources Data

This agreement contemplates both in-kind and out-of-kind mitigation for project impacts, based on classification of specific habitat types at each site. One requirement of biological resources studies will be that they adequately characterize the habitats of a site for classification. For each site, surveys will be conducted to determine the types of habitat on site and to delineate the boundaries of each habitat type.

The basis for these classification surveys will be the most current definitions of habitat types in the region at the time of study, found in the current literature. Surveys will involve data collection which will permit comparison of the characteristics of habitats on a site to the characteristics enumerated in each definition. Field investigations will collect data on enough habitat characteristics to permit reliable classification of habitats on site.

Finally, initial surveys will be adequate to determine whether the habitat being studied is occupied by, or if occupation cannot be established is suitable for occupation by, endangered/threatened species and other significant species generally associated with each habitat type. Significant species are defined as species officially designated as of local, state, or federal concern, up to and including state and federal endangered species.

To the extent possible, therefore, surveys will include collection and identification by experts of species not readily identified by field personnel.

The result from initial literature and field surveys will be a listing of habitat types on the site, their boundaries, and a preliminary listing of plant and animal species adequate to characterize the habitat type and identify sensitive species on site.

Habitat Quality Evaluation Studies

For each habitat type identified at the site, data on five indicators of habitat quality will be collected.

- 1) The presence of significant species. Observation schedules will be established to ensure that observations are made during periods of the year when habitat type being investigated could be expected to support significant species and evidence of their occupation or use of the habitat would generally be most readily available. Where necessary, species will be collected and identified by experts, with appropriate permits if required, to confirm identifications of significant species. A table listing all significant species will be provided. In addition, maps of the site will be prepared identifying habitats used by endangered or significant species.

- 2) Species richness, including the number of plants, small mammals, large mammals, birds, reptiles, and amphibians on site.

- 3) Vertebrate species density, including estimates of the unit density of small mammals, large mammals, birds, reptiles, and amphibians on site.
- 4) Vegetative structure. A sampling program will be conducted to characterize the vegetative structure of each habitat type in terms of four variables: (a) the number of tree boles per unit area in the habitat, (b) percent cover of canopy, (c) percent cover of shrubs, and (d) percent cover of terrestrial plants. The sampling program will be adequate to identify the range of vegetation structure on site.
- 5) Percent composition of native plants. Vegetation surveys will determine the presence of native plants within each habitat type on the site, and will be adequate to determine the percent composition of native plants.

Ecological Studies

The ecological values of each habitat will be evaluated for each site. Field observations will be made and a literature review will be conducted to determine if the habitat has overall regional ecological value beyond its value within the site studied. In particular:

- 1) Similar habitat areas in the region will be identified and compared to the habitat on site to determine if the habitat is one of the largest units of the habitat type within the region.
- 2) Observations shall be made and literature surveyed to determine whether wildlife use the habitat as a corridor or as part of a migratory route. Migratory mammals and birds identified on site will be identified and their use of the site documented from observation or literature review.
- 3) Significant ecotonal relationships among habitat types on the site will be identified and listed. The nature of the ecotonal relationships will be briefly described.

- 4) The regional distribution of rare species found at the site will be addressed through literature review and/or field surveys to determine if the site is an important reservoir of the species in the region.
- 5) The topography and hydrology of the site will be evaluated to determine if runoff from the site significantly affects downstream habitat quality.
- 6) Features which would adversely affect plant and animal distribution and/or movement within the site and from the site to other habitats will be identified and mapped to determine whether these features significantly reduce the ecological value of the site. Factors to be identified include roads, flood control channels, agricultural areas, development, etc.
- (7) The presence of exotic species will be documented and the probable impact of these species on native plant populations will be estimated to the extent possible based on literature review and observed trends within the site.
- (8) Type and level of human disturbance will be determined and enumerated based on field observations and literature review.

EXHIBIT D

DETAILED INVENTORY OF HABITAT VALUES FOR LAKE MATHEWS UNDER THE MITIGATION BANKING AGREEMENT

I. MITIGATION AREA

1.1 Habitat Values

The ledger of mitigation acreage for the Lake Mathews Mitigation Bank (Table D-1), based on:

- 1) Measurement of habitat quality parameters on Metropolitan lands at Lake Mathews
- 2) Calculation of habitat quality indices and Habitat Values (HVs) as specified in Exhibit B
- 3) Identification of habitat types and measurement of acreage on the Lake Mathews property using aerial photographs, and the Geographic Information System (GIS)
- 4) Final acreage estimates for Metropolitan's mitigation bank are based upon a total acreage estimate for Metropolitan lands at Lake Mathews minus acreage for the existing Ecological Reserve, Operations Area, and RCHCA Mitigation Lands on the expanded reserve area.
- 5) All lands including the existing Ecological Reserve and the proposed expanded Reserve treated as an Ecological Unit.

This approach is believed to provide a reasonable estimate of HVs on the Lake Mathews property.

In all tables and descriptions below, the following abbreviations may be used:

RSS = Riversidian Sage Scrub
 RSSG = Riversidian Sage scrub with gnatcatcher habitat
 NNG = Non-native grasslands
 JW = Juniper Woodland
 MFS = Mule Fat Scrub
 SRF = Sycamore Riparian Forest
 SWS = Southern Willow Scrub
 AG = Agriculture

Table D-1 Habitat Values for the Lake Mathews Mitigation Bank.

<u>Habitat Type</u>	<u>Acres</u>	<u>HQ</u>	<u>IHV</u>	<u>REHV</u>	<u>HV</u>
Riversidian Sage Scrub	61	1.0	1.6	1.15	1.84
Riversidian Sage Scrub (gnatcatchers)	355	1.0	1.6	1.15	1.84
Non-native Grassland	394	1.0	1.0	1.10	1.10
Juniper Woodland	10	1.0	1.6	1.00	1.60
Mule Fat Scrub	27	1.0	1.8	1.05	1.89
Southern Willow Scrub	20	1.0	1.8	1.10	1.98
Sycamore Riparian Forest	2.0	1.0	1.8	1.10	1.98
Agriculture ¹	<u>316</u>				1.00
Total	1185				

¹ Agricultural lands presently leased for dryland farming are suitable for occupation by Stephens' Kangaroo rat.

1.2 Adjustments of habitat values as a result of future restoration activities.

This inventory addresses existing habitat values on the Lake Mathews property only.

If Metropolitan pursues restoration of sensitive habitats and riparian areas successfully, Metropolitan would request an increase in the habitat values available at Lake Mathews to reflect changes in habitat values associated with restoration. Metropolitan would receive full mitigation credit for the additional habitat values, without consideration of the HVs lost as a result of restoration.

Calculation of mitigation credit for additional habitat values would be accomplished using either HQA or other methods acceptable to METROPOLITAN, the DEPARTMENT and/or the SERVICE. The DEPARTMENT and the SERVICE agree to this provision for calculating additional mitigation values for habitat restoration, recognizing the significant investment required for these activities and the overall environmental benefits which result from such activities.

Some land at Lake Mathews is suitable for occupation by sensitive species (e.g. the agriculture land is suitable but presently unoccupied by Stephens' kangaroo rat). If Metropolitan pursues re/introduction of a sensitive species on suitable habitat, Metropolitan would request the ability to obtain migration credit for the suitable/occupied acreage for that species. The DEPARTMENT and the SERVICE agree to this mitigation method and would issue the appropriate credit and permits.

Table D-2

Existing Habitat	Proposed Habitat Restoration/Enhancement	Acres
Non-native Grassland	Restored riparian	~ 50 acres
Degraded RSS	Restored RSS	Acreage not estimated
Agriculture	Occupied SKR habitat	316 acres
Non-Native Grassland	Clay soil grasslands	Acreage not estimated

II. IMPACT AREA: CAJALCO DAM AND DETENTION BASINS

HV calculations shown on Table D-3 were based on extensive field surveys of the Cajalco Dam and Detention Basin Impact Area on Metropolitan's lands at Lake Mathews.

Table D-3 Habitat Values for the Cajalco Dam and Detention Basin Impact Area.

<u>Habitat Type</u> ¹	<u>Acres</u>	<u>HQ</u>	<u>IHV</u>	<u>REHV</u>	<u>HV</u>
RSS	21.2	1.00	1.6	1.15	1.84
Juniper Woodland	1.0	1.00	1.6	1.00	1.6
NNG	16.3	1.00	1.0	1.10	1.10

¹ A portion of these habitats is occupied by the Stephens' kangaroo rat.

1.3 PROPOSED CAJALCO DAM, DETENTION BASIN, AND SEDIMENT BASINS: UPLAND HABITAT MITIGATION

The proposed upland mitigation plan for Cajalco Dam and Detention Basin is based on two mitigation components: (1) Section 7 consultation for occupied Stephens' kangaroo rat lands with the SERVICE, and (2) mitigation for remaining habitat impacts that are a part of the impact area Habitat Values shown in the above tables, and is based on the mitigation methods outlined below and summarized on Table D-3. Wetland mitigation will occur separately.

1.3.1 Basis for Mitigation Plan

The upland mitigation plan outlined below and summarized on Table D-3 has been based on the following assumptions:

- 1) Negotiations to establish the Lake Mathews Mitigation Bank are successfully completed
- 2) Total acreage within the Lake Mathews mitigation bank would be as follows:

Riversidian Sage Scrub:	14.5 acres
Non-Native Grasslands:	13.9 acres
Juniper Woodland:	<u>1.4 acres</u>
Total	29.8
- 3) Metropolitan will pursue on-site mitigation of impacts associated with the Cajalco Dam and Detention Project by

mitigating for upland habitat impacts with the Lake Mathews Mitigation Bank and mitigating for wetland habitat impacts on site under a separate permit.

The calculations shown in support of each mitigation exchange take the form:

$$\frac{\text{Impact site HV}}{\text{Mitigation site HV}} = \text{Mitigation Ratio (MR)}$$

$$\text{MR} \times \text{acres impacted} = \text{acres required in mitigation}$$

1.3.2 Cajalco Dam and Detention Basin Mitigation Plan Upland Habitats

For habitats that are not mitigated through the Section 7 consultation, mitigation will be accomplished according to the following formulae:

Riversidian Sage Scrub. There is a total of up to 12.7 acres of RSS impacted by the project. Mitigation is calculated as follows:

- 1) Up to 12.7 acres of impact would be mitigated with up to 12.7 acres of RSS (potential gnatcatcher habitat) on-site:

$$\text{MR} = \frac{1.84}{1.84} = 1.00$$

$$\text{MR} \times \text{Impact Areas} = \text{Mitigation Acres Required}$$
$$1.00 \times 12.7 = 12.7$$

Of the 61 acres of RSS (potential gnatcatcher) at Lake Mathews, 48.3 acres remain as a mitigation source for future use.

Non-Native Grasslands. There is a total of up to 9.4 acres of NNG impacts. Mitigation is calculated as follows:

- 1) Up to 9.4 acres of impact would be mitigated on-site:

$$\text{MR} = \frac{1.10}{1.10} = 1.00$$

$$\text{MR} \times \text{Impact Acres} = \text{Mitigation Acres Required}$$
$$1.00 \times 9.4 = 9.4$$

A total of 9.4 acres of NNG have been used for mitigation leaving 384.6 acres of NNG available for future mitigation needs.

California Junipers. There is a total of 0.6 acre of impact to California Junipers. Mitigation is calculated as follows:

- 1) 0.6 acre of impact area will be mitigated with 0.6 acre of Juniper Woodland on-site:

$$\begin{aligned} \text{MR} &= \frac{1.60}{1.60} = 1.00 \\ \text{MR x Impact Acres} &= \text{Mitigation Acres Required} \\ 1.00 \times 0.6 &= 0.6 \end{aligned}$$

Of 10 acres of Juniper Woodland at Lake Mathews, 9.4 acres remain as a mitigation resource to be used in the future.

1.3.3 Lake Mathews Sediment Basins

A total of six sediment/water quality wetland facilities are proposed on the south side of Lake Mathews and west of El Sobrante Road. These facilities will be located on the major drainage courses tributary to the lake and constructed immediately adjacent to the Cajalco roadway embankment crossing these drainage courses.

Riversidian Sage Scrub. There is a total of up to 1.8 acres of RSS impacted by the basins. Mitigation is calculated as follows:

- 1) Up to 1.8 acres of impact would be mitigated with up to 1.8 acres of RSS on-site:

$$\begin{aligned} \text{MR} &= \frac{1.84}{1.84} = 1.00 \\ \text{MR x Impact Acres} &= \text{Mitigation Acres Required} \\ 1.00 \times 1.8 &= 1.8 \end{aligned}$$

Of the 48.3 acres of RSS (potential gnatcatcher) at Lake Mathews, 46.5 acres remain as a mitigation source for future use.

Non-Native Grasslands. There is a total of up to 4.5 acres of NNG impacts. Mitigation is calculated as follows:

- 1) Up to 4.5 acres of impact would be mitigated on-site:

$$\begin{aligned} \text{MR} &= \frac{1.10}{1.10} = 1.00 \\ \text{MR x Impact Acres} &= \text{Mitigation Acres Required} \\ 1.00 \times 4.5 &= 4.5 \end{aligned}$$

A total of 4.5 acres of NNG have been used for mitigation, leaving 380.1 acres of NNG available for future mitigation needs.

Juniper Woodland. There is a total of 0.8 acres of impacts to California Junipers. Mitigation is calculated as follows:

- 1) 0.8 acres of impact area will be mitigated with 0.8 acres of Juniper Woodland on-site:

$$MR = \frac{1.60}{1.60} = 1.00$$

$$MR \times \text{Impact Acres} = \text{Mitigation Acres Required}$$

$$1.00 \times 0.8 = 0.8$$

Of 9.4 acres of Juniper Woodland at Lake Mathews, 8.6 acres remain as a mitigation resource to be used in the future.

Table D-4 Summary of Upland Mitigation Plan, Cajalco Dam, Detention Basin and Sediment Basins

Habitat Type	Impacted Acres	Mitigation Location	"Exchange" Type	Acres
RSS pot. gnatcatcher	14.5	On-site	RSS pot. gnatcatcher	14.5
NNG	13.9	On-site	NNG	13.9
Juniper Woodland	1.4	On-site	Juniper Woodland	1.4
Totals	29.8			29.8

Remaining in Lake Mathews Mitigation Bank:

RSS (pot. gnatcatcher):	46.5
RSSG:	355.0
NNG:	380.1
JW:	8.6
SWS:	20.0
MFS:	27.0
SRF:	2.0
AG:	316.0

1.3.4 Operations Areas

A total of 728.6 acres in the Plan Area are designated for operation of the reservoir and its ancillary facilities. These areas are primarily located on the northwest side of the lake and immediately adjacent to La Sierra Avenue and El Sobrante Road.

Riversidian Sage Scrub. There is a total of up to 303.2 acres of

RSS in Operations Areas. Mitigation is calculated as follows:

1) 46.5 acres of RSS (potential gnatcatcher) would be mitigated with 46.5 acres of RSS (potential gnatcatcher) on-site:

$$\text{MR} = \frac{1.84}{1.84} = 1.00$$

$$\text{MR x Impact Acres} = \text{Mitigation Acres Required} \\ 1.00 \times 46.5 = 46.5$$

2) 256.7 acres of RSS in Operations Areas will be mitigated with 256.7 acres of RSS (occupied gnatcatcher) on-site:

$$\text{MR} = \frac{1.84}{1.84} = 1.00$$

$$\text{MR x Impact Acres} = \text{Mitigation Acres Required} \\ 1.00 \times 256.7 = 256.7$$

Of the 46.5 acres of RSS (potential gnatcatcher) at Lake Mathews, 0 acres remain. Of the 355.0 acres of RSS (occupied gnatcatcher) at Lake Mathews, 98.3 acres remain as mitigation for future use.

Non-Native Grasslands. There is a total of 193.8 acres of NNG on-in Operations areas. Mitigation is calculated as follows:

1) 193.8 acres of NNG in Operations will be mitigated with 193.8 acres of NNG on-site:

$$\text{MR} = \frac{1.10}{1.10} = 1.00$$

$$\text{MR x Impact Acres} = \text{Mitigation Acres Required} \\ 1.00 \times 193.8 = 193.8$$

Of the 380.1 acres of NNG at Lake Mathews, 193.8 acres of NNG have been used for mitigation, leaving 186.3 acres of NNG available for future mitigation needs.

Mulefat Scrub. There is a total of 1.0 acre of MFS in Operations areas. Mitigation is calculated as follows:

1) 1.0 acre of MFS will be mitigated with 1.0 acre of MFS on-site:

$$\text{MR} = \frac{1.89}{1.89} = 1.00$$

$$\text{MR x Impact Acres} = \text{Mitigation Acres Required} \\ 1.00 \times 1.0 = 1.0$$

Of the 27.0 acres of MFS at Lake Mathews, 1.0 acre has been used for mitigation, leaving 26.0 acres MFS available for future mitigation needs.

Southern Willow Scrub. There is a total of 0.5 acre of SWS in Operations areas. Mitigation is calculated as follows:

1) 0.5 acre of MFS will be mitigated with 0.5 acre of MFS on-site:

$$MR = \frac{1.98}{1.98} = 1.00$$

$$MR \times \text{Impact Acres} = \text{Mitigation Acres Required}$$

$$1.00 \times 0.5 = 0.5$$

Of the 20.0 acres of MFS at Lake Mathews, 0.5 acre has been used for mitigation, leaving 19.5 acres of MFS available for future mitigation needs.

Table D-5 Summary of Upland Mitigation Plan, Operations Area Basin

Habitat Type	Impacted Acres	Mitigation Location	"Exchange" Type	Acres
RSS pot. gnatcatcher	46.5	On-site	RSS pot. gnatcatcher	46.5
RSS gnatcatcher	256.7	On-site	RSSG	256.7
NNG	193.8	On-site	NNG	193.8
MFS	1.0	On-site	MFS	1.0
SWS	0.5	On-site	SWS	0.5
Totals	498.5			498.5

Remaining in Lake Mathews Mitigation Bank:

RSS (pot. gnatcatcher):	0
RSSG:	98.3
NNG:	186.3
JW:	8.6
SWS:	19.5
MFS:	26.0
SRF:	2.0
AG:	309.0

**Fish and Game Sections
2081 and 2835 Agreement
Among CDFG, Metropolitan,
and RCHCA**

VOLUME 3

PART C

FISH AND GAME CODE SECTIONS 2081 AND 2835
MEMORANDUM OF UNDERSTANDING
AMONG
THE CALIFORNIA DEPARTMENT OF FISH AND GAME,
THE METROPOLITAN WATER DISTRICT OF SOUTHERN
CALIFORNIA,
AND THE RIVERSIDE COUNTY HABITAT CONSERVATION AGENCY

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**Exhibit 1 - California Endangered Species Act and
Natural Communities Conservation Planning Act
Management Authorization**

VOLUME 3

PART C

FISH AND GAME CODE SECTIONS 2081 AND 2835
MEMORANDUM OF UNDERSTANDING
AMONG
THE CALIFORNIA DEPARTMENT OF FISH AND GAME,
THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,
AND THE RIVERSIDE COUNTY HABITAT CONSERVATION AGENCY

THIS FISH AND GAME CODE SECTIONS 2081 AND 2835 MEMORANDUM OF UNDERSTANDING ("MOU"), dated for reference only as of December 5, 1995, is made and entered into by and among the Department of Fish and Game of the State of California ("DEPARTMENT"), The Metropolitan Water District of Southern California ("METROPOLITAN"), and the Riverside County Habitat Conservation Agency, a public agency ("RCHCA"), and is based on the following representations and statements of purpose which the parties accept as true and correct:

A. RCHCA

The RCHCA is a Joint Powers Authority created pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California relating to the joint exercise of powers common to public agencies. The RCHCA was created by and among the County of Riverside and the cities of Riverside, Moreno Valley, Hemet, Murrieta, Perris, Lake Elsinore, Corona and Temecula to plan for, acquire, administer, operate and maintain land and facilities for ecosystem conservation and habitat reserves and to implement habitat conservation plans

for plants and animals which are either candidates for or listed as Threatened or Endangered pursuant to the terms of the federal Endangered Species Act, 16 U.S.C. 1531 et seq. ("FESA") or the California Endangered Species Act, California Fish and Game Code Section 2050 et seq. ("CESA") or both. RCHCA has prepared and is implementing the terms of the Short-Term Habitat Conservation Plan for the Stephens' Kangaroo Rat ("SKR"), and has been issued a Permit ("PRT 739678") from the Fish and Wildlife Service, Department of the Interior ("SERVICE") for the incidental take of the SKR pursuant to the provisions of Section 10(a) of FESA. It has also entered into a Management Agreement with the DEPARTMENT pursuant to the provisions of Section 2081 and CESA which also allows the take of SKR. RCHCA has prepared a Long-Term Habitat Conservation Plan for the SKR ("Long-Term SKR HCP"), and has applied for a long-term permit from the SERVICE and a Management Agreement from the DEPARTMENT to provide for the conservation of the SKR as well as the ability to take that species. In addition, it is participating in the preparation of a multiple species preservation strategy for the entirety of Western Riverside County, California and intends the Combined Reserve, as contemplated herein, to be part of an integrated multiple species reserve system, which it anticipates will be created as a result of the implementation of the multiple species preservation strategy.

B. METROPOLITAN

METROPOLITAN is a public agency created pursuant to the provisions of California Stats. 1969, Chapter 209, as amended, whose primary purpose is to provide municipal and domestic use water to Southern California communities within its service area. In order to fulfill that purpose, METROPOLITAN owns, operates and maintains a reservoir and distribution facilities in northwestern Riverside County commonly known as Lake Mathews.

C. PLAN AREA PROJECTS AND OPERATIONS AREA

METROPOLITAN and one of its constituent members, Western Municipal Water District, contemplate the construction of certain facilities over and across certain portions of its properties adjacent to Lake Mathews ("**Plan Area Projects**"). In addition, METROPOLITAN has set aside an area wherein it has and will continue to operate its facilities at Lake Mathews ("**Operations Area**"). Plan Area Projects and Operations Areas are set forth on Figure 1 of Volume 1 of the Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan For The Lake Mathews Properties of The Metropolitan Water District of Southern California ("**MSHCP/NCCP**"), as hereinafter identified. Both Plan Area Projects and projects and activities within the Operations Area could affect the species which inhabit those areas. Several of those species have been listed as Threatened or Endangered pursuant to FESA and/or CESA ("**Listed Species**"), and others of those species could be listed in the future (both Listed Species and other species

which could be listed in the future are referred to collectively in this document as "**Target Species**", and are identified more particularly on Table 18 of Volume 1 of the MSHCP/NCCP). METROPOLITAN is concerned that during the construction and operation stages of its Plan Area Projects and projects and activities within the Operations Area, it could affect one or more of the Target Species which could have the effect of substantially disrupting and delaying METROPOLITAN's ability to construct and operate its facilities and thus adversely affect its ability to perform its mission of providing water to Southern California and its residents. To that end, METROPOLITAN has participated with RCHCA, the County of Riverside and others in habitat and species conservation efforts throughout the western portions of Riverside County with the hope that sufficient habitat might be preserved to avoid additional listings. However, the range of each of many of those species extends beyond the borders of Riverside County, and, despite conservation efforts by RCHCA, METROPOLITAN, the County and others, one or more of the Target Species may be listed.

D. COOPERATIVE EFFORT TO CONCLUDE THE LONG-TERM SKR HCP AND TO ESTABLISH MSHCP/NCCP

1. METROPOLITAN has cooperated with RCHCA in the preparation and implementation of the Short-Term SKR HCP, and has indicated its willingness to cooperate in the implementation of the Long-Term SKR HCP. However, its Plan Area Projects and projects and activities within its Operations Area may affect other Target Species, including the

California Gnatcatcher. Therefore, it desires to pursue a course of action which will provide sufficient protection for not only the Listed Species, but also the other Target Species in order to qualify it to incidentally take both Listed and Target Species pursuant to various provisions of State and Federal laws, including but not limited to FESA and CESA.

2. In order to meet the objectives of both the RCHCA with respect to the SKR, and METROPOLITAN with respect to not only the SKR, but also those additional Listed and Target Species which may become listed and which could affect its Plan Area Projects and projects and activities within its Operations Area, RCHCA and METROPOLITAN with the cooperation of the SERVICE and the DEPARTMENT, have prepared the MSHCP/NCCP which, together with the Long-Term SKR HCP will ultimately result in the conservation, preservation, restoration and enhancement of over 12,000 acres of habitat which will be managed to meet the previously stated objectives of RCHCA and METROPOLITAN.

3. The MSHCP/NCCP consists of:

a. The planning document (Volumes 1 and 2), which inventories the flora and fauna within the Multiple Species Reserve, and sets forth a long-term strategy for the conservation, preservation, restoration, enhancement and management of the habitat and species within the Combined Reserve. It also fulfills the requirements of a Natural Community Conservation Plan ("NCCP") pursuant to the Natural

Community Conservation Planning Act ("**NCCP Act**", California Fish and Game Code Section 2800 et seq.).

b. The legal agreements (Volume 3) which consist of:

i. A Cooperative Management Agreement ("**CMA**") which sets forth a long-term plan for the cooperative management and funding of the Combined Reserve by the DEPARTMENT, the SERVICE, METROPOLITAN and the RCHCA.

ii. A Lake Mathews Mitigation Banking Agreement ("**Mitigation Banking Agreement**") which establishes a mitigation bank for the accumulation of mitigation credits resulting from the conveyance of conservation easements to the RCHCA. The mitigation bank may be utilized by METROPOLITAN as mitigation for its Plan Area Projects, projects and activities within the Operations Area and, upon approval by the SERVICE and the DEPARTMENT, for METROPOLITAN projects located outside the Plan Area ("**Outside Projects**"). The mitigation bank may also be utilized by RCHCA for use in its Long-Term SKR HCP and, in the event it establishes a regional multiple species habitat conservation plan or NCCP in the future, in connection with such multiple species habitat conservation plan or NCCP.

iii. A Memorandum of Understanding and Implementation Agreement with the SERVICE which acknowledges the obligations of each of the Parties under the MSHCP/NCCP as well as the right of METROPOLITAN and the RCHCA to take Listed and Target Species.

iv. This MOU.

4. The MSHCP/NCCP has been prepared as if all of the Target Species were listed and based upon the best scientific and commercial information available in order to:

a. Assist the RCHCA to fulfill the requirements it must meet with respect to obtaining a long-term permit to take SKR pursuant to the provisions of Section 10(a) of FESA and Section 2081 of CESA.

b. Fulfill the requirements necessary to qualify as a NCCP for the Multiple Species Reserve and to allow the take of Listed and other Target Species pursuant to the terms of the NCCP Act, as hereinafter defined.

c. Serve as a Biological Assessment of the Plan Area for each of Plan Area Projects and projects and activities within the Operations Area that may affect the Target Species to support a Section 7 Consultation for all Listed Species and a Section 7(a)(4) Conference for Target Species which are or may be proposed for listing.

d. Serve as a Habitat Conservation Plan for each of the Target Species which meets the requirements of Sections 10(a)(2)(A) and 10(a)(2)(B) of the Endangered Species Act.

e. Serve as the basis for the issuance to METROPOLITAN of an incidental take permit issued by the SERVICE pursuant to Section 10(a) of FESA and a management permit issued by the DEPARTMENT pursuant to CESA (2081 Permit), or other methods to allow incidental take of the Target Species.

5. The lands surrounding Lake Mathews owned by METROPOLITAN, together with adjacent lands owned or to be acquired by RCHCA, constitute one of the largest remaining contiguous habitats occupied by the SKR. The conservation, preservation, restoration, enhancement and management of those lands has been deemed essential for the long-term survival of the SKR by the RCHCA, and is an important element in the Long-Term SKR HCP. The publicly-owned lands included within the MSHCP/NCCP are set forth on Figure 4 of Volume 1 of the MSHCP/NCCP and are referred to collectively as the "Combined Reserve", and consist of the following:

a. The "Lake Mathews Multiple Species Reserve" or "Multiple Species Reserve" as shown on Figure 1 of Volume 1 of the MSHCP/NCCP, consisting of 5110.4 acres which is made up of two components:

i. "Existing Reserve Lands" consisting of 2565.5 acres owned by METROPOLITAN that are subject to the previous agreements as identified in Paragraph E of Article II of the CMA.

ii. "Mitigation Bank Lands" which consist of approximately 2544.9 acres which are owned by METROPOLITAN.

b. The following lands within the southern portion of the Combined Reserve:

i. 4598 acres owned by the RCHCA.

ii. 344 acres owned by the DEPARTMENT and designated the "Estelle Mountain Ecological Reserve" by the California Fish and Game Commission on November 4, 1994.

iii. 320 acres administered by the United States Department of the Interior (the north half of Section 8, T.5 S., R.5 W.).

E. CALIFORNIA NATURAL COMMUNITY CONSERVATION PLANNING PROCESS

1. The State of California has announced its intention to promote the proactive protection of wildlife species and their habitats by the adoption of the NCCP Act. Pursuant to the terms of that act, local, state and federal agencies are encouraged to prepare and implement NCCP to provide comprehensive management and conservation of multiple wildlife species and their habitats in one plan, rather than wait and later adopt many individual plans for individual species as those species become in danger of extinction. Pursuant to the terms of the NCCP Act, guidelines have been established for the development and implementation of NCCPs, one of which is that approved NCCPs shall be compatible with FESA. Furthermore, the NCCP Act provides that, after approval of a NCCP, the DEPARTMENT may authorize the incidental taking of any species identified in the NCCP for whose benefit habitat is conserved and managed.

2. METROPOLITAN enrolled its land around Lake Mathews into the NCCP process in August of 1992. Planning for this MSHCP/NCCP began in 1990.

3. The MSHCP/NCCP has been drafted in order to allow the DEPARTMENT to designate the MSHCP/NCCP as an approved NCCP plan and to enter into the MOU allowing the

incidental take of California Gnatcatchers and other Target Species by METROPOLITAN.

4. In addition to the MSHCP/NCCP which is the subject of this MOU, on or about September 30, 1994, the RCHCA, the SERVICE, the United States Bureau of Land Management and the DEPARTMENT entered into a Memorandum of Understanding wherein each of the parties agreed to cooperate and participate in the preparation of a habitat and ecosystem Multiple Species Habitat Conservation Plan for Western Riverside County, California which will meet the requirements of a NCCP, FESA and CESA.

F. LISTED AND TARGET SPECIES

Among other plant and animals species residing or located in the area of the Combined Reserve are those species which have been listed by the SERVICE and/or the DEPARTMENT as Threatened or Endangered, and those species which could reasonably be foreseen as possible candidates for listing by the SERVICE or DEPARTMENT as Threatened or Endangered, all as more specifically set forth in Table 18 of Volume 1 of the MSHCP/NCCP.

G. INCORPORATION OF MSHCP/NCCP AND CMA

The MSHCP/NCCP and each of its constituent parts are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this MOU and Volume 1 of the MSHCP/NCCP, the terms of this MOU shall control. In all other cases, the terms of this

MOU and the terms of the MSHCP/NCCP shall be interpreted to be supplementary to each other.

H. COOPERATIVE EFFORT

In order to conserve, protect, restore and enhance the Target Species and their habitat within the Combined Reserve, each of the Parties to this MOU as well as the CMA, the Memorandum of Understanding and Implementation Agreement, and the Mitigation Banking Agreement must perform certain specific tasks. The MSHCP/NCCP thus describes a cooperative federal, state and local program of conservation for the Listed and other Target Species.

I. UTILIZATION OF TERMS

Terms defined and utilized in Volume 1 of the MSHCP/NCCP shall have the same meaning when utilized in this MOU, except as specifically noted.

J. RELIANCE

1. In reliance upon the terms of this MOU, METROPOLITAN will sell conservation easements to the RCHCA which will enable the Multiple Species Reserve and the Combined Reserve to be managed for the benefit of the Listed and other Target Species. But for the sale of the conservation easements by METROPOLITAN and the purchase thereof by RCHCA, many millions of dollars would be required to purchase that land or comparable land to serve as a Multiple Species Reserve.

2. RCHCA, in reliance on the terms of this MOU and in consideration of the conveyance to it of the conservation

easements, will pay to METROPOLITAN the sum of \$5,000,000 (\$2,500,000 to be paid immediately, and \$2,500,000 to be paid within five (5) years from the date hereof), which sum will be set aside, managed and invested by METROPOLITAN as an endowment fund, the proceeds of which will be used solely for the management and preservation of the Combined Reserve, in perpetuity. METROPOLITAN shall not be responsible for any failure of RCHCA to make the second payment and, the validity of the authorization provided METROPOLITAN through this MOU, shall not be impaired. In addition, RCHCA has expended over ten million dollars purchasing land for the Lake Mathews-Estelle Mountain Core Reserve and intends to expend significant sums of money acquiring lands surrounding the Combined Reserve in order to expand the Combined Reserve and to provide additional protection for the SKR as well as the other Target Species.

3. The DEPARTMENT acknowledges and agrees that:

a. But for this MOU, the dedications of land and interests in land, and the expenditure of time and money by both the RCHCA and METROPOLITAN would not occur; and,

b. METROPOLITAN and RCHCA are relying upon each and every commitment, covenant and promise made by the DEPARTMENT herein, and that those commitments, covenants and promises are the only consideration for METROPOLITAN and the RCHCA to enter into this MOU; and,

c. The benefits accruing to the Listed and other Target Species and the habitat occupied by them as a

result of the MSHCP/NCCP are significant and result in the preservation of irreplaceable ecosystems which would likely otherwise be lost as a result of development within the near term.

WHEREFORE, the parties mutually agree as follows:

1. Acceptance of MSHCP/NCCP.

The DEPARTMENT accepts the MSHCP/NCCP as a Natural Community Conservation Plan complying with the requirements of the NCCP Act and authorizes the take by, or on behalf of METROPOLITAN, its assignees or agents, pursuant to Section 2835, of any of the Target Species specifically identified in the MSHCP/NCCP. The DEPARTMENT also accepts the appended MSHCP/NCCP as complying with the requirements, purposes and intent of CESA and authorizes the take, for management purposes, pursuant to Section 2081, of any of the Target Species specifically identified in the MSHCP/NCCP once the species becomes listed pursuant to CESA, and the operative effect of any permit for purposes of CESA is the date of listing. No further actions need be taken to comply with CESA except to the extent expressly required by the MSHCP/NCCP. These authorizations may also extend to species not specifically identified if a management plan is implemented which provides for the long-term viability of the species in a manner approved by the DEPARTMENT. With this acceptance, the DEPARTMENT may characterize the Coastal sage scrub habitat and other Reserve lands that are subject to the MSHCP/NCCP as being a planning subregion for a Natural Community

Conservation Plan for the region in which the Reserve is located but additional requirements shall not result due to such characterization.

2. DEPARTMENT Findings and Determinations.

The DEPARTMENT hereby determines and agrees that METROPOLITAN is authorized to take or permit the taking of the Target Species and the disturbance of their habitat pursuant to Volumes 1 and 2 of the MSHCP/NCCP and each of the Agreements in Volume 3 of the MSHCP/NCCP. The DEPARTMENT hereby determines and agrees that RCHCA is authorized to take or permit the taking of the Target Species and the disturbance of their habitat pursuant to Volumes 1 and 2 of the MSHCP/NCCP and each of the Agreements in Volume 3 of the MSHCP/NCCP after DEPARTMENT approval of a regional MSHCP/NCCP to be developed by RCHCA in the future. Failure of RCHCA to obtain DEPARTMENT approval shall not affect METROPOLITAN's rights. These authorizations shall apply to employees, agents and assignees of METROPOLITAN and RCHCA acting consistently with the MSHCP/NCCP.

3. Implementation of Plan.

METROPOLITAN and RCHCA shall fully perform their obligations set forth in the MSHCP/NCCP, and other appended Agreements which are incorporated herein by reference, including, but not limited to, the conveyance of conservation easements over METROPOLITAN lands to RCHCA as required by such agreements.

4. Opinions and Determinations.

Where the terms of this MOU provide for action to be based upon the opinion, judgment, approval, review, or determination of any party, those terms are not intended to be and shall never be construed as permitting the opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.

5. Litigation.

The parties shall cooperate in the defense of any litigation that challenges the validity of this MOU or any action taken by the parties pursuant to this MOU, to the extent permitted by law.

6. Content of MOU.

This MOU incorporates the full and complete understanding of the parties. Any oral or written understanding not incorporated in this MOU by amendment shall not be effective to modify the terms of this MOU or be utilized for the purpose of interpreting any provision herein.

7. Amendment.

This MOU may only be amended in writing by agreement of all of the parties.

8. Successors and Assigns.

This MOU and all of its provisions and exhibits shall apply to and bind the successors and assigns of the parties to this MOU.

9. Captions.

The captions on articles and paragraphs in this MOU are solely for the convenience of the parties, and no meaning shall be ascribed to them in interpreting this MOU.

10. Effective Date.

This MOU shall become effective upon execution by all parties.

11. Form.

This MOU may be executed in any number of counterparts, each of which shall be deemed an original.

**DEPARTMENT OF FISH AND GAME,
an agency of the State
of California**

By 
Director

Date 15 Nov. 1995

Approved as to form

By 
General Counsel

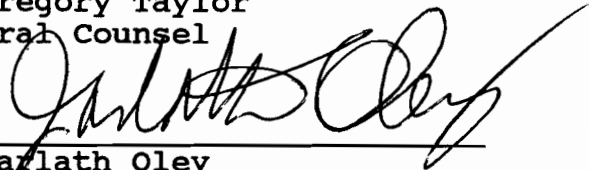
Date 15 Nov 1995

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By 
John R. Wodraska
General Manager

Date NOV 14 1995

Approved as to form

N. Gregory Taylor
General Counsel
By 
Jarlath Oley
Sr. Deputy General Counsel

Date 6 NOVEMBER 1995

**RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY, a public
agency**

Approved as to form

By 
General Counsel

By 
Chairman of Board of Directors
Executive Director

Date 10/27/95

Date _____

EXHIBIT 1

CALIFORNIA ENDANGERED SPECIES ACT AND NATURAL COMMUNITIES CONSERVATION PLANNING ACT MANAGEMENT AUTHORIZATION

FOR IMPLEMENTATION OF

Lake Mathews Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan

Metropolitan Water District of Southern California and Riverside County Habitat Conservation Agency

(Tracking No. 2081-1995-48-5)

SUMMARY

The Metropolitan Water District of Southern California (hereinafter "MWD") and Riverside County Habitat Conservation Agency (hereinafter "RCHCA") have requested an Authorization for Management ("Management Authorization" or "MA") of Endangered Species pursuant to California Fish and Game Code Sections 2081 and 2835 for the proposed "Lake Mathews Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan (hereinafter "Lake Mathews MSHCP/NCCP").

MWD Operations and Lake Mathews MSHCP/NCCP Plan Area Projects, and RCHCA reserve management activities, will permanently modify known or potential habitat for sixty-five (65) Species of Concern. Eight (8) of these Species of Concern are presently listed as Endangered or Threatened Species pursuant to Fish and Game Code 2070 and California Code of Regulations Title 14, Sections 670.2 and 670.5. The "take" of these "listed" species is prohibited unless authorized by the Department pursuant to Fish and Game Code Sections 2081.

Pursuant to Sections 2081 and 2835, the Department authorizes MWD to "take" the following enumerated species, subject to the terms and conditions of this MA:

Plants

1. Munz's onion (*Allium munzii*) (threatened)
2. Slender-horned spineflower (*Dodecahema leptoceras*) (endangered)
3. Braunton's milk vetch (*Astragalus brauntonii*)
4. Clay bindweed (*Convolvulus simulans*)
5. Clay phacelia (*Phacelia ciliata*)
6. Coulter's matilija poppy (*Romneya coulteri*)
7. Knotweed spineflower (*Chorizanthe polygonoides* var. *longispina*)
8. Large-leaved filaree (*Erodium macrophyllum*)
9. Little mouse tail (*Myosurus minimus* ssp. *apus*)
10. Many-stemmed dudleya (*Dudleya multicaulis*)
11. Palmer's grappling hook (*Harpagonella palmeri*)
12. Parry's spineflower (*Chorizanthe parryi* var. *parryi*)
13. Small-flowered microseris (*Microseris douglasii* var. *platycarpha*)
14. Smooth tarplant (*Hemizonia pungens* ssp. *laevis*)
15. Southern tarplant (*Hemizonia parryi* ssp. *australis*)

Invertebrates

16. Ruth's cuckoo bee (*Holocopasites ruthae*)
17. Quino checkerspot (*Euphydryas editha quino*)

Amphibians

18. Western spadefoot (*Scaphiopus hammondi*)

Reptiles

19. Coastal rosy boa (*Lichanura trivirgata rosafusca*)
20. Coastal western whiptail (*Cnemidophorus tigris multiscutatus*)
21. Northern red diamond rattlesnake (*Crotalus ruber ruber*)
22. Orange-throated whiptail (*Cnemidophorus hyperythrus beldingi*)
23. San Diego banded gecko (*Coleonyx variegatus abbotti*)
24. San Diego horned lizard (*Phrynosoma coronatum blainvillei*)
25. San Bernardino ringneck snake (*Diodaphus punctatus modestus*)

Birds

26. Bald eagle (*Haliaeetus leucocephalus*) (endangered)
27. Bank swallow (*Riparia riparia*) (threatened)

28. Least Bell's vireo (*Vireo bellii pusillus*) (endangered)
29. Southwestern willow flycatcher (*Empidonax trailli extimus*) (endangered)
30. Swainson's hawk (*Buteo swainsonii*) (threatened)
31. Bell's sage sparrow (*Amphispiza belli belli*)
32. Black-crowned night heron (*Nycticorax nycticorax*)
33. Blue grosbeak (*Gruiaca caerulea*)
34. Burrowing owl (*Speotyto cunicularia*)
35. California horned lark (*Eremophila alpestris actia*)
36. Coastal California gnatcatcher (*Polioptila californica californica*)
37. Cooper's hawk (*Accipiter cooperi*)
38. Downy woodpecker (*Picoides pubescens*)
39. Ferruginous hawk (*Buteo regalis*)
40. Golden eagle (*Aquila chrysaetos*)
41. Grasshopper sparrow (*Ammodramus savannarum*)
42. Great blue heron (*Ardea herodias*)
43. Loggerhead shrike (*Lanius ludovicianus*)
44. Long-eared owl (*Asio otus*)
45. Northern harrier (*Circus cyaneus*)
46. Red-shouldered hawk (*Buteo lineatus*)
47. Rough-legged hawk (*Buteo lagopus*)
48. San Diego cactus wren (*Campylorhynchus brunneicapillus couesi*)
49. Sharp-shinned hawk (*Accipiter striatus*)
50. Southern California rufous-crowned sparrow (*Aimophila ruficeps canescens*)
51. Tricolored blackbird (*Agelaius tricolor*)
52. Yellow-breasted chat (*Icteria virens*)
53. Yellow warbler (*Dendroica petechia brewsteri*)
54. White-tailed kite (*Elanus leucurus*)

Mammals

55. Stephens' kangaroo rat (*Dipodomys stephensi*) (threatened)
56. American badger (*Taxidea taxus*)
57. Pocketed free-tailed bat (*Nyctinomops femerosaccus*)
58. California mastiff bat (*Eumops perotis californicus*)
59. Mountain lion (*Felis concolor*)
60. Northwestern San Diego pocket mouse (*Chaetodipus fallax fallax*)
61. Pallid bat (*Antrozous pallidus*)
62. San Diego black-tailed jackrabbit (*Lepus californicus bennettii*)
63. San Diego desert woodrat (*Neotoma lepida intermedia*)
64. Western pipistrelle (*Pipistrellus hesperus*)
65. Yuma myotis (*Myotis yumanensis*)

The California Department of Fish and Game (hereinafter "Department") has found and determined that the Lake Mathews MSHCP/NCCP, as implemented by the Section 2081 and 2835 Memorandum of Understanding (CESA MOU) and this MA, meets the requirements for a Natural Community Conservation Plan (NCCP) for purposes of the NCCP Act, and specifically for purposes of California Fish and Game Code Sections 2081 and 2835. The "take" authorization provided by this MA extends to each of the enumerated species and shall extend to any such species listed pursuant to Fish and Game Code Sections 2070 or 2074.2 after the effective date of this MA.

The Department has determined that the Habitat Conservation and Impact Mitigation Program for the enumerated species will offset the impacts contemplated by the Lake Mathews MSHCP/NCCP and will result in preserving core areas for the species in order to achieve sustainable populations. The Department has determined further that the Lake Mathews MSHCP/NCCP will not result in jeopardy to the continued existence of the enumerated species and may, through the acquisition of habitat lands, protect the species from further degradation.

PROJECT DESCRIPTION

PROJECT LOCATION

The Lake Mathews MSHCP/NCCP includes 5,993.5 acres owned by MWD around, but not including, Lake Mathews in northwestern Riverside County.

PROJECT DESCRIPTION

Projects and activities covered by the Lake Mathews MSHCP/NCCP include:

1. Biological management of an over 12,000-acre multi-jurisdictional reserve that combines a 5,110.4-acre Multiple Species Reserve and lands in public ownership within the RCHCA's proposed Stephens' Kangaroo Rat Core Reserve Lands outside the Lake Mathews MSHCP/NCCP area;
2. Property management in the 5,993.5 acre MSHCP/NCCP area, including maintenance of roads and fences, construction of a Reserve Managers office, and implementation of a Fire Management Plan;
3. Activities at the lake Mathews facilities within an area encompassing 728.6 acres;
4. Water facility improvements and related projects encompassing 154.5 acres inside the Lake Mathews MSHCP/NCCP area (Plan Area Projects);

5. MWD's projects and/or activities outside the Lake Mathews MSHCP/NCCP area; and
6. Construction, operation, and maintenance of additional projects within a 5,110.4 acre Multiple Species Reserve.

HABITAT DESCRIPTION

Fourteen habitat types occur within the Lake Mathews MSHCP/NCCP area: non-native grassland (2,721.6 acres), Riversidian sage scrub (1,649.2 acres), mule fat scrub (48 acres), southern willow scrub (28.6 acres), Sycamore riparian woodland (1.9 acres), juniper woodland (82.5 acres), natural barren (0.9 acres), freshwater marsh (1.0 acre), saltbush stand (1.3 acres), ruderal (5.2 acres), agricultural (324.4 acres), exotic trees (11.6 acres), disturbed (234.2 acres), and open water (1.1 acres). Detailed habitat descriptions and results of a Habitat Quality Analyses are presented in the Lake Mathews MSHCP/NCCP.

PROJECT IMPACTS

Foreseeable impacts to habitats and species are described in the Lake Mathews MSHCP/NCCP. Six sources and types of impacts to the enumerated species and their habitats have been identified: (1) Biological management of the Combined Reserve, (2) Property Management, (3) Facility improvements and related projects in Operations and operation and maintenance activities at the Lake Mathews facility, (4) Plan Area Projects, (5) Outside Projects, and (6) Projects in the Multiple Species Reserve.

Habitat types in the Operations and Plan Area Project areas include the following: non-native grassland (235.4 acres), Riversidian sage scrub (344.1 acres), mule fat scrub (8.3 acres), southern willow scrub (9.4 acres), Sycamore riparian woodland (0.2 acres), juniper woodland (2.4 acres), freshwater marsh (0.2 acres), saltbush stand (1.2 acres), ruderal (9.7 acres), agricultural (18.5 acres), exotic trees (8.6 acres), and disturbed (244.0 acres).

SPECIES OF CONCERN

Based on biological surveys conducted in 1992 and 1993, 50 of the 65 Species of Concern are known to occur in the Lake Mathews MSHCP/NCCP area; the remaining species are closely associated with habitats in the Lake Mathews MSHCP/NCCP area and have been treated as potentially occurring. Regarding the eight (8) listed endangered or threatened species; the bald eagle, bank swallow, Swainson's hawk, and Stephens' kangaroo rat are known to occur in the Lake Mathews MSHCP/NCCP area and the Munz's onion, slender-horned spineflower, least Bell's vireo, and southwestern willow flycatcher potentially occur in the Lake Mathews MSHCP/NCCP area.

A summary of the life history information and site specific status for each of the 65 Species of Concern is provided in the Lake Mathews MSHCP/NCCP.

EFFECTS ON SPECIES OF CONCERN

The enumerated species will be subject to direct and indirect adverse impacts and take associated with projects and activities covered by the Lake Mathews MSHCP/NCCP. Impacts to each of the 65 species are described in the MSHCP/NCCP.

HABITAT MANAGEMENT LANDS

PRESERVATION OF LANDS

Under the Lake Mathews MSHCP/NCCP, provisions are made for the establishment of the 5,110.4-acre Multiple Species Reserve and the management of the more than 12,000-acre Combined Reserve.

The Cooperative Management Agreement among MWD, RCHCA, U. S. Fish and Wildlife Service, and the Department in Volume 3 of the Lake Mathews MSHCP/NCCP establishes the Combined Reserve. The Combined Reserve is composed of (1) the Multiple Species Reserve which consists of the Existing Reserve and the Mitigation Bank, (2) RCHCA ownership within its proposed Lake Mathews-Estelle Mountain Core Reserve, (3) the Estelle Mountain Ecological Reserve owned by the Department, and (4) approximately 320 acres administered by the U. S. Bureau of Land Management located within the RCHCA's proposed Core Reserve. The Multiple Species Reserve will be managed to benefit the 65 enumerated species. Biological management of the RCHCA's properties within the Combined Reserve will focus on management of the Stephens' kangaroo rat.

SPECIFIC CONDITIONS REQUIRED

CONSERVATION PROGRAM AND MITIGATION MEASURES

1. All "Habitat Conservation and Impact Mitigation Program Measures", as detailed in the Lake Mathews MSHCP/NCCP, shall be implemented by MWD and RCHCA, as specified in the corresponding CESA MOU between the Department, the Service, MWD, and the RCHCA.
2. The term of this MA shall commence on the date that the CESA MOU is executed by the last of the parties thereto and shall terminate 50 years from that date. This period is subject to earlier termination pursuant to provisions of the CESA MOU.

DISCLAIMER

3. Upon timely satisfaction of the conditions of this MA, MWD and RCHCA will have adequately mitigated impacts to endangered species and achieved compliance with the California Endangered Species Act with regard to the project. Nonetheless, MWD and RCHCA understand and recognize that this MA does not constitute or imply compliance with, or entitlement to proceed with the project, under laws and regulations beyond the authority and jurisdiction of the Department. MWD and RCHCA have independent responsibility for compliance with any and all applicable laws and regulations.
4. Following execution of the Lake Mathews MSHCP/NCCP and issuance by the Department of this MA, MWD's and RCHCA's decision whether or not to proceed with said project shall be voluntary, and subject to all other pertinent law and regulations.

DEPARTMENT FINDINGS

SPECIES OF CONCERN

The Department has found and determined that the Lake Mathews MSHCP/NCCP, as implemented by the CESA MOU and this MA, meet the requirements for an NCCP for purposes of the NCCP Act, and specifically for purposes of California Fish and Game Code Sections 2081 and 2835. In this regard, the Department has found and determined that if the terms and conditions of this MA are complied with, the taking of the enumerated species, including the modification of their habitat, as contemplated by the Lake Mathews MSHCP/NCCP, the CESA MOU, and this MA, will not result in jeopardy to their continued existence and may, through the Habitat Conservation and Impact Mitigation Program protect the species from further degradation. The Lake Mathews MSHCP/NCCP and the CESA MOU, to the extent practicable, minimize and mitigate the impacts of the taking of the enumerated species (including, without limitation, the modification of their habitat).

OTHER SPECIES

In the event that a species not enumerated in this MA is listed as endangered or threatened pursuant Fish and Game Code Section 2070, or is a candidate for such listing pursuant to Fish and Game Code Section 2074.2, the Department shall consider, and if appropriate, expeditiously act to negotiate and execute, an MOU with MWD and RCHCA providing for the management of the species in order that the Habitat Conservation and Impact Mitigation Program may proceed in accordance with CESA.

In determining whether any further mitigation measures are required to amend this MA to include an additional species, the Department shall: (1) take into consideration that MWD and

RCHCA have minimized and mitigated the impacts to the species enumerated in this MA within the Plan Area to the maximum extent practicable; and, (2) cooperate with MWD and RCHCA in good faith to minimize, consistent with CESA, any impediment to the Project's completion resulting from the listing of a species not enumerated in this MA.

CALIFORNIA DEPARTMENT
OF FISH AND GAME

BY: CF Raybrook

Paul [Signature]
Approved as to form

TITLE: INTERIM DIRECTOR

DATED: 15 Nov. 1995

Memorandum of Understanding and Implementation Agreement

VOLUME 3

PART D

**MEMORANDUM OF UNDERSTANDING
and
IMPLEMENTATION AGREEMENT**

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VOLUME 3

PART D

MEMORANDUM OF UNDERSTANDING
and
IMPLEMENTATION AGREEMENT

THIS MEMORANDUM OF UNDERSTANDING AND IMPLEMENTATION AGREEMENT ("MOU") is made and entered into this 5th day of December, 1995 by and between the Fish and Wildlife Service of United States Department of the Interior ("SERVICE"), the Riverside County Habitat Conservation Agency ("RCHCA"), and The Metropolitan Water District of Southern California ("METROPOLITAN").

I. RECITALS

A. RCHCA

The RCHCA is a Joint Powers Authority created pursuant to the provisions of Article 1, Chapter 5, Division 7, Title 1 of the Government Code of the State of California relating to the joint exercise of powers common to public agencies. The RCHCA was created by and among the County of Riverside and the cities of Riverside, Moreno Valley, Hemet, Murrieta, Perris, Lake Elsinore, Corona and Temecula to plan for, acquire, administer, operate and maintain land and facilities for ecosystem conservation and habitat reserves and to implement habitat conservation plans

for plants and animals which are either candidates for or listed as Threatened or Endangered pursuant to the terms of the federal Endangered Species Act, 16 U.S.C. 1531 et seq. ("**FESA**") or the California Endangered Species Act, California Fish and Game Code Section 2050 et seq. ("**CESA**") or both. RCHCA has prepared and is implementing the terms of the Short-Term Habitat Conservation Plan for the Stephens' Kangaroo Rat ("**SKR**"), and has been issued a Permit ("**PRT 739678**") for the incidental take of the SKR pursuant to the provisions of Section 10(a) of FESA. RCHCA has prepared a Long-Term Habitat Conservation Plan for the SKR ("**Long-Term SKR HCP**"), and has applied for a long term permit for the continued take of the SKR. In addition, it is participating in the preparation of a multiple species preservation strategy for the entirety of Western Riverside County, California and intends the Reserve, as contemplated herein, to be part of an integrated multiple species reserve system, which it anticipates will be created as a result of the implementation of the multiple species preservation strategy.

B. METROPOLITAN

METROPOLITAN is a public agency created pursuant to the provisions of California Stats. 1969, Chapter 209, as amended, whose primary purpose is to provide municipal and domestic use water to Southern California communities within its service area. In order to fulfill that purpose, METROPOLITAN owns, operates and maintains a reservoir and distribution facilities in northwestern Riverside County

commonly known as Lake Mathews. The area surrounding Lake Mathews and owned by METROPOLITAN is an area rich in biodiversity and one that the RCHCA has designated as a core reserve, the preservation of which is essential for the long-term survival and recovery of the SKR. In addition, the RCHCA believes that it is an area in which a multiple species reserve should be established for the preservation and enhancement of many additional plant and animal species indigenous to that area.

C. PLAN AREA PROJECTS AND OPERATIONS AREA

METROPOLITAN and one of its constituent members, Western Municipal Water District, contemplate the construction of certain facilities over and across certain portions of its properties adjacent to Lake Mathews ("**Plan Area Projects**"). In addition, METROPOLITAN has set aside an area wherein it has and will continue to operate its facilities at Lake Mathews ("**Operations Area**"). Plan Area Projects and Operations Areas are set forth on Figure 1 of Volume 1 of the Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan For The Lake Mathews Properties of The Metropolitan Water District of Southern California ("**MSHCP/NCCP**"), as hereinafter identified. Both Plan Area Projects and projects and activities within the Operations Area could affect the species which inhabit those areas. Several of those species have been listed as Threatened or Endangered pursuant to FESA and/or CESA ("**Listed Species**"), and others of those species could be listed in the future (both Listed Species and other species

which could be listed in the future are referred to collectively in this document as "**Target Species**", and are identified more particularly on Table 18 of Volume 1 of the MSHCP/NCCP). METROPOLITAN is concerned that during the construction and operation stages of its Plan Area Projects and projects and activities within the Operations Area, it could affect one or more of the Target Species which could have the effect of substantially disrupting and delaying METROPOLITAN's ability to construct and operate its facilities and thus adversely affect its ability to perform its mission of providing water to Southern California and its residents. To that end, METROPOLITAN has participated with RCHCA, the County of Riverside and others in habitat and species conservation efforts throughout the western portions of Riverside County with the hope that sufficient habitat might be preserved to avoid additional listings. However, the range of each of many of those species extends beyond the borders of Riverside County, and, despite conservation efforts by RCHCA, METROPOLITAN, the County and others, one or more of the Target Species may be listed.

D. COOPERATIVE EFFORT TO CONCLUDE THE LONG-TERM SKR HCP AND TO ESTABLISH MSHCP/NCCP

1. METROPOLITAN has cooperated with RCHCA in the preparation and implementation of the Short-Term SKR HCP, and has indicated its willingness to cooperate in the implementation of the Long-Term SKR HCP. However, its Plan Area Projects and projects and activities within its Operations Area may affect other Target Species, including the

California Gnatcatcher. Therefore, it desires to pursue a course of action which will provide sufficient protection for not only the Listed Species, but also the other Target Species in order to qualify it to incidentally take both Listed and Target Species pursuant to various provisions of State and Federal laws including, but not limited to, FESA and CESA.

2. In order to meet the objectives of both the RCHCA with respect to the SKR, and METROPOLITAN with respect to not only the SKR, but also those additional Listed and other Target Species which may become listed and which could affect its Plan Area Projects and projects and activities within its Operations Area, RCHCA and METROPOLITAN with the cooperation of the SERVICE and the California Department of Fish and Game ("**DEPARTMENT**"), have prepared the MSHCP/NCCP which, together with the Long-Term SKR HCP will ultimately result in the conservation, preservation, restoration and enhancement of over 12,000 acres of habitat which will be managed to meet the previously stated objectives of RCHCA and METROPOLITAN.

3. The lands surrounding Lake Mathews owned by METROPOLITAN, together with adjacent lands owned or to be acquired by RCHCA, constitute one of the largest remaining contiguous habitats occupied by the SKR. The conservation, preservation, restoration, enhancement and management of those lands has been deemed essential for the long-term survival of the SKR by the RCHCA, and is an important element in the Long-Term SKR HCP. The lands included within the MSHCP/NCCP are

set forth on Figure 4 of Volume 1 of the MSHCP/NCCP. All of the lands depicted on Figure 4 of Volume 1 are referred to collectively as the "Lake Mathews-Estelle Mountain Core Reserve" or "Combined Reserve", and consist of the following:

a. The "Lake Mathews Multiple Species Reserve" or "Multiple Species Reserve" as shown on Figure 1 of Volume 1 of the MSHCP/NCCP, consisting of 5110.4 acres which is made up of two components:

i. "Existing Reserve Lands" consisting of 2565.5 acres owned by METROPOLITAN that are subject to the "Agreement for the Establishment of an Ecological Reserve at Lake Mathews" and dated September 14, 1982.

ii. "Mitigation Bank Lands" which consist of approximately 2544.9 acres which are owned by METROPOLITAN.

b. The following lands within the southern portion of the Combined Reserve:

i. 4598 acres owned by the RCHCA.

ii. 344 acres owned by the DEPARTMENT and designated the "Estelle Mountain Ecological Reserve" by the California Fish and Game Commission on November 4, 1994.

iii. 320 acres administered by the United States Department of the Interior (the north half of Section 8, T.5 S., R.5 W.).

4. The MSHCP/NCCP consists of:

a. The planning document (Volumes 1 and 2), which inventories the flora and fauna within the Multiple Species Reserve, and sets forth a long-term strategy for the

conservation, preservation, restoration, enhancement and management of the habitat and species within the Combined Reserve. It also fulfills the requirements of a Natural Community Conservation Plan ("**NCCP**") pursuant to the Natural Community Conservation Planning Act ("**NCCP Act**", California Fish and Game Code Section 2800 et seq.).

b. The legal agreements (Volume 3) which consist of:

i. A Cooperative Management Agreement ("**CMA**") which sets forth a long-term plan for the cooperative management and funding of the Combined Reserve by the DEPARTMENT, the SERVICE, METROPOLITAN and the RCHCA.

ii. A Lake Mathews Mitigation Banking Agreement ("**Mitigation Banking Agreement**") which establishes a mitigation bank for the accumulation of mitigation credits resulting from the conveyance of conservation easements to the RCHCA. The mitigation bank may be utilized by METROPOLITAN as mitigation for its Plan Area Projects, projects and activities within the Operations Area and, upon approval by the SERVICE and the DEPARTMENT, for METROPOLITAN projects located outside the Plan Area ("**Outside Projects**"). The mitigation bank may also be utilized by RCHCA for use in its Long-Term SKR HCP and, in the event it establishes a regional multiple species habitat conservation plan or NCCP in the future, in connection with such multiple species habitat conservation plan or NCCP.

iii. A Memorandum of Understanding/Permit with the DEPARTMENT pursuant to the provisions of California

Fish and Game Code Sections 2081 and 2800 et seq. ("2081/2835 Memorandum of Understanding/Permit") which acknowledges that the MSHCP/NCCP complies with the provisions of the NCCP Act and qualifies as a NCCP, and allows the incidental take by METROPOLITAN of the Listed and other Target Species and the disturbance of Coastal sage scrub habitat.

iv. This MOU.

5. The MSHCP/NCCP has been prepared as if all of the Target Species were listed and based upon the best scientific and commercial information available in order to:

a. Assist the RCHCA to fulfill the requirements it must meet with respect to obtaining a long-term permit to take SKR pursuant to the provisions of Section 10(a) of FESA and Section 2081 of CESA.

b. Fulfill the requirements necessary to qualify as a NCCP for the Multiple Species Reserve and to allow the take of Listed and other Target Species.

c. Serve as a Biological Assessment of the Plan Area for each of Plan Area Projects and projects and activities within the Operations Area that may affect the Target Species to support a Section 7 Consultation for all Listed Species and a Section 7(a)(4) Conference for Target Species which are or may be proposed for listing.

d. Serve as a Habitat Conservation Plan for each of the Target Species which meets the requirements of Sections 10(a)(2)(A) and 10(a)(2)(B) of the Endangered Species Act.

e. Serve as the basis for the issuance to METROPOLITAN of an incidental take permit issued by the SERVICE pursuant to Section 10(a) of FESA and a management permit issued by the DEPARTMENT pursuant to CESA (2081 Memorandum of Understanding/Permit), or other methods to allow incidental take of the Target Species.

E. CALIFORNIA NATURAL COMMUNITY CONSERVATION PLANNING PROCESS

1. The State of California has announced its intention to promote the proactive protection of wildlife species and their habitats by the adoption of the NCCP Act. Pursuant to the terms of that NCCP Act, local, state and federal agencies are encouraged to prepare and implement NCCPs to provide comprehensive management and conservation of multiple wildlife species and their habitats in one plan, rather than wait and later adopt many individual plans for individual species as those species become in danger of extinction. Pursuant to the terms of the NCCP Act, guidelines have been established for the development and implementation of NCCPs, one of which is that approved NCCPs shall be compatible with FESA. Furthermore, the NCCP Act provides that, after approval of a NCCP, the DEPARTMENT may authorize the incidental taking of any species identified in the NCCP for whose benefit habitat is conserved and managed.

2. METROPOLITAN has enrolled its land around Lake Mathews into the NCCP process.

3. The DEPARTMENT has designated the MSHCP/NCCP as an approved NCCP plan and has entered into a Section 2081/2835

Memorandum of Understanding/Permit allowing the incidental take of the Target Species by METROPOLITAN.

4. In addition to the MSHCP/NCCP which is the subject of this MOU, on or about September 30, 1994, the RCHCA, the SERVICE, the BLM and the DEPARTMENT entered into a Memorandum of Understanding wherein each of the parties agreed to cooperate and participate in the preparation of a habitat and ecosystem Multiple Species Habitat Conservation Plan for Western Riverside County, California which will meet the requirements of an NCCP, FESA and CESA.

F. CONGRESSIONAL INTENT

In addition to the policy enacted by the State of California in the NCCP Act, each of the Parties hereto recognizes that the Congress of the United States has expressed its intention that the federal government work closely with local governmental entities and the private sector to proactively protect ecosystems as well as Listed and other Target Species over the long-term, as follows:

"Although the conservation plan is keyed to the permit provisions of the Act which only apply to listed species, the Committee intends that conservation plans may address both listed and unlisted species.

* * *

"The Committee intends that the Secretary may utilize this provision to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed

in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act.

* * *

"It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address the situation the Committee expects that any plan approved for a long-term permit will contain a procedure by which the Parties will deal with unforeseen circumstances." H.R. Rep. No. 97-835, 97th Cong., 2d Sess. 30-31 (1982).

G. NO SURPRISES POLICY

On August 11, 1994, the DEPARTMENT of the Interior issued its "No Surprises" policy which was adopted to assure certainty for landowners who participate in the habitat conservation planning process. The Policy provides assurances to non-federal landowners that no additional land restrictions or financial compensation will be required from participants for species adequately covered by a properly functioning conservation plan in light of unforeseen or extraordinary circumstances.

H. FISH AND WILDLIFE COORDINATION ACT

In addition, Congress has authorized the Secretary of Interior to provide assistance to and cooperate with state and local governments in efforts to protect all species of wildlife and their habitats pursuant to the terms of the Fish and Wildlife Coordination Act.

I. LISTED AND OTHER TARGET SPECIES

Among other plant and animals species residing or located in the area of the Combined Reserve are those species which have been listed by the SERVICE as Threatened or Endangered, and those species which could reasonably be foreseen as possible candidates for listing by the SERVICE or DEPARTMENT as Threatened or Endangered, all as more specifically set forth on Table 18 of Volume 1 of the MSHCP/NCCP.

J. INCORPORATION OF MSHCP/NCCP AND CMA

The MSHCP/NCCP and each of its constituent parts are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this MOU and the MSHCP/NCCP, the terms of the MOU shall control. In all other cases, the terms of this MOU and the terms of the MSHCP/NCCP shall be interpreted to be supplementary to each other.

K. LEGAL REQUIREMENTS

The MSHCP/NCCP provides measures that are intended to assure that any incidental take of the Target Species will be incidental; that the impacts likely to result from the take will, to the maximum extent practicable, be monitored, minimized and mitigated; that adequate funding for the MSHCP/NCCP will be provided; that the take will not appreciably reduce the likelihood of the survival and recovery of the Listed or other Target Species in the wild; and that it

complies with all other requirements of 50 CFR 17.22(b) and 50 CFR 17.32(b), as applicable.

L. COOPERATIVE EFFORT

In order that each of the legal requirements as set forth in Subparagraph "K" hereof are fulfilled, each of the Parties to this MOU as well as the CMA, the 2081/2835 Memorandum of Understanding/Permit and the Lake Mathews Mitigation Banking Agreement must perform certain specific tasks. The MSHCP/NCCP thus describes a cooperative federal, state and local program of conservation for the Target Species.

M. UTILIZATION OF TERMS

Terms defined and utilized in Volume 1 of the MSHCP/NCCP shall have the same meaning when utilized in this MOU, except as specifically noted.

N. RELIANCE

1. In reliance upon the terms of this MOU, METROPOLITAN will sell conservation easements to the RCHCA which will enable the Multiple Species Reserve and the Combined Reserve to be managed for the benefit of the Target Species. But for the sale of the conservation easements by METROPOLITAN and the purchase thereof by RCHCA, many millions of dollars would be required to purchase that land or comparable land to serve as a Multiple Species Reserve.

2. RCHCA, in reliance on the terms of this MOU and in consideration of the conveyance to it of the conservation easements, will pay to METROPOLITAN the sum of \$5,000,000

(\$2,500,000 to be paid immediately, and \$2,500,000 to be paid within five (5) years from the date hereof), which sum will be set aside, managed and invested by METROPOLITAN as an endowment fund, the proceeds of which will be used solely for the permanent management and preservation of the Combined Reserve. METROPOLITAN shall not be responsible for any failure of RCHCA to make the second payment and, the validity of the authorization provided METROPOLITAN through this MOU, shall not be impaired. In addition, RCHCA has expended over ten million dollars purchasing land for the Lake Mathews-Estelle Mountain Core Reserve and intends to expend significant sums of money acquiring lands surrounding the Combined Reserve in order to expand the Combined Reserve and to provide additional protection for the SKR as well as the other Target Species.

3. The SERVICE acknowledges and agrees that:

a. But for this MOU, the dedications of land and interests in land, and the expenditure of time and money by both the RCHCA and METROPOLITAN would not occur; and,

b. METROPOLITAN and RCHCA are relying upon each and every commitment, covenant and promise made by the SERVICE herein, and that those commitments, covenants and promises and the issuance of a Section 10(a) Incidental Take Permit authorizing the take of the Target Species are the only consideration for METROPOLITAN and the RCHCA to enter into this MOU; and,

c. The benefits accruing to the Target Species and the habitat occupied by them as a result of the MSHCP/NCCP are significant and result in the preservation of irreplaceable ecosystems which would likely otherwise be lost as a result of development within the near term.

II. PURPOSES

The purposes of this Memorandum of Understanding are:

A. To provide for the implementation of each of the provisions of the MSHCP/NCCP in order to protect the Listed as well as the other Target Species and their habitat regardless of whether any of the latter are ever listed as Threatened or Endangered; and,

B. To bind each of the Parties to fulfill and faithfully perform the obligations, responsibilities and tasks assigned to it pursuant to the terms of the MSHCP/NCCP and such Section 10(a) Permit or other authorizations to take which may be issued by the SERVICE; and,

C. To provide remedies and recourse should any party fail or refuse to perform its obligations, responsibilities and tasks as set forth in the MSHCP/NCCP, the Section 10(a) Permit, other authorizations to take which may be issued by the SERVICE, or this MOU; and,

D. To provide assurances to METROPOLITAN that it will be authorized to take any of the Target Species, utilizing one or more of the following means:

1. Issuance of a Section 10(a) Permit authorizing the incidental take of all listed species and the future incidental take of each Target Species. The Section 10(a) Permit shall become effective immediately as to all Listed Species and automatically as to each Target Species concurrently with the listing of such Target Species as Threatened or Endangered under FESA; and/or,

2. Based upon the continuing participation and oversight of the SERVICE in the management of the Combined Reserve, the SERVICE will conduct an internal formal Section 7 Conference on any Plan Area Project, activity within the Operations Area or Outside Project which is likely to affect any Target Species which is proposed for listing. Reasonable and prudent alternatives and reasonable and prudent measures shall be consistent with the provisions of the MSHCP/NCCP.

3. Any formal Section 7 Conference Opinion ("**Formal Conference Opinion**"), and any incidental take statement contained therein, issued in connection with a Section 7 Conference with respect to any proposed species which is also a Target Species will be expeditiously adopted by the SERVICE, subject to requirements of 50 CFR 402.10(d) or other applicable provisions of law.

E. To provide the basis for the SERVICE to make the determination required by the Section 4(d) rule issued in connection with the listing of the California Gnatcatcher as threatened as to whether or not the Plan meets the issuance

criteria of an incidental take permit pursuant to 50 CFR 17.32(b)(2).

III. TERM

A. STATED TERM

This MOU shall become effective on the date hereof and shall remain in full force and effect for a period of fifty (50) years ("**Stated Term**").

B. PERMANENCE OF MULTIPLE SPECIES RESERVE

Notwithstanding the Stated Term of this MOU or any extension thereof, the Parties agree and recognize that in regard to the Listed Species and, once any additional Target Species has been listed, and for either of which an incidental take statement pursuant to Section 7 of FESA or Section 10(a) Permit has been issued by the SERVICE as herein provided, has been incidentally taken and its habitat modified, the take and habitat modification will be permanent. It is therefore the intention of the Parties that in the event that incidental take and habitat modification of a Listed Species occurs or any of the Target Species is listed and an incidental take statement or Section 10(a) Permit has been issued by the SERVICE as herein contemplated, the provisions of the MSHCP/NCCP regarding the establishment and maintenance of the Multiple Species Reserve shall likewise, to the extent permitted by law and except as otherwise provided herein, be permanent and extend beyond the Stated Term of this MOU or any

extension thereof. Unless terminated pursuant to other provisions of this MOU, it is the Parties' intent that the Multiple Species Reserve and the endowment for management and operations will be permanent and extend beyond the stated term of this MOU or any extension hereof, even if no additional listings occur.

IV. OBLIGATIONS OF THE PARTIES

A. MINIMIZATION AND MONITORING OF THE IMPACTS OF INCIDENTAL TAKE WITHIN THE NCCP AREA

In order to minimize and monitor the impacts of incidental take, RCHCA, METROPOLITAN and the SERVICE agree that they shall each undertake and fulfill the tasks, responsibilities and obligations assigned to each of them as more particularly set forth in the MSHCP/NCCP.

B. MITIGATION OF THE IMPACTS OF INCIDENTAL TAKE: THE ESTABLISHMENT, MAINTENANCE AND MONITORING OF THE MULTIPLE SPECIES RESERVE

1. In order to mitigate the impacts of incidental take, the RCHCA, METROPOLITAN and the SERVICE agree that they shall each undertake and fulfill the tasks, responsibilities and obligations assigned to each of them as more particularly set forth in the MSHCP/NCCP.

2. In addition to the tasks, responsibilities and obligations assigned to it in the MSHCP/NCCP, the SERVICE agrees that it:

a. Assistance to Multiple Species Reserve Management Committee. Shall cooperate with and provide

technical assistance to the Combined Reserve Management Committee.

b. Evaluation of Annual Work Plan. Shall evaluate and comment upon the Annual Work Plan submitted by the Reserve Manager to assure that the terms of the MSHCP/NCCP, and if issued, any Section 10(a) Permit are being fulfilled.

C. FUNDING OF THE MSHCP/NCCP

1. RCHCA and METROPOLITAN. RCHCA and METROPOLITAN shall each provide the funds and in kind services as more particularly set forth in the MSHCP/NCCP. In addition, the RCHCA agrees that it shall seek additional funding and conveyances of land or interests in land for the expansion of the Combined Reserve from sources such as adjacent land owners, the Land and Water Conservation Fund, land trades with the Bureau of Land Management, proceeds of any bond measure for the conservation of wildlife habitat and the like.

2. The SERVICE. The SERVICE agrees that it shall include in its annual budget request adequate funding to allow it to fully perform the obligations and tasks assigned to it pursuant to the terms hereof including, but not limited to, the review of the Annual Work Plan as well as to cooperate with and provide technical assistance to the Committee. It shall also provide assistance to METROPOLITAN and RCHCA in applying for funds from federal sources to expand or operate the Combined Reserve.

V. FORMAL SECTION 7 OPINIONS

A. ISSUANCE AND ADOPTION:

Contemporaneously herewith the SERVICE has issued a formal Section 7 Opinion regarding the issuance of a Section 10(a) Permit authorizing the take of the Target Species. In addition, it agrees that, if for any reason whatsoever the Section 10(a) Permit is not effective to authorize the incidental take of any Target Species, it shall:

1. Undertake formal Section 7 Conferences regarding the Plan Area Projects, projects and activities within the Operations Area and Outside Projects that may affect any Target Species which is proposed for listing within 3 months after any such Target Species has been proposed;

2. Undertake formal Section 7 Consultations regarding Plan Area Projects, projects and activities within the Operations Area and Outside Projects that affect any Target Species which is listed and for which a formal Section 7 Conference has not been completed;

3. All Formal Conference and Consultation Opinions shall, to the extent permitted by law, contain incidental take statements and reasonable and prudent mitigation measures consistent with the terms of this MOU and the MSHCP/NCCP;

4. In the event any of the Target Species for which a Formal Conference Opinion has been completed is thereafter listed as Threatened or Endangered, the Federal Action Agency shall immediately request that the SERVICE adopt

the Formal Conference Opinion, including any incidental take statement, pursuant to the provisions of 50 CFR 402.10(d) or other applicable provisions of law. In the event that the Federal Action Agency has not requested the SERVICE to do so within 48 hours after any Target Species for which a Formal Conference Opinion has been completed, is listed, presentation of a copy of the Formal Conference Opinion to the SERVICE by METROPOLITAN or the RCHCA shall serve as such request; and

5. Upon receipt of a request that it adopt a Formal Conference Opinion rendered with respect to any Target Species, the SERVICE shall adopt the Formal Conference Opinion, including any Incidental Take Statement, subject to the requirements of 50 CFR 402.10(d) or other applicable provisions of law.

VI. SECTION 10(a) PERMITS AND SECTION 4(d) RULE

A. FINDINGS

After a thorough review of the MSHCP/NCCP, the SERVICE finds, based upon the best scientific and commercial data currently available, as to the California Gnatcatcher and the other Target Species, and subject to Unforeseen Circumstances, that:

1. Incidental Take.

Any taking in connection with the Plan Area Projects and projects and activities within the Operations

Area will be incidental to the carrying out of otherwise lawful activities;

2. Minimize and Mitigate.

The MSHCP/NCCP will assure that, to the maximum extent practicable, the impacts of such incidental take will be minimized and mitigated;

3. Adequate Funding.

The funding sources identified and provided for in the MSHCP/NCCP will ensure that adequate funding for the MSHCP/NCCP will be provided;

4. No Likely Jeopardy.

Any permitted taking of the California gnatcatcher and any Target Species in connection with the Plan Area Projects and projects and activities within the Operations Area will not appreciably reduce the likelihood of the survival and recovery of the California Gnatcatcher or any of the other Target Species in the wild; and,

5. Other Measures.

The measures set forth in the MSHCP/NCCP and required by the SERVICE as being necessary or appropriate for the purposes of the MSHCP/NCCP will be fulfilled.

B. TAKE OF CALIFORNIA GNATCATCHERS

Incidental take of the California Gnatcatcher, as set forth in the MSHCP/NCCP, shall not be considered a violation of FESA as authorized by the Section 4(d) rule issued in connection with the listing of the California Gnatcatcher.

C. ISSUANCE OF SECTION 10(a) PERMIT

Concurrent with the execution of this Agreement, the SERVICE has issued a Section 10(a) Permit to METROPOLITAN authorizing the take of each of the Target Species, subject to and in accordance with the provisions of the MSHCP/NCCP and this MOU. The Section 10(a) Permit shall become effective immediately as to all Listed Species and automatically as to each other Target Species concurrent with the listing of such species as Threatened or Endangered under FESA.

D. UNFORESEEN CIRCUMSTANCES

In the event the SERVICE finds that Unforeseen Circumstances have occurred, and consideration of such Unforeseen Circumstances is then legally required, the MSHCP/NCCP may be amended to deal with the Unforeseen Circumstances; provided, however, that in such event no additional land restrictions or financial compensation shall be required from METROPOLITAN, the RCHCA, or their constituent members.

E. ISSUANCE AND MONITORING

After issuance of any Section 10(a) Permit or Section 7 biological opinion issued pursuant to the terms hereof, the SERVICE shall monitor the implementation thereof, including each of the terms of the MSHCP/NCCP including, but not limited to, the acquisition, expansion, management, operation, maintenance and monitoring of the Combined Reserve in order to assure compliance with the Section 10(a) Permit or biological opinion and the MSHCP/NCCP. In addition, the

SERVICE shall, to the maximum extent possible ensure the availability of its staff to cooperate with and provide technical and research assistance to the Management Committee as well as to attend informal meetings with the other Parties to this MOU.

VII. REMEDIES AND ENFORCEMENT

A. IN GENERAL

Each of the Parties hereto shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of the MSHCP/NCCP and the Section 10(a) Permit and to seek remedies for any breach hereof, consistent with and subject to the following:

1. No Monetary Damages.

No party shall be liable in damages to any party or other person for any breach of the MSHCP/NCCP, any performance or failure to perform a mandatory or discretionary obligation imposed by the MSHCP/NCCP or any other cause of action arising from this MOU. Notwithstanding the foregoing:

a. Retain Liability. All Parties shall retain whatever liability they would possess for their present and future acts or failure to act without the existence of the MSHCP/NCCP or this MOU.

b. Land Owner Liability. All Parties shall retain whatever liability they possess as owners of interests in land.

2. Injunctive and Temporary Relief.

The Parties acknowledge that each of the Target Species is unique and that its loss as a species would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate in certain instances involving a breach of the MSHCP/NCCP, this MOU, any term of the Section 10(a) Permit, or a provision of a Section 7 Biological Opinion.

B. REGARDING THE SECTION 10(a) PERMIT

1. Authority of Permittee.

A permittee shall have the right to revoke, terminate or suspend the right of any landowner to enjoy or have the benefit, right or privileges under the Permit in the event such landowner violates any significant provision of the Permit. In the event any Permittee shall terminate or suspend any such benefit, right, or privilege, it shall promptly notify the SERVICE in writing of such termination or suspension and shall set forth in writing the basis for such termination or suspension.

2. Severability.

A violation of a Section 10(a) Permit by a landowner or by any Permittee shall not adversely affect or be attributed to nor shall it result in a loss or diminution of

any right, privilege or benefit hereunder of any other Permittee or landowner.

3. Suspension and Revocation or Termination.

In the event any Section 10(a) Permit is issued, suspension or revocation thereof shall be governed by 50 CFR 13.27-13.29 or other applicable provisions of law.

C. LIMITATIONS

1. Limitations on Further Mitigation.

It is acknowledged that the purpose of this MOU is to set forth the obligations and rights of the Parties hereto with respect to the MSHCP/NCCP and to provide for the conservation of the Listed and other Target Species and the mitigation and compensatory measures required in connection with incidental taking of the Listed and other Target Species in the course of otherwise lawful activities. Accordingly, except as otherwise required by law, by the terms of the MSHCP/NCCP or this MOU, no further mitigation or compensation for the conservation of any of the Target Species will be required by any party hereto.

2. Other Provisions.

Except as otherwise specifically provided in the MSHCP/NCCP, or any Section 10(a) Permit, nothing herein contained shall be deemed to limit the power of any person, firm, or public or private entity to use their lands. Furthermore, nothing herein contained is intended to limit the authority or responsibility of the United States government to

invoke the penalties or otherwise fulfill its responsibilities under the FESA.

VIII. MISCELLANEOUS PROVISIONS

A. AMENDMENTS

Except as otherwise set forth herein, this MOU may be amended only with the written consent of each of the Parties hereto. The Parties understand and agree that this MOU may be amended in the future in order to accommodate Unforeseen Circumstances or the expansion of the Multiple Species Reserve and/or the remainder of the Combined Reserve as well as the area covered by the MSHCP/NCCP as part of the overall western Riverside County multiple species strategy.

B. NO PARTNERSHIP

Except as otherwise expressly set forth herein, the MSHCP/NCCP shall not make nor be deemed to make any party to this MOU the agent for or the partner of any other party.

C. SUCCESSORS AND ASSIGNS

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

D. NOTICE

Any notice permitted or required by this MOU 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 which any Party may from time to time notify each of the other Parties, in writing:

Riverside County Habitat Conservation Agency
4080 Lemon Street, 12th Floor
Riverside, CA 92501
Attention: Executive Director

The Metropolitan Water District
of Southern California
P.O. Box 54153
Los Angeles, CA 90054
Attention: General Manager

United States Fish and Wildlife Service
500 NE Multnomah, Suite 607
Portland, OR 97232
Attention: Regional Director

United States Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, CA 92008
Attention: Field Supervisor

E. ENTIRE AGREEMENT

This MOU supersedes any and all other agreements, either oral or in writing between the Parties hereto with respect to the subject matter hereof and contain 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 party which are not embodied therein.

F. ATTORNEYS FEES

If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this MOU, all Parties to the litigation shall

bear all their own attorneys fees and costs. Attorneys fees and costs' recoverable against the United States, however, shall be governed by applicable Federal law.

G. ELECTED OFFICIALS NOT TO BENEFIT

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

H. DUPLICATE ORIGINALS

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

I. THIRD PARTY BENEFICIARIES

Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 USC 1540(g), this agreement shall not create the public or any member thereof as a third party beneficiary hereof, nor shall it authorize anyone not a party to this MOU to maintain a suit for personal injuries or property damages pursuant to the provisions of this MOU.

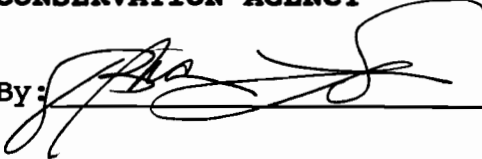
J. AVAILABILITY OF APPROPRIATED FUNDS

Implementation of this MOU by the SERVICE shall be subject to the availability of appropriated funds.

THIS MEMORANDUM OF UNDERSTANDING HAS BEEN EXECUTED ON THE DAY SET BY EACH SIGNATURE ATTACHED HERETO AND SHALL BECOME EFFECTIVE ON THE DAY AND YEAR FIRST ABOVE WRITTEN.

DATE: _____

**RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY**

By:  _____

NOV 14 1995

DATE: _____

**THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA**

By:  _____

APPROVED AS TO FORM
BY N. GREGORY TAYLOR
GENERAL COUNSEL
BY JACQUETH OLEY.

DATE: 12/5/95

U.S. FISH AND WILDLIFE SERVICE

By:  _____