

**AGENDA FOR MEETING OF BOARD OF DIRECTORS  
OF  
SAN BERNARDINO VALLEY CONSERVATION TRUST,  
a California Nonprofit Public Benefit Corporation**

**Monday, April 20, 2020 – 10:00 A.M.**

In accordance with [Governor Newsom's Executive Order N-25-20 and N-29-20](#), this meeting is being conducted via teleconference/Zoom. Anyone wishing to join the meeting can join via Zoom: **Call in (669) 900-6833, Meeting ID: 990-1169-7560**

To join the Zoom Meeting online: <https://zoom.us/j/99011697560>

Note: Copies of staff reports and other documents relating to the items on this agenda are on file at the San Bernardino Valley Water Conservation District office and are available for public review during regular District business hours. New information relating to agenda topics listed, received, or generated by the District after the posting of this agenda, but before the meeting, will be made available upon request. The San Bernardino Valley Conservation Trust intends to follow California Open Meeting laws and the Americans with Disabilities Act (ADA) in all respects. If you need special assistance with respect to the agenda or other written materials forwarded to the members of the Board for consideration at the Board meeting, or if as an attendee or a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact Athena Monge at (909) 793-2503 at least 48 hours prior to the meeting to inform her of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

**CALL TO ORDER**

**ROLL CALL**

**1. PUBLIC PARTICIPATION**

*Members of the public may address the Board of Directors on any item that is within the jurisdiction of the Board; however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) Section 54954.2 of the Government Code.*

**2. APPROVAL OF MINUTES FROM MARCH 02, 2020**

***Presenter:*** Daniel Cozad

***Recommendation:*** Review and approve minutes from March 02, 2020, as presented.

**3. FINANCIAL STATUS UPDATE**

***Presenter:*** Daniel Cozad

***Recommendation:*** Review and approve quarterly financial report

**4. SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY'S COMMUNITY MITIGATION AGREEMENT DOCUMENTS AND SERVICES APPROVAL**

***Presenter:*** Betsy Miller

***Recommendation:*** Review and approve the San Bernardino Transportation Authority's Community Endowment Agreement, Conservation Easement and Services proposal with changes acceptable to Executive Director and Counsel. .

5. WASH PLAN PROGRESS UPDATE

***Presenter:*** Betsy Miller

***Recommendation:*** Receive update on Wash Plan

ADJOURN MEETING

The next regular scheduled Board of Directors Meeting will be on \_\_\_\_\_, 2020 at \_\_\_\_\_, at 1630 W. Redlands Blvd., Redlands, CA.

**MINUTES FOR MEETING OF BOARD OF DIRECTORS OF  
SAN BERNARDINO VALLEY CONSERVATION TRUST,**  
a California Nonprofit Public Benefit Corporation  
**Monday, March 20, 2020 – 10:00 a.m.**

CALL TO ORDER – 10:00 a.m.

ROLL CALL

David E. Raley, SBV Water Conservation District (District)  
Paul Williams, IE Resource Conservation District  
John Longville, SBV Water Conservation District (Absent)  
Gil Navarro, SBV Municipal Water District  
Daniel Cozad, SBV Water Conservation District  
Betsy Miller, SBV Water Conservation District (Absent)  
Angie Quiroga, SBV Water Conservation District  
David Cosgrove, Rutan & Tucker, LLP

1. PUBLIC PARTICIPATION -None
2. APPROVAL OF MINUTES FROM OCTOBER 10, 2019

**It was moved by Director Navarro and seconded by Vice President Williams to approve the meeting minutes from October 10, 2019, as presented. The motion carried 3-0.**

**Ayes: Raley, Williams, Navarro**

**Noes:**

**Absent: Longville**

**Abstain:**

3. FINANCIAL STATUS UPDATE

Mr. Cozad directed the Board to package page 7. He reviewed each section of the financial report. He stated Robertson's and Cemex are expected to pay their portion of the endowment when the Wash Plan Incidental Take Permit (ITP) is issued. He reminded the Board of the Trust's liability related to the loan from the District to complete the Wash Plan processing. Certificates of Inclusion costs are include this liability. The District can request payment at any time. Discussion ensued.

**It was moved by Vice President Williams and seconded by Director Navarro to approve the Financial Status Update as presented. The motion carried 3-0 with all Directors present voting in the affirmative.**

**Ayes: Raley, Williams, Navarro**

**Noes:**

**Absent: Longville**

**Abstain:**

**4. LEGAL COUNSEL FEE INCREASE FOR DEVELOPERS**

Mr. Cozad stated he and Mr. Cosgrove have worked with several developers who wish to obtain mitigation from the Trust for their projects noted on package page 9. They determined this reimbursement should be charged Mr. Cosgrove's commercial rate and that it is inappropriate to use the preferred rate that is provided to the District. Mr. Cosgrove sent a letter proposing the standard commercial rate of \$500/hour to be charged for the work the Trust does for others. These fees will be reimbursable to the District under the Deposit Agreements with the developers. The legal fees are strictly pass-through payments billed against their deposits. If there is inadequate remaining deposit to continue work, additional deposit funds are requested. Director Navarro sought a budgeted line item to keep track of these reimbursed fees. Mr. Cozad indicated staff planned to include these items in the FY 20-21 budget when more steady work likely occurs. President Raley agreed he would like to see a report of deposits and expenses. Mr. Cozad noted these deposits would be itemized on future community mitigation request spreadsheets. The Board concurred.

**It was moved by Director Navarro and seconded by Vice President Williams to approve the Legal Counsel Fee Increase for Developers as presented. The motion carried 3-0 with all Directors present voting in the affirmative.**

**Ayes: Raley, Williams, Navarro**

**Noes:**

**Absent: Longville**

**Abstain:**

**5. WASH PLAN PROGRESS UPDATE**

Mr. Cozad reported for Ms. Miller in her absence. Staff is currently working through 167 public comments on the EIR/EIS. Significant public comments were received from US EPA, Center for Biological Diversity, FAA, and City of Redlands related to the Redlands airport. A plan for responses has been discussed with the City of Redlands. Water supply, water quality, air quality, children's health, and biology comments from EPA have been addressed. District counsel is working through the legal aspects of the responses. An additional mitigation measure for air quality is likely at full mining production. It will take a couple of weeks for the USFWS solicitor to review responses to these comments. During this time, changes to the final EIR will be made and reviewed. A briefing will likely occur in April with the Secretary of the Department of the Interior for approval and publishing in the Federal Register. Draft documents (Biological Opinion (BO) and Record of Decision (ROD)) for USFWS will be prepared concurrently. We are moving forward with a multi-party 2081 permit with CDFW to permit Wash Plan Covered Activities. The application and permit will look much like the Wash Plan permitting but in a State version. Additionally, if there is ever a Natural Community Conservation Plan (NCCP), this permit could be rolled into the effort for a broad regional plan. Staff is hoping the 2081 permit will be received a few months after the HCP is approved. Mitigation ratios and quality were developed to meet the State of California's fully mitigate standard. President Raley inquired as to when the Trust will have

to start paying for mitigation. Mr. Cozad stated if the ROD and ITP are issued in July that will begin implementation. We will likely begin paying for mitigation in July. The percentage of income earned at that point from our endowment will provide the Management Preserve Committee the amount available to expend in the budget which will run in our next fiscal year. Director Navarro thanked District staff for the field tour he attended. He stated it really gave him a better understanding of what the challenges and objectives that the District are implementing to ensure there is water. This item was received and filed.

## 6. COMMUNITY MITIGATION

Mr. Cozad directed the Board to package page 9. He reviewed the deposit agreements the Trust has currently for Blossom Trails and Woodbridge Residential projects. Blossom Trails seems to be moving forward. The Woodbridge project has not renewed their map with the City of Highland. Their site appears to have high quality habitat which is costlier to mitigate. They have indicated that they want to maintain their deposit agreement at this time. The Trust will likely provide three or so acres of mitigation through the District to the cities of Highland and Redlands for the Orange Street Bike Trail. They are going through WSPA and their impacts are greater than they expected in the Wash Plan, so there is a residual need for mitigation.

The most active project is SBCTA for the 210 Freeway widening. CDFW is requiring additional mitigation and approximately \$400,000 for a much more detailed translocation plan for San Bernardino Kangaroo rats as well as tagging and monitoring their movement. SBCTA has asked the Trust to be the consultant to complete this work. A proposal has been put together which includes an estimate from IERCD and field biologist Mike Romich as well as estimated Trust overhead and staff time costs that will be billed as a reimbursable project. It would occur over about an eighteen month timeframe. The Trust would be the turnkey provider of the mitigation SBCTA needs, the improvement to the mitigation land and the translocation planning and implementation. Mr. Cozad clarified that these proposals would be issued for the Trust and if there were agreements those would be presented to the Board at their next meeting or a special meeting would be called.

Mr. Cozad and Ms. Miller are firmly in support of taking this project on to learn more about moving SBKR, keeping them alive, and to managing them for future projects more efficiently. They feel it is in the long-term benefit of the Trust. Mr. Cozad continued on with the list of mitigation requests. He stated the remaining list of projects is relatively dormant. A meeting is scheduled with Larry Mainez with the City of Highland to discuss what TREH Partners plan to do with the portion of land they have split off from the original project site. The River HCP is our largest agreement, and SBVMWD has paid half of its obligation to the District. Funds will come to the Trust for their conservation easement and endowment once SBVMWD receives their ITP. This spreadsheet helps to keep track of the mitigation lands we have available, and ensure we are not obligating lands we don't have. Mr. Cozad reviewed the map on package page 10. Discussion ensued. This item was received and filed.

## 7. ADJOURN MEETING – 10:44 a.m.

**Action:** Motion was made by Director Navarro and seconded by Vice President Williams to adjourn the meeting. The motion carried 3-0 with all Directors present voting in the affirmative.

Ayes: Raley, Williams, Navarro

Noes:

Absent: Longville

Abstain:

---

Daniel B. Cozad  
Secretary/CFO

# San Bernardino Valley Conservation Trust

## Financial Status as of March 31, 2020

### Wash Plan MOU-Exhibit D (Approved July 22, 2016) Expected Income

Covered Party (Participant)	Total			Paid
	Estimated Land and Species Total	Issuance Cost /Land Buy-In	Total	
San Bernardino Valley Water Conservation District	\$ 51,427	\$ 2,616	\$ 54,042	\$ 54,042
East Valley Water District	\$ 49,286	\$ 2,507	\$ 51,792	\$ 51,792
City of Highland	\$ 193,134	\$ 9,823	\$ 202,957	\$ 202,957
Robertson's and Cemex	\$ 7,843,563	\$ 398,940	\$ 8,242,503	\$ -
City of Redlands	\$ 28,063	\$ 1,427	\$ 29,490	\$ 29,490
San Bernardino Valley Municipal Water District	\$ 1,665,027	\$ 709,687	\$ 2,374,714	\$ 2,374,714
<b>Expected Total:</b>	<b>\$ 9,830,500</b>	<b>\$ 1,125,000</b>	<b>\$ 10,995,500</b>	<b>\$ 2,712,995</b>
<b>Current Total Received:</b>	<b>\$ 1,986,935</b>	<b>\$ 726,060</b>	<b>\$ 2,712,995</b>	

Total Independent Contributions	\$ 20.00
Total Deposits For Mitigation Credit	\$ 20,000.00

### California Credit Union Account Balance (Account Opened July 21, 2016)

As of:	Deposits	Interest Earned	Fees	Expenses	Withdrawals /Transfers	Balance
Prev FY End 6/30/2019	\$ 10,000.00	\$ 164.89	\$ -	\$ 4,454.46	\$ -	\$ 327,896.88
7/31/2019	\$ -	\$ 13.92	\$ -	\$ -	\$ -	\$ 327,910.80
8/31/2019	\$ -	\$ 13.92	\$ -	\$ -	\$ -	\$ 327,924.72
9/30/2019	\$ -	\$ 13.48	\$ -	\$ 2,945.00	\$ -	\$ 324,993.20
10/31/2019	\$ -	\$ 13.93	\$ -	\$ 50.00	\$ -	\$ 324,957.13
11/30/2019	\$ -	\$ 13.37	\$ -	\$ -	\$ -	\$ 324,970.50
12/31/2019	\$ -	\$ 13.80	\$ -	\$ 65.00	\$ -	\$ 324,919.30
1/31/2020	\$ -	\$ 13.76	\$ -	\$ 35.00	\$ -	\$ 324,898.06
2/29/2020	\$ -	\$ 12.87	\$ -	\$ -	\$ -	\$ 324,910.93
3/31/2020	\$ -	\$ 13.71	\$ -	\$ 1,371.00	\$ -	\$ 323,553.64
<b>YTD TOTALS</b>	<b>\$ -</b>	<b>\$ 122.76</b>	<b>\$ -</b>	<b>\$ 4,466.00</b>	<b>\$ -</b>	<b>\$ 323,553.64</b>

Expenses include: RAMS audit fees, Attorney General's Registry of Charitable Trusts fee, FTB Form 199 reporting fee, liability insurance, S-I 100 filing fees

**US Bank Investments Balance** (Account Opened April 25, 2018)

As of:	Deposits	Accrued Income, Interest & Dividends	Fees	Unrealized Gain/Loss	Realized Gain/Loss	Market Value
Prev FY End 6/30/2019	\$ -	\$ 36,376.40	\$ (10,635.50)	\$ 110,434.01	\$ 5,097.15	\$ 2,522,107.99
7/31/2019	\$ -	\$ 1,868.51	\$ (1,522.42)	\$ 6,021.64		\$ 2,528,475.72
8/31/2019	\$ -	\$ 2,290.16	\$ (658.62)	\$ (24,164.74)		\$ 2,505,942.52
9/30/2019	\$ -	\$ 1,829.03	\$ (670.41)	\$ 35,103.86		\$ 2,542,205.00
10/31/2019	\$ -	\$ 1,646.47	\$ (1,549.74)	\$ 42,877.34		\$ 2,585,179.07
11/30/2019	\$ -	\$ 1,716.72	\$ (792.56)	\$ 54,226.40	\$ 1,054.31	\$ 2,641,383.94
12/31/2019	\$ -	\$ 35,938.19	\$ (690.80)	\$ 3,947.21	\$ 22,650.08	\$ 2,703,228.62
1/31/2020	\$ -	\$ 1,112.45	\$ (1,557.84)	\$ (15,543.61)		\$ 2,687,239.62
2/29/2020	\$ -	\$ 1,434.65	\$ (742.53)	\$ (151,296.34)		\$ 2,536,635.40
3/31/2020		\$ 2,227.62	\$ (749.39)	\$ (231,126.48)	\$ 8,477.61	\$ 2,315,464.76
<b>YTD TOTALS</b>	\$ -	\$ 50,063.80	\$ (8,934.31)	\$ (279,954.72)	\$ 32,182.00	<b>\$2,315,464.76</b>

**Liability to SBVWCD**

As of:	Expenses	Balance
6/30/2019	\$ 43,094.17	\$ 850,387.59
7/31/2019	\$ 24,821.65	\$ 875,209.24
8/31/2019	\$ 34,029.76	\$ 909,239.00
9/30/2019	\$ 38,990.95	\$ 948,229.95
10/31/2019	\$ 32,181.62	\$ 980,411.57
11/30/2019	\$ 35,374.67	\$ 1,015,786.24
12/31/2019	\$ 46,730.76	\$ 1,062,517.00
1/31/2020	\$ 40,855.34	\$ 1,103,372.34
2/29/2020	\$ 43,047.76	\$ 1,146,420.10
3/31/2020	\$ 49,119.12	\$ 1,195,539.22



# SAN BERNARDINO VALLEY CONSERVATION TRUST

Established 2016

1630 West Redlands Boulevard, Suite A  
Redlands, CA 92373-8032  
(909) 793-2503  
Fax: (909) 793-0188

Email: [sbvct@sbvwcd.org](mailto:sbvct@sbvwcd.org)  
<http://sites.google.com/site/sbvctrust/>

March 18, 2020

Julie Beeman, President  
VCS Environmental  
30900 Rancho Viejo Road, Suite 100  
San Juan Capistrano, CA 92675

***Subject: Proposal for work associated with implementation of the SR 210 Mixed Flow Lane Addition Project, specifically California Endangered Species Act Incidental Take Permit (ITP) No. 2081-2017-062-06***

Dear Julie Beeman,

The San Bernardino Valley Conservation Trust is pleased to submit the following proposal for work associated with implementation of the SR 210 Mixed Flow Lane Addition Project, specifically California Endangered Species Act Incidental Take Permit (ITP) No. 2081-2017-062-06.

## **Task 1. Post-Exclusionary Fencing Installation (ITP 8.7)**

Per the ITP, within 7 days following the installation of the exclusionary fence, the following tasks would be completed:

*Subtask 1.1 Accompany small mammal trappers-within exclusion fence and 500-foot buffer (ITP 8.7.1, 8.7.2, 8.7.3)*

Small mammal trapping shall be conducted by the contractor for the Project Area and a 500-foot buffer. This proposal provides a SBKR biologist to accompany the SBKR trappers to assess all SBKR captured for age, gender, reproductive status, mass, GPS location, notation of new/recapture status, and ear tagging. The SBKR biologist would also transport any SBKR captured in the Project Area to the holding facility. If a lactating female is captured inside the Project Area during morning checks, the SBKR biologist will attempt to determine her burrow location and with a mini camera try to determine if she and/or pups are present. If no kangaroo rats are observed within the burrow, it will be hand excavated to ensure no occupancy. If kangaroo rat pups are observed, CDFW shall be notified at once, and the pups captured and placed in a rodent carrier with the female. If the female's burrow cannot be relocated, all kangaroo burrows within a 20-meter (66 feet) radius shall be scoped and collapsed.

Cost: \$25,800

BOARD  
OF  
DIRECTORS

President  
David E. Raley

Vice President  
Paul Williams

Director  
John Longville  
Director  
Gil Navarro

SECRETARY/CFO  
Daniel B. Cozad

*Subtask 1.2 SBKR Housing, Care, Transport*

Between capture and relocation, SBKR will be housed and cared for within a designated space to be provided by the Conservation District. This task covers the cost of purchasing and preparing 50 individual cages.

Cost: \$5,800

*Subtask 1.3 SBKR Radio Telemetry (ITP 8.7.4)*

A subset of SBKR captured during Task 3.2 (30 animals) would be equipped with Very High Frequency (VHF) radio transmitters. The Holohil System [model BD-2C] is proposed as it only weighs 1.1 g and lasts about 42 days (range is 28-50 days). It has also been used successfully on previous studies of kangaroo rats. SBKR captured in the 500-foot buffer would be equipped with radio transmitters and released. SBKR for the soft release would be equipped with a radio transmitter prior to removal of the cage.

Cost: \$16,500

*Subtask 1.4 SBKR Relocation Plan (ITP 8.7.6)*

Prior to SBKR relocation, CDFW requires for review and approval: a spatial map of kangaroo rats trapped both within the exclusionary fence and adjacent 500-foot buffer, data collected on each individual, and a map of proposed relocation area(s) that includes individual spatial grouping, and any other details related to the relocation. This plan would be prepared, submitted, and coordinated under this task.

Cost: \$4,488

**Task 2. Soft Release Exclusion (ITP 8.8)**

This task involves the construction, installation, monitoring, and maintenance of above-ground wire mesh retention cages, as well as care of SBKR for 7-10 days while in the cage. The cage would measure about 90 × 60 cm and be constructed of 6.4 mm (1/4 in) hardware cloth with a closed top and open bottom. SBKR artificial burrows would be hand augured at 45 mm diameter at roughly a 30° angle to a length of 1 m (3.3 feet). It is assumed that 50 artificial burrows and cages would be required. The burrows would be established outside of the exclusionary fencing in the same approximate neighbor relationship as trapped (per the approved SBKR Relocation Plan). A retention cage would be placed over each artificial burrow and buried to an approximate depth of 20 cm. Ten (10) remote infrared wildlife cameras would be placed to record activity during acclimation and for 30 days following removal of the cage.

SBKR would be placed in an artificial burrow and retention cage for 7-10 days. The burrow entrance would be plugged during the day and unplugged each evening prior to dark to allow the SBKR to enter into the cage area. SBKR would be fed a combination of romaine lettuce, finch seed mix, and plant seeds native to the release site daily while in the retention cage/burrow. After 7-10 days the retention cages

would be removed. CDFW would be provided daily updates on the status of SBKR during, and 30 days following, the soft release, including any camera data information (activity period, behaviors, physical trauma, predation attempts), daily monitoring summary, cage damage, and vandalism.

Cost: \$15,125

### **Task 3. Supplemental Feeding (ITP 8.9)**

Seed will be broadcast at the release site 3 evenings per week for the first month following the removal of the retention cages and once each week thereafter for the next 3 months. Seed will be microwaved for 1-3 minutes before broadcast at the release site to prevent seed germination and alteration of the native vegetation community.

Cost: \$8,125

### **Task 4. Relocation Monitoring (ITP 8.11)**

Following the removal of the retention cages, the location of the radio transmitted SBKR will be logged 3 times weekly until the battery life ends (about 6 weeks). SBKR trapping in suitable habitat will occur within the Project Area, including where Covered Activities are occurring (as feasible), the relocation release area(s), and the 500-foot buffer will occur each month for the first 3 months following relocation, and then annually thereafter for the duration of the Project (assume 2 years). Therefore, there would be a maximum total of 30 3-night trap sessions. A report of the relocation monitoring findings shall be submitted to CDFW annually for the duration of the Project (assume 2 annual reports).

Cost: \$108,675

### **Task 5. Habitat Management Cost Estimates (ITP 9.1)**

This task includes time to meet with and obtain CDFW approval on the cost estimates prepared.

#### *Subtask 5.1 Start-up Cost Estimates (ITP 9.1.2)*

Develop start-up costs for 4.2 acres of land conserved via Conservation Easement to meet project mitigation requirements under ITP section 9 (Conserved Lands), including initial site protection and restoration costs as described in Condition of Approval 9.7.5 below.

Cost: \$3,000

#### *Subtask 5.2 Interim Management Funding Cost Estimates (ITP 9.1.3)*

Develop interim management costs for the Conserved Lands as described in Condition of Approval 9.7.6 below.

Cost: \$2,500

## **Task 6. Conservation Easement Approval and Recordation (ITP 9.7)**

### *Subtask 6.1 Conservation Land Approval (ITP 9.7.2)*

At least three months prior to recordation of the conservation easement, submit a Proposed Lands for Acquisition Form for the Conserved Lands in order to obtain written approval from CDFW.

Cost: \$1,688

### *Subtask 6.2 Conservation Land Documentation (ITP 9.7.3)*

Provide a recent preliminary title report, initial hazardous materials survey report, and/or any other necessary documents for the Conserved Lands in order to obtain written approval from CDFW.

Cost: \$4,750

### *Subtask 6.3 Conservation Easement (ITP 9.7.1)*

Record a conservation easement, held by San Bernardino Valley Conservation Trust and approved by CDFW, over the Conserved Lands. This task includes legal fees.

Cost: \$17,500

### *Subtask 6.4 Designation of Land Manager (ITP 9.7.4)*

Designate the San Bernardino Valley Conservation Trust as the interim and long-term land manager for the Conserved Lands, including provision of materials to CDFW for approval.

Cost: \$1,250

## **Task 7. Establish Endowment Fund (ITP 9.8)**

### *Subtask 7.1 Identify Endowment Manager (ITP 9.8.1)*

Submit a written proposal to CDFW identifying the San Bernardino Valley Conservation Trust, a 501(c)(3) non-profit corporation, as the 1) holder of the conservation easement recorded on lands owned by the San Bernardino Valley Water Conservation District and 2) endowment manager. Proposal will include a copy of the Trust's certification pursuant to Government Code section 65968(e).

Cost: \$2,500

### *Subtask 7.2 Determination of Endowment (ITP 9.8.2, 9.8.2.1, 9.8.2.2, 9.8.2.2.2, 9.8.2.2.3)*

Prepare a PAR for the Conserved Lands sufficient to fund all Long-term Management Plan (ITP 9.7.5) activities, at the Wash Plan standard, and meet all other conservation easement requirements (ITP 9.7.1) in perpetuity. The PAR shall include a 4% capitalization rate; adjustments for administrative, periodic and/or annual fees; and a 10% contingency. This endowment shall not be used for the first three years of management following recordation of the conservation easement. Costs include coordination with CDFW and time to revise the PAR as needed to obtain CDFW approval.

Cost: \$22,500

---

BOARD  
OF  
DIRECTORS

President  
David E. Raley

Vice President  
Paul Williams

Director  
John Longville  
Director  
Gil Navarro

SECRETARY/CFO  
Daniel B. Cozad

*Subtask 7.3 Establish and Fund Endowment (ITP 9.8.3)*

This task includes all actions necessary to transfer funds to the San Bernardino Valley Conservation Trust, including legal fees for review of agreements, contracts, etc.

Cost: \$14,000

The total cost for all above listed tasks, including a \$61,692 contingency, is \$315,363. Please let me know if you have any questions regarding this proposal.

Sincerely,



Daniel Cozad, Secretary of the Board and Executive Director  
San Bernardino Valley Conservation Trust

### *Estimated Costs By Task*

TASK	SUBTASK	INCIDENTAL TAKE	COST
		PERMIT	
Task 1. Post-Exclusionary Fencing Installation	1.1	8.7.1	-
		8.7.2	-
		8.7.3	\$ 25,800.00
	1.2		\$ 5,800.00
	1.3	8.7.4	\$ 16,500.00
	1.4	8.7.6	\$ 4,488.00
Task 2. Soft Release Exclusion		8.8	\$ 15,125.00
Task 3. Supplemental Feeding		8.9	\$ 8,125.00
Task 4. Relocation Monitoring		8.11	\$ 108,675.00
Task 5. Habitat Management Cost Estimates	5.1	9.1.2	\$ 3,000.00
	5.2	9.1.3	\$ 2,500.00
Task 6. Conservation Easement Approval and Recordation	6.1	9.7.2	\$ 1,688.00
	6.2	9.7.3	\$ 4,750.00
	6.3	9.7.1	\$ 17,500.00
	6.4	9.7.4	\$ 1,250.00
Task 7. Establish Endowment Fund	7.1	9.8.1	\$ 2,500.00
	7.2	9.8.2	\$ 12,500.00
		9.8.2.1	\$ -
		9.8.2.2	\$ -
		9.8.2.2.2	\$ -
		9.8.2.2.3	\$ 10,000.00
	7.3	9.8.3	\$ 14,000.00
Sub-total			\$ 254,201.00
Contingency			\$ 61,162.00
<b>TOTAL</b>			<b>\$ 315,363.00</b>

## **ENDOWMENT AGREEMENT FOR THE DEPOSIT, DISBURSEMENT, AND USE OF FUNDS FOR WASTING AND NON-WASTING ENDOWMENTS**

This Endowment Agreement for the Deposit, Disbursement, and Use of Funds for the Wasting and Non-wasting Endowment (“Agreement” or “Endowment Agreement”) is entered into effective this \_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”), by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT (“District”), a California water conservation district; THE SAN BERNARDINO CONSERVATION TRUST, a 501(c)(3) nonprofit corporation, authorized under California Civil Code section 815.3 to receive, hold, and administer Conservation Easements and endowments (“Trust”); and SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a transportation authority created under the San Bernardino County Transportation Authority Consolidation Act of 2017, Public Utilities Code sections 130800 et seq., with its principal place of business at 1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> floor, San Bernardino, California, (“Authority”). This Agreement is entered into in consideration of all of the following:

A. District is a California water conservation district, duly formed and existing under Water Code sections 74000 et seq. of the California Water Code. District is the owner of certain real property located within the Santa Ana River Wash, consisting of 4.2 acres, located in San Bernardino County, California, and more specifically described and depicted in Exhibits A and B attached hereto (“Property”).

B. The Trust’s duties and purposes include holding and managing lands, monies, and Conservation Easements over property with habitat values for threatened or endangered species under the Federal Endangered Species Act, 16 U.S.C. sections 1531 et seq., and the California Endangered Species Act, California Fish and Game Code sections 2050 et seq. The Trust does so to further compliance with various permitting and regulatory habitat maintenance, enhancement, and protection requirements imposed upon public and private projects, that may or do result in impacts to protected biological resources.

C. The Authority proposes the State Route 210 Mixed Flow Lane Addition Project to widen the existing segment of SR-210 from Sterling Avenue to San Bernardino Avenue from four mixed flow lanes to six mixed flow lanes with the addition of one mixed flow land in each direction within the median (“Project”). Through the course of securing permits and development entitlements for the Project, various habitat enhancement, preservation, management, and mitigation requirements were offered by or imposed upon Authority, or are proposed to be offered by or imposed upon Authority, as a condition to allowing the Project to go forward.

D. District is the sponsor and lead agency for the Upper Santa Ana River Wash Plan Habitat Conservation Plan (“Wash Plan HCP”). The Wash Plan HCP has been formulated, processed, and sponsored by the District, to set habitat management, enhancement, operation, and maintenance responsibilities in connection with a larger “Wash Plan Preserve” defined therein, of which the Property is a part.

E. Authority, District, and Trust have identified District land ownership which is available and that is or may be suitable for meeting the habitat requirements for impacts to

biological resources from the Project. In this regard, the parties hereto have negotiated, and concurrently with this Agreement are entering into, an “Agreement for Acquisition of Conservation Easement” (“Conservation Easement Agreement”). The Conservation Easement Agreement provides for transfer of a Conservation Easement over the Property from District to Trust, contemplated to satisfy the habitat reserve requirements on the Project from its development entitlements. Under the Conservation Easement, the Trust will undertake to fulfill the habitat management, enhancement, and protection requirements set out therein, to meet the responsibilities of the Wash Plan HCP on and over the Property.

F. This Endowment Agreement is intended to provide a mechanism for funding of:

1. A wasting endowment, for the purpose of financing the implementation of the Habitat Management and Monitoring Plan (HMMP) developed for applicable Project permits, for responsibilities of habitat operation, enhancement, and preservation measures and strategies for a period of three (3) years, and administration of same. The wasting endowment shall be paid to the District for the benefit of the Trust, and released by the District to the Trust at the time of recording of the Conservation Easement from the District to the Trust.

2. A non-wasting endowment, for the purpose of financing the ongoing and recurring responsibilities of habitat operation, enhancement, and preservation measures and strategies, of the Conservation Easement, and administration of same. The non-wasting endowment shall be paid to the District for the benefit of the Trust, and released by the District to the Trust at the time of recording of the Conservation Easement from the District to the Trust.

H. This Endowment Agreement also defines various terms and obligations of Authority, District, and the Trust in connection with the Authority’s required deposit of funds needed by the District and the Trust to review, process, and approve the transfer of the Conservation Easement to the Trust, and to assure that the responsibilities of habitat preservation, maintenance, enhancement, and operation, consistent with the Wash Plan HCP, can be performed within the funding required under the non-wasting endowment.

NOW, THEREFORE, in consideration of all the foregoing, the parties do hereby agree as follows:

1. Review by District and Trust of Permitting by Authority.

(a) If not already provided, Authority shall, as soon as practical after the execution of this Endowment Agreement, provide to both District and Trust copies of all habitat mitigation dedication requirements and habitat preservation, maintenance, enhancement, and operational requirements on the Project, whether required by CDFW, USFWS, or either applicable regulatory agency. These requirements may come in the form of an HCP, HMMP, proposed conditions for any incidental take permit, Biological Opinion, subdivision or land use entitlement conditions of approval, or other development condition, exaction or requirement (collectively, “Biological Permit”). Copies of the Biological Permit shall be provided to the District and to the Trust without cost to either. The Biological Permit information shall include any property analysis record (“PAR”) or other cost estimates, any biological studies or reports

submitted in conjunction with or connection with securing the Biological Permit, and all correspondence with USFWS, CDFW, and any biological permitting agencies.

(b) The Trust and the District will work as quickly as possible but shall have 90 days from receipt of the Biological Permit to review all aspects thereof to determine consistency of same with the Wash Plan HCP, or the ability of the Trust or the District, respectively, to otherwise meet the requirements of the Biological Permit consistent with its performance of activities required under the Wash Plan HCP. The review of District and Trust as may be extended by mutual agreement of the parties and shall include, but not be limited to, all of the following:

(i) Consistency of the Biological Permit with Wash Plan HCP standards, strategies, and obligations.

(ii) Adequacy of the proposed wasting endowment to fund Biological Permit needs to ensure the property can be managed at the Wash Plan HCP Preserve standards.

(iii) Adequacy of the proposed non-wasting endowment to fund Wash Plan HCP activities on the Property pursuant to the Conservation Easement.

(iv) The adequacy and accuracy of the PAR in establishing the amount of the wasting and non-wasting endowments.

(v) The amount of acreage required for habitat set aside under the Biological Permit, and the availability of such acreage owned by the District, and eligible for the Conservation Easement.

(vi) The impact of the issuance of a Conservation Easement and the incorporation or joint administration of the Conservation Easement on the Property with the Wash Plan HCP, to assure both District and Trust can meet “stay ahead” mitigation obligations, and other obligations under the Wash Plan HCP Implementing Agreement.

(c) After such review, Trust and District, and each of them, shall advise Authority in writing as to whether it agrees to go forward with the acceptance of the non-wasting endowment, in response to Authority’s Biological Permit. Trust and District may approve, disapprove, or require in writing clarification of the provisions, conditions, or requirements of the Biological Permit. Authority shall provide final, signed copies of all permits utilizing Conservation Easement for mitigation to District and Trust prior to close of escrow.

(d) In the event both District and Trust approve requirements of the Biological Permit, the parties shall proceed to full implementation of this Agreement including payment by the Authority of the amounts set forth in Section 2 below. .

(e) In the event either Trust or District disapproves of the Biological Permit, this Endowment Agreement shall terminate, and all remaining deposit amounts unused to that point shall be refunded to Authority, without interest, and all continuing and further obligations between and among the parties shall cease.

(f) In the event either District or Trust require amendment or clarifications in writing to the requirements of the Biological Permit, the parties shall meet and confer in good faith, including as necessary seeking any clarification or modification to permit requirements from USFWS, CDFW, or other applicable regulatory agency. This meet and confer process shall proceed for a period not to exceed ninety (90) days, unless extended in writing by all parties. If the matter is resolved pursuant to this additional clarification, the parties shall proceed with approval and to close of escrow, if not, the Biological Permit shall be deemed disapproved.

(g) Review and approval of the Biological Permit and all matters incident thereto by the District and the Trust is solely for the purpose of determining the suitability, achievability, and compatibility of the Biological Permit requirements for inclusion into the Wash Plan HCP, and its approved habitat preservation, enhancement, operation, and management strategies. Neither District nor Trust makes any representation, warranty, guaranty, or indemnity to Authority that the Wash Plan HCP, or management of the Property pursuant to the requirements thereof, complies with Authority's obligations under the Biological Permit. Any responsibilities, obligations, or requirements of the Biological Permit that are not met by the imposition of the Conservation Easement over the Property, its inclusion into the Wash Plan Preserve, or its management pursuant to the Wash Plan HCP are, and shall remain, the sole responsibility of Authority.

## 2. Deposits with District.

Within 15 days of the approval of the Biological Permit, Authority shall provide payment to the District as follows: :

(a) The amount of Five Hundred Sixty-Seven Thousand Dollars (\$567,000) as payment for the Conservation Easement as such is described in the the Conservation Easement Agreement purchase price.

(b) The amount of Fifty-eight Thousand Two Hundred and Fifty Dollars (\$58,250) to fund the wasting endowment for Biological Permit start-up requirements on the property to ensure it is able to meet Wash Plan Preserve standards.

(c) The amount of Eighty-seven Thousand Sixty\_Dollars (\$87,060) , to fund the wasting endowment for Biological Permit initial and interim requirements on the property to ensure it is able to meet Wash Plan Preserve standards.

(d) The amount of Ninety-Seven Thousand Five Hundred Ninety-One Dollars (\$97,591), to fund the permanent non-wasting endowment for managing the Property consistent with the Wash Plan HCP.

(e) District shall record the Conservation Easement within 90 days of payment of the amounts set forth in 2(a)-(c) above.

(f) All parties shall deposit any additional amounts, or execute such additional documents or instructions, as may be required to effectuate the transfer and recording

of the Conservation Easement. All costs of document preparation, recording fees, title transfer fees, document transfer taxes, etc., shall be borne by Authority. At least three (3) days prior to recording of the Conservation Easement, District shall advise all parties of such costs, and Authority shall deposit all of same, and such deposit shall be a condition of the transfer and recording of the Conservation Easement.

3. Disbursements by District. Once all documents, funds, and other materials are deposited with District, and all conditions to this Endowment Agreement and the Conservation Easement have been met, District shall do all of the following:

(a) Disburse the amount of the wasting and non-wasting endowment to the Trust.

(b) Record the Conservation Easement in the name of the Trust.

(c) Refund any unused deposits or payments for costs to Authority.

4. Limitation of District Liability in Acting as Transactional Intermediary.

(a) In acting as the intermediary for the deposit of funds and documents hereunder, the District shall not be liable for any error of judgment or any act done, or omitted to be done, hereunder by it in the absence of its gross negligence or willful misconduct.

(b) The District may act in reliance upon any writing, instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and shall not be required to investigate the truth or accuracy of any statement contained in any such writing or instrument. Also, the District may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized so to do.

(c) The District shall be entitled to consult with legal counsel in the event that a question or dispute arises with regard to the construction of any of the provisions hereof, and shall incur no liability and shall be fully protected in acting in accordance with the advice or opinion of such counsel.

(d) The District shall not be required to use its own funds in the performance of any of its intermediary obligations or duties or the exercise of any of its rights or powers under this Agreement, and shall not be required to take any action which, in the District's sole and absolute judgment, could involve it in expense or liability unless furnished with security and indemnity which it deems, in its sole and absolute discretion, to be satisfactory.

(e) As an inducement for the District to perform the intermediary transactional duties specific in this Agreement, prior to or at the time such compensation is earned, Authority shall pay to the District compensation for its services hereunder.

(f) Except in the case of a final, non-appealable order of a court of competent jurisdiction which holds the District liable for the performance of its transactional intermediary duties hereunder, on account of its own negligence or willful misconduct, Authority shall



Redlands, CA 92373-8032  
Attention: Corporate Secretary  
e-mail: dcozad@sbcwcd.org

If to Authority: San Bernardino County Transportation Authority  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> floor  
San Bernardino, CA 92410  
Attention: Paula Beauchamp  
e-mail: pbeauchamp@gosbcta.com

8. Entire Agreement. This Endowment Agreement, in conjunction with the Conservation Easement Agreement entered into concurrently herewith, contains the entire agreement of the parties hereto with respect to the matters contained herein, and supersedes all negotiations, prior discussions, and preliminary agreements or understandings, whether written or oral. No waiver or modification of this Endowment Agreement shall be binding unless consented to by all parties in writing.

9. Waiver. No waiver of any default shall constitute a waiver hereunder of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give any other party any contractual rights by custom, estoppel, or otherwise. Nothing herein is intended to, nor shall be construed as, any waiver by any party of any applicable Government Tort Claims Act requirements.

10. Cooperation and Further Acts. All parties hereto agree to use reasonable care and diligence to perform their respective obligations under this Endowment Agreement, and the Conservation Easement Agreement. All parties agree to act in good faith and execute all instruments, prepare all documents, and take all actions as may be reasonably necessary, appropriate, or convenient to carry out the purposes of this Endowment Agreement.

11. Governing Law. This Endowment Agreement shall be governed by, and construed under, the laws of the State of California.

12. Attorneys' Fees. In the event of any proceeding, in law or equity, to enforce any provision of this Endowment Agreement, or the related Conservation Easement Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees. The term "attorneys' fees" herein shall include reasonable costs for investigating the action, conducting discovery, cost of appeal, costs and fees for expert witnesses, and other normally allowable costs incurred in such litigation, whether or not such litigation or other proceeding is prosecuted to final judgment. Service of process on any party shall be made in any matter permitted by law, and shall be effective whether served inside or outside of California.

13. Construction. The language of this Endowment Agreement shall be accrued according to its fair meaning, and not for or against any party hereto based on authorship. The captions of the various sections and paragraphs hereunder are for convenience and ease of reference only, and do not define, limit, augment, or interpret the scope, content, or intent of this Endowment Agreement.

14. Severability. Each provision of this Endowment Agreement shall be severable from the whole. If any provision of this Endowment Agreement shall be found contrary to law, it is the intention of all the parties, and each of them, that the remainder of this Endowment Agreement shall continue in full force and effect.

15. Corporate Authority. Each party hereto represents to the others that the person whose signature appears below on its behalf has all requisite power and authority to execute and perform this Endowment Agreement, and to bind his or her respective party, and that in so doing, such party is not thereby in breach of any other contract or agreement.

16. Counterparts. This Endowment Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have entered into this Endowment Agreement as of the day and year first set forth above.

Date: \_\_\_\_\_ San Bernardino Valley Water Conservation District

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_ "TRUST"  
San Bernardino Conservation Trust

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_ San Bernardino County Transportation Authority

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

San Bernardino Valley Conservation Trust  
1630 West Redlands Boulevard, Suite A  
Redlands, CA 92373-8032  
Attn: General Manager

---

Space Above Line for Recorder's Use Only  
Exempt From Recording Fees under Government Code section 6103

**CONSERVATION EASEMENT DEED  
(Including Third-Party Beneficiary)**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_, by and between the San Bernardino Valley Water Conservation District ("SBVWCD"), in favor of the San Bernardino Valley Conservation Trust "Trust"), in cooperation with San Bernardino County Transportation Authority ("Authority") with reference to the following facts:

**RECITALS**

A. SBVWCD is the owner of certain real property containing approximately 4.2 acres, located in San Bernardino County, State of California ("Property"), more specifically described and depicted in **Exhibits A and B** attached to this Conservation Easement and incorporated in it by this reference. District is the sponsor and lead agency for the Upper Santa Ana River Wash Habitat Conservation Plan ("Wash Plan HCP"). The Wash Plan HCP has been formulated, processed, and sponsored by the District, to set habitat management, enhancement, operation, and maintenance responsibilities in connection with a larger "Wash Plan Preserve" defined therein, of which the Property is a part.

B. Trust is a 501(c)(3) corporation, whose duties and purposes include holding and managing lands, moneys, and conservation easements over property with habitat values for threatened or endangered species under the Federal Endangered Species Act 16 U.S.C. sections 1531 et seq., and the California Endangered Species Act, California Fish and Game Code sections 2050 et seq., in, and to further, compliance with various permitting and regulatory habitat maintenance, enhancement, and protection requirements imposed upon public and private projects that may or do result in impacts to protected biological resources.

C. Authority is a transportation authority created under the San Bernardino County Transportation Authority Consolidation Act of 2017, Public Utilities Code section 130800 et

159/015042-0013  
14303035.2  
a04/16/20  
1481372.1

seq., which proposes the State Route 210 Mixed Flow Lane Addition Project to widen the existing segment of SR-210 from Sterling Avenue to San Bernardino Avenue from four mixed flow lanes to six mixed flow lanes with the addition of one mixed flow land in each direction within the median (“Project”). Through the course of securing Project permits and entitlements, various habitat enhancement, preservation, management, and mitigation requirements were offered by or imposed upon Authority by Benefitting Agencies, as a condition to allowing the Project to go forward. Authority, SBVWCD and Trust have identified SBVWCD land resources that are or may be suitable for meeting these requirements, which may be performed and funded by Trust to implement and effectuate thereon species and habitat management measures which have been required to offset biological impacts of the Project.

D. The Property is located within the Wash Plan Preserve” as designated and directed under the Wash Plan HCP. Authority, has consulted with the applicable Benefitting Agency (defined below), and determined that the Property, which is owned by District and to be managed by Trust within the Wash Plan Preserve, is appropriate for offsetting the biological and habitat impacts from the Project, and for attempting to meet the biological and habitat requirements for the Project, under Agency’s applicable permitting regarding same. The Property possesses wildlife and habitat values of great importance to Trust, the people of the State of California and the people of the United States. The Property will provide or contribute to high quality natural, enhanced and/or restored habitat for one or more the following species: Slender-horned spineflower, Santa Ana River woolly-star, cactus wren, coastal California gnatcatcher, and San Bernardino kangaroo rat (collectively “Covered Species”). Preserving habitat for the Covered Species comprises the “Conservation Values” of the Property.

E. The United States Fish and Wildlife Service (“USFWS”), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of some or all of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law. USFWS has jurisdiction to issue incidental take permits pursuant to Section 10 of the ESA. USFWS is a third party beneficiary of this Conservation Easement, with regulatory oversight over the resources that will be protected hereunder.

F. California Department of Fish and Wildlife (“CDFW”) has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of some or all of the Covered Species pursuant to California Fish and Game Code Section 1802. CDFW issues incidental take permits pursuant to California Fish and Game Code section 2081(b), and consistency determinations under California Fish and Game code section 2080.1, relating to projects that may impact protected biological resources. CDFW is a third party beneficiary of this Conservation Easement, with regulatory oversight over the resources that will be protected hereunder.

G. The applicable regulatory resource agencies (CDFW, USFWS, or others) with enforcement oversight for the Project, and for compliance with all mitigation and habitat preservation, enhancement, and management requirements imposed thereon the Project through permitting, are California Department of Fish and Wildlife and U.S. Fish and Wildlife Service. Such agency or agencies are referred to collectively hereafter as the “Benefitting Agency.”

H. SBVWCD prepared and submitted an Incidental Take Permit (“ITP”) application to USFWS and prepared the Wash Plan HCP, of which the Property is a part. The Wash Plan HCP was prepared in accordance with USFWS guidance provided in the 1996 Habitat Conservation Planning Handbook (“HCP Handbook”), the 2000 Addendum to the HCP Handbook and the revised 2016 HCP Handbook. The Wash Plan HCP includes avoidance, minimization, and mitigation measures for each of the Covered Species and accomplishes the following:

Provides for the conservation of the Covered Species and their habitat within the Plan Area as mitigation for the effects of “Covered Activities” listed in the Wash Plan HCP.

Fulfills the requirements for an ITP as specified in Section 10(a)(1)(B) of the Federal Endangered Species Act (“FESA”) and FESA implementing regulations (Code of Federal Regulations, Title 50, Sections 17.22(b)(2)(i) and 17.32(b)(2)(i).

Supports SBVWCD’s request to California Department of Fish and Wildlife (“CDFW”) for an ITP pursuant to Section 2081(b) of the California Endangered Species Act (“CESA”).

Informs a FESA Section 7 consultation between USFWS and the U.S. Bureau of Land Management regarding effects on listed species on federal lands in connection with activities covered by the Wash Plan HCP.

Fulfills the requirements of the 2008 Upper Santa Ana River HCP Wash Land Management and Habitat Conservation Plan and its certified Environmental Impact Report regarding compliance with FESA and CESA and the identification of measures to avoid, minimize, mitigate, and monitor effects on the Covered Species.

I. The Benefitting Agency has reviewed the Project and its biological impacts, and has determined that a conservation easement over the Property, to be held by the Trust, and administered in a manner that complies with the District’s Wash Plan HCP and applicable related permits and implementing agreements for the Wash Plan, will satisfy the species and habitat maintenance, enhancement, and protection requirements imposed upon the Project.

J. Benefitting Agency has reviewed the Project and its biological impacts, and have determined that a conservation easement over the Property, to be held by the Trust, and administered in a manner that complies with the Wash Plan HCP and applicable related permits and implementing agreements for the Wash Plan, will satisfy the species and habitat

maintenance, enhancement, and protection requirements imposed upon the Project.

K. Trust is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Trust is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a “qualified organization” as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

L. SBVWCD, Trust, and Authority have, concurrently with this Conservation Easement, entered into an Endowment Agreement, whereby Authority shall pay, directly to Trust, the amount necessary to implement the approved Habitat Management and Monitoring Plan (HMMP) and create a non-wasting endowment to fund, in perpetuity, the costs of the species and habitat management, preservation, and administration, consistent with the standards and requirements of the Wash Plan HCP and related agreements. Trust has, as part of such agreement, committed to hold, invest, preserve, and manage such funds in such a manner as its proceeds shall be available for, and restricted to accomplishing such purposes.

NOW, THEREFORE, for good and valuable consideration paid by Authority to SBVWCD, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Sections 815, *et seq.*, SBVWCD hereby voluntarily grants and conveys to Trust a Conservation Easement in perpetuity over the Property, as follows (“Conservation Easement”).

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Property will be retained forever in a natural condition as contemplated in the Wash Plan HCP, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property.

SBVWCD and Trust intend that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of Covered Species and their habitats in accordance with the Wash Plan HCP.

2. Trust’s Rights.

To accomplish the purposes of this Conservation Easement, SBVWCD hereby grants and conveys the following rights to Trust, and to the Benefitting Agency as a third party beneficiary:

(a) To preserve and protect the Conservation Values of the Property in perpetuity.

(b) To access and enter the Property at all reasonable times, in order to (1)

monitor compliance with and otherwise implement and enforce the terms of this Conservation Easement and the Wash Plan HCP, (2) inspect the Property, and conduct surveys, trapping, ground verifications, or non-invasive scientific research (3) exercise and enforce the rights which are granted to Trust herein; it being understood that such access and entry will be made in a manner that will not interfere unreasonably with the operations and permitted use(s) or quiet enjoyment of the Property by SBVWCD, its successors in interest, or any legally recognized user(s) of the Property.

(c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to restore or require the restoration such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To implement the Wash Plan HCP, including habitat modifications, maintenance, monitoring, and reporting, except that this shall impose no affirmative obligation on the part of the Benefitting Agency not otherwise imposed by law.

(e) To require that all mineral, air and water rights as Trust deems necessary to preserve and protect the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement.

(f) Provided Trust gives SBVWCD prior written notice, the right to conduct habitat studies, research, and monitoring on the Property; it being understood and agreed that (1) such studies, research, and monitoring will be made in a manner that will not interfere unreasonably with the permitted use(s) or enjoyment of the Property and (2) Trust shall carry out such studies, research, and monitoring in a manner which minimizes as much as reasonably possible harm to the Conservation Values of the Property.

(g) The right to enjoin any activity on the Property or other use of the Property that is inconsistent with the Conservation Values of the Property and/or the Wash Plan HCP.

(h) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Property are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property.

3. Prohibited Uses.

Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and/or the Wash Plan HCP is prohibited. Without limiting the generality of the foregoing, the following uses and activities by SBVWCD, Trust, and third parties are expressly prohibited:

(a) Any and all activities and uses which may impair or interfere with the purposes of this Conservation Easement, including unseasonable watering; use of fertilizers,

159/015042-0013  
14303035.2  
a04/16/20  
1481372.1

pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; and incompatible fire protection activities except as needed to manage the land for its Conservation Easement purposes.

(b) Any activity conducted by a third party that interferes with the Conservation Values, unless specifically permitted as part of a Covered Activity in the Wash Plan HCP.

(c) Collection and handling of the Wash Plan HCP Covered Species unless specifically required as a component of the biological monitoring, adaptive management and/or scientific research. Separate authorization from USFWS or CDFW as appropriate is required for unrelated collection and handling of any Covered Species.

(d) Take of Wash Plan HCP Covered Species, species proposed for federal listing, state-listed species, or state candidate species as a result of the use of herbicides or other pesticides, or other chemical agents except as needed to manage the land for its Conservation Easement purposes.

(e) Use of off-road vehicles and use of any other motorized vehicles except on existing maintenance or other roadways, and except as necessary to implement the Conservation Values or other covered activities.

(f) Unseasonable watering; use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agents; weed abatement activities; incompatible fire protection activities; agricultural activity of any kind, and any and all other activities and uses which may adversely affect the Conservation Values of the Property or otherwise interfere with the purposes of this Conservation Easement except as specifically provided in the Wash Plan HCP.

(g) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing, unless such activities are consistent with the purposes of this Conservation Easement and specifically permitted in the Wash Plan HCP, such as for trails, and then only on such areas as the Wash Plan HCP and related agreements permit such uses.

(h) Commercial, industrial, residential, or institutional structures or uses.

(i) Any legal or de facto division, subdivision or partitioning of the Property.

(j) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, except such signage and barriers as may be consistent with the Wash Plan HCP for the designation or protection of habitat preservation and mitigation areas, or trails or other uses permitted under the Wash Plan HCP.

(k) Depositing, stockpiling, or accumulating any soil, sand, gravel, trash, ashes, refuse, waste, bio-solids or any other materials except as specifically permitted in the

Wash Plan HCP.

(l) Planting, introduction or dispersal of non-native or exotic plant or animal species, except as specifically permitted in the Wash Plan HCP.

(m) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes, except as expressly permitted in the Wash Plan HCP.

(n) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material, except for those habitat management and/or recreation activities specified in the Wash Plan HCP.

(o) Removing, destroying, or cutting of trees, shrubs or other native vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease; and except for activities as specifically provided in the Wash Plan HCP.

(p) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except as expressly permitted in the Wash Plan HCP.

(q) Except as may be consistent with the Wash Plan HCP, and without the prior written consent of Trust and the Benefitting Agency, which Trust and the Benefitting Agency, and each of them, may withhold in the exercise of reasonable discretion, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any public or private water purveyor or water district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.

(r) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to SBVWCD, the Property, or the use or activity in question.

4. Trust's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in

Section 1 are being accomplished, Trust and its successors and assigns shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property and shall perform compliance monitoring and reporting to the Benefitting Agency, as described in and to the extent and format required in the Wash Plan HCP, including the following:

(1) Periodic accounting of the acreage, type, and location of vegetation communities and species habitat conserved and impacted by permitted land uses and other Covered Activities of the Wash Plan HCP within their respective portions of the Plan Area.

(2) At the end of each periodic reporting period, tabulate and summarize all impacts that have occurred by vegetation community and species habitat type.

(3) Develop and maintain a conservation tracking and reporting system to ensure that conservation activities are implemented in advance of planned impacts identified in the Wash Plan HCP.

(4) Ensure that Wash Plan conservation stays ahead of ground-disturbing impacts by a minimum of five (5) percent, pursuant to the Wash Plan HCP.

(5) Fence Installation and Maintenance: [Intentionally omitted as these area are within access limited lands].

5. SBVWCD's Duties.

SBVWCD shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement. In addition, SBVWCD shall undertake all necessary actions to perfect and defend Trust's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of SBVWCD under the Wash Plan HCP.

6. Authority's Duties. Authority shall be responsible for paying to SBVWCD the agreed amount of compensation, prior to the recordation of this Conservation Easement, as may be required by SBVWCD as consideration for the dedication and transfer of this Conservation Easement to the Trust. Authority shall, prior to the recordation of this Conservation Easement, likewise pay all sums required in the Endowment Agreement to fund the approved HMMP and a non-wasting endowment to cover, in perpetuity, the costs of habitat management and administration of the Property consistent with the requirements of the Wash Plan HCP and related agreements. Authority shall also pay all costs to SBVWCD, and Trust, incurred in the preparation, negotiation, review, and processing of the Conservation Easement, the Endowment Agreement, and related documents. All amounts to be paid by Authority hereunder shall be paid prior to the recordation of this Conservation Easement, and recordation of this Conservation Easement is specifically conditioned upon, full, complete, and final payment of all such amounts by Authority. Upon payment of such amounts, and recordation of this Conservation Easement,

159/015042-0013  
14303035.2  
a04/16/20  
1481372.1

Authority shall have no continuing obligation under this Conservation Easement, except for such obligations as are specifically identified as surviving, continuing obligations of Authority.

7. No Representations, Warranties, or Guarantees by District or Trust. Neither District nor Trust makes any representation, warranty, guaranty, or indemnity to Authority that the Wash Plan HCP, or management of the Property pursuant to the requirements thereof, complies with Authority's obligations upon the Project imposed by the Benefitting Agency. Any such responsibilities, obligations, or requirements that are not met by the imposition of the Conservation Easement over the Property, its inclusion into the Wash Plan Preserve, or its management pursuant to the Wash Plan HCP are, and shall remain, the sole responsibility of Authority.

8. Reserved Rights. SBVWCD reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from SBVWCD's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement. SBVWCD specifically reserves the right to obtain and/or modify any and all permits on the Property so long as SBVWCD's permitting activities are consistent with this Conservation Easement and so long as SBVWCD gives Trust and the Benefitting Agency reasonable notice of any new or modified permits.

9. SBVWCD's Remedies. If SBVWCD determines that a violation of this Conservation Easement has occurred or is threatened, or if SBVWCD determines that a violation of the Wash Plan HCP has occurred or is threatened, SBVWCD shall give written notice to Trust of such violation and demand in writing the cure of such violation ("Notice of Violation"). At the time of giving any such notice, SBVWCD shall give a copy of the notice to the Benefitting Agency. Notice shall be provided in the manner specified in the "Notices" section hereunder. If Trust fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Trust fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, SBVWCD reserves the right to carry out such activity on the Property itself subject to the following conditions: (1) SBVWCD shall first give Trust notice of the proposed activity in writing; (2) SBVWCD shall carry out such activity in a manner which is consistent with the Conservation Values of this Conservation Easement.

If Trust fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Trust fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, SBVWCD also reserves the right to bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which SBVWCD may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; to enjoin the violation, *ex parte* as necessary,

by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Trust, SBVWCD may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If SBVWCD, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, SBVWCD may pursue its remedies under this Conservation Easement without prior notice to Trust or without waiting for the period provided for cure to expire. SBVWCD shall provide the Benefitting Agency with reasonable notice of any such action. SBVWCD's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Trust agrees that SBVWCD's remedies at law for any violation of this Conservation Easement are inadequate and that SBVWCD shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which SBVWCD may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. SBVWCD's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of SBVWCD to discover a violation or to take immediate legal action shall not bar SBVWCD from taking such action at a later time.

The Benefitting Agency, as a third party beneficiary of this Conservation Easement, shall have the same rights and remedies as SBVWCD under this Section 8. All enforcement rights and remedies conveyed to SBVWCD under this Conservation Easement shall extend to and are enforceable by the Benefitting Agency. These enforcement rights are in addition to, and do not limit, the rights of the Benefitting Agency to enforcement under the applicable permitting for the Project. To the extent the Benefitting Agency is the CDFW, and if at any time in the future SBVWCD or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, despite the provisions of Civil Code section 815.7, the California Attorney General has standing as an interested party in any proceeding affecting this Conservation Easement.

(a) Costs of Enforcement.

All costs incurred by SBVWCD, where SBVWCD is the prevailing party, in enforcing the terms of this Conservation Easement against Trust, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Trust.

(b) SBVWCD's Discretion.

Enforcement of the terms of this Conservation Easement by SBVWCD

shall be at the discretion of SBVWCD, and any forbearance by SBVWCD to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of SBVWCD under this Conservation Easement. No delay or omission by SBVWCD in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Trust's Control.

Nothing contained in this Conservation Easement shall be construed to entitle SBVWCD to bring any action against Trust for any injury to or change in the Property resulting from (i) any natural cause beyond Trust's control, including, without limitation, fire not caused by Trust, flood, storm, and earth movement, or any prudent action taken by Trust under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by SBVWCD or its employees.

(d) Mediation. Except in cases where injunctive relief is being sought, or where emergency action is necessary and authorized under the terms of this Conservation Easement, SBVWCD and Trust hereby agree to try first in good faith to settle any dispute by non-binding mediation if a dispute arises from or relates to the terms and provisions of this Conservation Easement or any other matter referred to herein.

(e) Notice of Conflict.

If SBVWCD receives a Notice of Violation from the Benefitting Agency with which it is impossible for SBVWCD to comply consistent with any prior uncured Notice(s) of Violation, SBVWCD shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Benefitting Agency. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date SBVWCD receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, SBVWCD shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revise Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, SBVWCD shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of SBVWCD to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of SBVWCD's ability to claim a conflict.

10. Access.

This Conservation Easement does not convey a general right of access to the public.

11. Trust Costs and Liabilities.

Trust retains all responsibilities and shall bear all costs and liabilities of any kind

related to the preparation, enhancement, ownership, operation, upkeep, and maintenance of the Property and its management consistent with the Wash Plan HCP. Trust agrees that neither SBVWCD, Authority, nor the Benefitting Agency shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Trust, the public or any third parties from risks relating to conditions on the Property, except as specifically identified in this Conservation Easement.

12. SBVWCD Costs and Liabilities.

SBVWCD remains solely responsible for obtaining and complying with any applicable governmental permits and approvals required for any activity or use reserved to SBVWCD as permitted by this Conservation Easement, and any such activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Trust shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority, including possessory interest taxes, (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish SBVWCD with satisfactory evidence of payment upon request. Trust shall keep the Property free from any liens, including those arising out of any obligations incurred by Trust for any labor or materials furnished or alleged to have been furnished to or for Trust at or for use on the Property.

(b) Hold Harmless.

(1) SBVWCD and Authority shall hold harmless, protect and indemnify Trust and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Trust Indemnified Party" and collectively, "Trust Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Trust or any of its employees; (ii) the obligations specified in Sections 5; and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Trust's Indemnified Parties by reason of any such Claim, SBVWCD shall, at the election of and upon written notice from Trust, defend such action or proceeding by counsel reasonably acceptable to the Trust's Indemnified Party. As to Authority, the provisions of this paragraph shall survive recordation of this Conservation Easement.

(2) SBVWCD and Trust shall hold harmless, protect and indemnify the Benefitting Agency, and their respective directors, officers, employees, agents, contractors (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary

Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 10(b)(2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence or willful misconduct of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 19(b)(2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, SBVWCD shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, including habitat functions and values, or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is "property appropriated to public use," as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, *only* as provided in Code of Civil Procedure section 1240.055. The Benefitting Agency is a public entity that imposed conditions on approval of a project that were satisfied, in whole or in part, by the creation of this Conservation Easement. If any person seeks to acquire the Property for public use, Trust and SBVWCD shall provide notice to the Benefitting Agency, and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with Government Code section 65966(j). The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680, notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

13. Transfer of Conservation Easement or Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Trust only upon prior written approval of SBVWCD and the Benefitting Agency, which approval shall not

be unreasonably withheld or delayed, but Trust shall give SBVWCD and the Benefitting Agency at least sixty (60) days prior written notice of the proposed assignment or transfer. Benefitting Authority approval shall be required of any transfer of the Property, including such transfers as may occur by operation of law, such as changes of boundaries of reorganizations ordered under the Cortese-Knox-Hertzberg Local Government Reorganization Act. Trust may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Benefitting Agency. Trust shall require the assignee to record the assignment in the official records of San Bernardino County. The failure of Trust to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

(b) Property.

SBVWCD agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which SBVWCD divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. SBVWCD agrees that the deed or other legal instrument shall also incorporate by reference the Wash Plan HCP, and any amendment(s) to the Wash Plan HCP. SBVWCD further agrees to give written notice to Trust, and and/or Benefitting Agency, of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Trust and and/or Benefitting Agency shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it) and the Wash Plan HCP. The failure of SBVWCD to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

14. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless SBVWCD, Trust, and the Benefitting Agency otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

15. Notices.

Any notice, demand, request, consent, approval, or other communication that SBVWCD or Trust desires or is required to give to the other shall be in writing, with a copy to USFWS, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To SBVWCD: San Bernardino Valley Water Conservation District

1630 West Redlands Boulevard, Suite A  
Redlands, California 92373  
Attn: Daniel Cozad

With Copy To: David B. Cosgrove  
Rutan & Tucker, LLP  
611 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626

To Trust : San Bernardino Valley Conservation Trust  
1630 West Redlands Boulevard, Suite A  
Redlands, CA 92373-8032  
Attn: Corporate Secretary

To Authority: : San Bernardino County Transportation Authority  
1170 West 3<sup>rd</sup> Street, 2<sup>nd</sup> floor  
San Bernardino, CA 92410  
Attn: Paula Beauchamp

To the Benefitting Agency

To USFWS: United States Fish and Wildlife Service  
Palm Springs Field Office  
777 E. Tahquitz Canyon Way, Suite 208  
Palm Springs, CA 92262  
Attn: Field Supervisor

To CDFW: California Department of Fish and Wildlife  
3602 Inland Empire Blvd, Suite C-220  
Ontario, CA 91764  
Attn: Kimberly Freeburn

or to such other address a party or the Benefitting Agency may designate by written notice to SBVWCD, Trust and the Benefitting Agency. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

16. Amendment.

159/015042-0013  
14303035.2  
a04/16/20  
1481372.1

This Conservation Easement may be amended only by mutual written agreement of SBVWCD and Trust and written approval of the Benefitting Agency, which approval shall not be unreasonably withheld or delayed. SBVWCD and Trust shall provide the Benefitting Agency with 60-days advance notification before any action is taken to amend this Conservation Easement. Any such amendment shall be consistent with the purposes of this Conservation Easement and applicable Federal or California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of San Bernardino County, and Trust shall promptly provide a conformed copy of the recorded amendment to the SBVWCD and the Benefitting Agency.

17. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* and Government Code Section 65965. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document, including the Wash Plan HCP which is hereby incorporated by reference in this document, including as it may be hereinafter amended, sets forth the entire agreement of the parties and USFWS with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in writing signed by all parties hereto.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of SBVWCD's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) 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 its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) SBVWCD represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

(2) Without limiting the obligations of SBVWCD under this Conservation Easement, SBVWCD hereby releases and agrees to indemnify, protect and hold harmless the Authority, Trust, and Trust Indemnified Parties (defined in Section 10(b)) from and against any and all Claims (defined in Section 10(b)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Trust or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against Authority or any of the Trust Indemnified Parties by reason of any such Claim, SBVWCD shall, at the election of and upon written notice from the Authority or applicable Trust Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Authority, or Trust Indemnified Party, as applicable.

(3) Without limiting the obligations of SBVWCD under this Conservation Easement, SBVWCD hereby releases and agrees to indemnify, protect and hold harmless the Benefitting Agency from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party

with respect to any Hazardous Materials placed, disposed or released by that Third-Party Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, SBVWCD shall, at the election and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding, as may be applicable.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Authority, Trust, or Benefitting Agency any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(E) Any control over SBVWCD's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. SBVWCD represents, warrants and covenants to Trust and the Benefitting Agency that activities upon and use of the Property by SBVWCD, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(7) The provisions of this Section 16(i) shall survive the recordation of this Conservation Easement.

(j) Warranty.

SBVWCD represents and warrants that SBVWCD is the owner of the Property. SBVWCD also represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement.

(k) Additional Interests.

SBVWCD shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall SBVWCD grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Property, without first notifying Trust and the Benefitting Agency 60-days in advance of such Transfer and obtaining the written consent of each of them. Such consent may be withheld if Trust, CDFW, or USFWS determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 16(k) shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to and in compliance with this Conservation Easement. SBVWCD shall provide a copy of any recorded or unrecorded grant or Transfer document to the Trust and Benefitting Agency

(l) Recording.

Trust shall record this Conservation Easement in San Bernardino County, and may re-record it at any time as Trust deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Authority, SBVWCD and Trust acknowledge that the Benefitting Agency (the "Third-Party Beneficiary") is a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all of the rights and obligations of SBVWCD and Trust under this Conservation Easement.

IN WITNESS WHEREOF all parties have executed this Conservation Easement Deed the day and year first above written.

**SBVWCD:**

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

**TRUST:**

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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

**AUTHORITY:**

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

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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