

APPENDIX H. IMPLEMENTING AGREEMENT

For the

United Water Conservation District
Multiple Species Habitat Conservation Plan

[Month] [Day], [Year]

(Draft September 7, 2018)

IMPLEMENTING AGREEMENT

by and between

UNITED WATER CONSERVATION DISTRICT

and

THE UNITED STATES FISH AND WILDLIFE SERVICE and THE NATIONAL MARINE FISHERIES SERVICE

This IMPLEMENTING AGREEMENT (“IA”) is entered into as of the date of the last signature below (“Effective Date”) by: the UNITED STATES FISH AND WILDLIFE SERVICE, an agency of the Department of the Interior of the United States of America (“USFWS”); the NATIONAL MARINE FISHERIES SERVICE, an agency of the Department of Commerce of the United States of America (“NMFS”); and UNITED WATER CONSERVATION DISTRICT, a special district established in accordance with the California Water Code Section 74000 et seq (“United”). In this IA, these entities may be referred to collectively as the “Parties” and each individually as a “Party.” Further, USFWS and NMFS may be collectively referred to as the “Services.”

1 RECITALS

The Parties have entered into this IA in consideration of the following facts:

- 1.1. United is a water conservation district organized to provide water for irrigation, municipal, and other beneficial uses to the agricultural operations and communities located in the Santa Clara River Watershed and adjacent Oxnard Plain in central Ventura County, California.
- 1.2. United owns, operates, and maintains facilities and infrastructure located within certain areas of the Santa Clara River Watershed and Oxnard Plain necessary and related to providing water to agricultural and municipal users including through recharge of groundwater basins and direct delivery of surface water.
- 1.3. A primary facility of United’s infrastructure is the Freeman Diversion Facility, which, among other things, diverts surface water for conveyance from the Santa Clara River to irrigation and municipal customers and to groundwater recharge basins for groundwater recharge and replenishment, which in turn protects groundwater quality for beneficial uses.
- 1.4. In conjunction with the approval of a habitat conservation plan, the ESA authorizes incidental taking of endangered and threatened species, including species that are not now but may

in the future be listed as endangered or threatened, in accordance with Incidental Take Permits (“ITP”) issued by the Services pursuant to Section 10(a)(1)(B) of the ESA.

1.5. The Permit Area (as defined in section 2.12 of this IA) provides habitat for certain terrestrial and aquatic species that are listed as endangered or threatened under the ESA or may become listed as threatened or endangered, hereinafter referred to and further detailed in Section 2.5 of this IA as “Covered Species.”

1.6. United, with technical assistance from the Services and the California Department of Fish and Wildlife (CDFW), has prepared a Multiple Species Habitat Conservation Plan (“MSHCP”) in support of its applications to the Services for issuance of ITPs for “Covered Activities” as defined in Section 2.3 of this IA.

1.7. The MSHCP includes a series of measures to conserve the Covered Species and to minimize and mitigate the adverse effects of Covered Activities on Covered Species associated with Covered Activities.

1.8. United has applied to the Services for issuance of ITPs to authorize the incidental take of Covered Species.

1.9. United desires, and the Services agree that it is appropriate to provide, legally binding “no surprises” assurances from the Services.

1.10. The Parties agree that it is appropriate to enter into the IA with its terms and that such terms shall be legally binding on the Parties.

1.11. The Services have given full consideration to the MSHCP and this IA and found them to meet the requirements for issuance of ITPs.

1.12. The Services have given full consideration to the MSHCP, the Environmental Impact Statement they have prepared to support their consideration of the ITPs, and all other information and material in the record of their decision on the ITPs, and found the MSHCP and this IA to meet the requirements for issuance of ITPs under the ESA.

1.13. The Parties acknowledge that United is additionally seeking permits from CDFW under the California Endangered Species allowing incidental take of certain species under California Endangered Species Act, California Fish and Game Code Section 2050 et seq. (CESA), but that this IA provides terms related to implementation as to the ESA, which is administered by the Services.

THEREFORE, in consideration of the mutual covenants and conditions contained below, the Parties agree as follows:

2 DEFINITIONS

The following terms shall have the following meanings for all purposes of this IA:

- 2.1. “IA” means this Implementing Agreement as the same may be amended from time to time.
- 2.2. “Changed Circumstances” shall have the same meanings as provided in the ESA, as provided below:
 - (a) “Changed Circumstances” means changes in circumstances affecting a Covered Species within the Permit Area provided for in the MSHCP or this IA that were reasonably anticipated and planned for by the Services during the preparation of the MSHCP or the negotiation of this. This definition of is currently codified at 50 C.F.R. § 17.3 [USFWS regulations] and 50 C.F.R. § 222.102 [NMFS regulations].
 - (b) Changes that constitute Changed Circumstances and the response to those circumstances are described in Table 8-1 of the MSHCP.
 - (c) Changed Circumstances are not Unforeseen Circumstances as defined in Section 2.13 of this IA.
- 2.3. “Covered Activities” means activities to be conducted by United described in section 3.0 of the MSHCP.
- 2.4. “Effective Date” means the date on which this IA has been signed by all the Parties and CDFW has issued incidental take permits under CESA for those Covered Species that are listed as endangered or threatened or candidate species under CESA.
- 2.5. “Covered Species” means:
 - (a) Southern California steelhead (*oncorhynchus mykiss*);
 - (b) Tidewater goby (*Eucyclogobius newberryi*);
 - (c) Santa Ana sucker (*Catostomus santaanae*);
 - (d) Least Bell’s vireo (*Vireo bellii pusillus*);
 - (e) Southwestern willow flycatcher (*Empidonax traillii browni*);
 - (f) Pacific lamprey (*Entosphenus tridentatus*);
 - (g) Two-striped garter snake (*Thamnophis hammondi*);
 - (h) Yellow warbler (*Dendroica petechial*);
 - (i) Western yellow-billed cuckoo (*Coccyzus americanus occidentalis*); and
 - (j) Yellow-breasted chat (*Icteria virens*);
- 2.6. “ESA” means the federal Endangered Species Act, 16 U.S.C. § 1531, et seq., as the same may be amended or reauthorized from time to time.
- 2.7. “CESA” means the California Endangered Species Act, California Fish and Game Code Section 2050 et seq., as the same may be amended from time to time.
- 2.8. “Freeman Diversion” means the facility described in Section 2.2.1. of the MSHCP, including any modifications of that facility described in Conservation Measure 1.1.1. in section 5.2.1 of the MSHCP and others that may occur in the future.

- 2.9. “ITP” means an incidental take permit to be issued by USFWS and NMFS to United pursuant to Section 10(a)(1)(B) of the ESA as the same may be amended from time to time.
- 2.10. “MSHCP” means the Multiple Species Habitat Conservation Plan prepared by United, dated [Month] [Day], [Year].
- 2.11. “Plan Area” means the areas of land and water so identified in Figure 1-2 of the MSHCP.
- 2.12. “Permit Area” means the areas of land and water so identified in Figure 1-2 of the MSHCP. The Permit Area is the area within which the ITPs authorize incidental take of Covered Species resulting from Covered Activities
- 2.13. “Unforeseen Circumstances” shall have the same meanings as provided in the ESA, as provided below:
- (a) “Unforeseen Circumstances” means changes in circumstances affecting a Covered Species or the Plan Area not provided for in the MSHCP or this IA at the time the MSHCP and this IA were prepared and negotiated, and that result in a substantial and adverse change in the status of the Covered Species. This definition is currently codified at 50 C.F.R. § 17.3 [USFWS regulations] and 50 C.F.R. § 222.102 [NMFS regulations].

3 CONSISTENCY WITH THE MSHCP

The provisions of the IA are intended to be consistent with the MSHCP. In the event there is any direct contradiction between the terms of this IA and the MSHCP, the terms of this IA shall control. In all other cases, the terms of this IA and the terms of the MSHCP shall be interpreted to be supplementary to each other.

4 TERMS USED

Where applicable, the terms defined and used in this IA shall have the same meaning as those terms are defined in the MSHCP and the ESA and its implementing regulations, except where specifically stated or defined in this IA.

5 PURPOSES

The purposes of this IA are to:

- 5.1. Ensure the proper implementation and administration of specific the terms of the MSHCP;
- 5.2. Describe the remedies and recourses should any Party fail to perform its obligations, responsibilities, and tasks as set forth in this IA;
- 5.3. Provide assurances to United that, pursuant to the “No Surprises” regulations currently codified at 50 C.F.R. §§ 17.22, 17.32 [USFWS regulations] and 50 C.F.R. § 222.307(g) [NMFS regulations], as long as the terms of the MSHCP and this IA are performed, the Services will not require additional mitigation with respect to Covered Species beyond what is provided in the MSHCP.

6 TERM

6.1. Initial Permit Duration. The ITPS, MSHCP, and this IA will remain in effect for an initial term of fifty (50) years from the Effective Date of this IA unless earlier relinquished or terminated as herein provided.

6.2. Short-Term Extensions. Parties may extend, on a short-term basis, as specified below, any ITP and relevant provisions of the MSHCP and this IA upon the written agreement between United and either or both of the Services as applicable based on the involved Covered Species. In furtherance of this provision, the Parties agree as follows:

- (a) At least 180 days prior to the expiration of an ITP, United may request that USFWS, NMFS, or the Services extend one or both of the ITP(s) for an additional calendar year. If the USFWS, NMFS, or the Services conclude that extension of an ITP within their jurisdiction would be consistent with all applicable laws and regulations, and that no new material information exists indicating an effect of the action or additional incidental take of Covered Species that was not previously considered, then USFWS, NMFS, or the Services will promptly extend the ITP(s) for an additional year, subject to United continuing to fulfill its obligations under section 8.1 of this ITP for an additional year. Such an extension shall constitute a Minor Modification pursuant to Section 14.2(a) of this IA.
- (b) In the event that United requests an extension of the ITP(s) pursuant to Section 6.3(a), but USFWS or NMFS as applicable determine in good faith that it is precluded from granting such an extension, then United and USFWS or NMFS or the Services, as the case may be, shall promptly meet to discuss alternative options to extending the ITP(s), including, but not limited to, renewal of the ITP(s) and amendment of the ITP(s) and/or the SITP pursuant to Section 14.2(a) of this IA.

7 FUNDING

7.1. Expenditure of Funding. United warrants that it has the authority to levy and collect, and shall expend, such funds as may be necessary to fulfill its obligations under the ITPs, the MSHCP, and this IA, subject to the limitations and requirements of California law as discussed in the MSHCP. United shall promptly notify the Services and the CDFW of any material change in United's financial ability to fulfill its obligations under the ITPs, the MSHCP, or this IA.

8 RESPONSIBILITIES AND ASSURANCES OF THE PARTIES

8.1. United's Responsibilities in Consideration of the Services Issuing an ITP. In consideration of the issuance of the ITPs by the Services authorizing any incidental take that may result from Covered Activities conducted in accordance with the MSHCP, and in consideration of the assurances provided by this IA, United agrees to:

- (a) Implement the conservation measures identified in section 5.2 of the MSHCP, including any modifications or amendments thereto adopted under section 14 of this IA;

- (b) Implement the monitoring actions described in Tables 6-1 and 6-2, and section 6.3 of the MSHCP, including any modifications or amendments thereto adopted under section 14 of this IA;
- (c) Submit to the Services the annual reports described in section 6.4.1 of the MSHCP;
- (d) Act consistently with Table 8-1 of the MSHCP;
- (e) Comply with the ITPs to the extent they are consistent with this IA, and to perform the obligations in this IA; and ensure that adequate funding for the MSHCP will be provided, consistent with the requirements and limitations of California law.

8.2. The Services' Responsibilities. The Services:

- (a) Shall, upon execution of this IA by the Services and United, issue ITPs to United authorizing any incidental take of Covered Species that may result from Covered Activities conducted in accordance with the MSHCP, and shall, in such ITPs, repeat or incorporate by reference the terms of Sections 6.0, 9.1, 9.2, 9.3, and 13.1 of this IA as legally effective conditions.
- (b) Shall not condition the approval the ITPs or the ITPs, directly or indirectly, on any additional environmental impact avoidance or mitigation measures beyond those committed to by United in Section 8.1 of this IA.
- (c) Shall not, in any biological opinion or incidental take statement issued pursuant to Section 7(b) of the ESA with respect to the action of any federal agency authorizing a Covered Activity in whole or in part, identify reasonable and prudent alternatives or reasonable and prudent measures that go beyond the specific conservation measures in in section 5.2 of the MSHCP (including any modifications amendments thereto made in accordance with the terms of section 14 this IA). .
- (d) Shall cooperate with and, to the extent funding is available, provide technical assistance to United as well as attend meetings requested by United to consider matters relevant to the Freeman Diversion, the MSHCP, the ITPs, or any of the construction, operations, maintenance, or other activities contemplated thereunder.
- (e) Shall participate in the adaptive management framework process consistent with the description in section 6.4.1.of the MSHCP and any amendments thereto;
- (f) Shall keep United apprised of the names and contact information for Services' personnel responsible for any tracking or participation of implementation procedures.

9 CHANGED CIRCUMSTANCES AND UNFORESEEN CIRCUMSTANCES

9.1. Changed Circumstances Provided for in the MSHCP. Subject to Section 9.4 of this IA, Table 8-1 of the MSHCP contains the complete list of Changed Circumstances and describes those specific remedial measures that United agrees to implement where, pursuant to the MSHCP, they are deemed necessary to respond to Changed Circumstances. The Parties agree that there are no other changes in circumstances affecting a Covered Species or Permit Area or the MSHCP or this IA that can reasonably be anticipated by United and the Services.

9.2. Changed Circumstances Responses Not Provided for in the MSHCP. Pursuant to the Services' "No Surprises" regulations currently codified at 50 C.F.R. §§ 17.22(b)(5)(ii), 17.32(b)(5)(ii) [USFWS regulations] and 50 C.F.R. § 222.307(g)(2) [NMFS regulations], the Services will not, without the consent of United, require any measures beyond those remedial measures provided for in Table 8-1 of the MSHCP to respond to Changed Circumstances.

9.3. Unforeseen Circumstances Not Provided for in the MSHCP. Pursuant to the Services' "No Surprises" regulations currently codified at 50 C.F.R. §§ 17.22(b)(5)(iii), 17.32(b)(5)(iii) [USFWS regulations] and 50 C.F.R. § 222.307(g)(3) [NMFS regulations], if additional measures are required to respond to unforeseen circumstances, the Services may require additional measures of United where the MSHCP is being properly implemented. However, such additional measures are limited to modification within any conserved habitat areas or the MSHCP's operating conservation program for the Covered Species (which is described in section 5.2 of the MSHCP, including any amendments thereto made in accordance with the terms of this IA). The original terms of the MSHCP will be maintained to the maximum extent possible. Additional measures will not involve, and the Services will not require, the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level provided for the Covered Species in the original terms of the MSHCP without the consent of United. With respect to commitments of water, this means the Services will not require diversion and bypass operations at the Freeman Diversion that differ from the specific facilities operations described in section 5.2.2 of the MSHCP. The Services have the burden of demonstrating that Unforeseen Circumstances exist, as provided in implementing regulations as they exist on the Effective Date, at 50 C.F.R. § 17.32(b)(5)(iii)(C) [USFWS Regulations] and 222.307(g)(iii) [NMFS regulations].

9.4. New Listings of Species that are Not Covered Species. In the event that a species that is not a Covered Species becomes listed under the ESA, United shall not have incidental take authority with respect to such newly-listed species unless and until the ITP(s) are amended to include such species or other authorization is provided pursuant to the ESA. Upon receipt of notice of the potential listing of a species that is not a Covered Species, United may request the technical assistance of the Services: to (i) identify possible measures to avoid take of such species; (ii) identify any modifications to the MSHCP that United may wish to make in order to provide coverage for the new species; and (iii) determine whether to amend the ITP(s) and/or the MSHCP, as the case may be. In the event that a non-Covered Species becomes listed or may become listed, the Services, shall consider in good faith whether the ITP(s) can be amended to provide incidental take authorization for such species, and section 2.5 of this IA can, consistent with applicable law, be amended to add such species without need for United to adopt additional conservation measures beyond those provided in the MSHCP. This section is intended to be consistent with Table 8-1 of the MSHCP as related to new listings.

10 MONITORING AND REPORTING

10.1. Reporting. United will provide the Services with the reports described in chapter Table 6-1 and Section 6.4.1 of the MSHCP at the notice address then in effect for the Services pursuant to Section 15.5 of this IA, and will provide any available information reasonably requested by the Services to verify the information contained in such reports.

10.2. Certification of Reports. All reports shall include the following certification by a responsible United manager who supervised or directed preparation of the report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

10.3. Inspections. Subject to federal and state law and regulation, where United controls access to the any part of the Plan Area or Permit Area, United agrees to allow the Services to inspect the Plan Area. Subject to the provisions of this IA, United consents to and shall cooperate with such inspections, and shall allow entry at reasonable hours to agents or employees of the Services to the Plan Area or Permit Area where Covered Activities are conducted or may have an effect, and to the premises where records relating to Covered Activities are kept. Except for inspections performed in connection with a law enforcement investigation by the Services, the Services agree to give United not less than two business days' advance notice of any inspection so as to provide United's representative with the opportunity to accompany the Services' representatives making such inspection. Except for inspections performed in connection with a law enforcement investigation by the Services, the Services agree not to delegate their rights of inspection hereunder to any other agency or person without United's prior consent. The Services shall ensure that any individual conducting an inspection on its behalf performs such inspection in compliance with all federal and state law and regulations applicable to the Services and in compliance with all of the terms and conditions of this IA, including without limitation, the requirement of advance notice where applicable. Except when the Services have reason to believe that United may be acting in violation of applicable laws or regulations or in breach of the ITPs, the SITP, and/or this IA, and believe in good faith that it would be significantly detrimental to their law enforcement obligations, the Services will promptly brief United of any information learned during any such inspection.

10.4. Annual Meetings. The Parties shall conduct annual meetings, or forego such meeting in a year if all Parties agree, consistent with the "Annual Meetings" provisions in section 6.4.1 of the MSHCP. The annual meetings will be conducted on the second Tuesday of February of each year, at United's principal office, or at a time and location otherwise agreed to by the Parties.

11 SUSPENSION, REVOCATION OR RELINQUISHMENT OF THE ITP

11.1. Permit Suspension or Revocation. The Services may suspend or revoke the ITPs only in accordance with the regulations in force at the time of such suspension or revocation. These regulations are currently codified at 50 C.F.R. §§ 13.27, 13.28 [USFWS regulations] and 50 C.F.R. § 222.306 [NMFS regulations]. Any such suspension or revocation will apply only to the specifically identified Covered Species, Covered Activities, or portions of the Permit Area.

11.2. Relinquishment. United may relinquish one of more of the ITPs or a portion thereof in accordance with regulations in effect on the date of such relinquishment and this section of the IA. These regulations are currently codified at 50 C.F.R. § 13.26 [USFWS regulations] and 50 C.F.R. § 222.306(d) [NMFS regulations]. Unless later modification of these regulations dictate otherwise, to relinquish an ITP, United shall, within thirty (30) calendar days of discontinuing incidental take and the exercise of other rights granted by the ITP and this IA, return the ITP to USFWS or NMFS as applicable, at the Service's issuing office together with a written statement surrendering the ITP for

cancellation. Relinquishment of an ITP will result in the termination of United's responsibilities and obligations to Covered Species listed and either or both (as applicable) of the Services' responsibilities and obligations as provided for in this IA.

11.3. Effect of Termination, Relinquishment, and Revocation. Any termination, relinquishment, or revocation of an ITP automatically terminates United's and USFWS, NMFS, or the Services' obligations and responsibilities under the MSHCP and this IA as related to the subjects of the specific ITP. Activities thereafter conducted by United will be subject to all applicable provisions of the ESA and related regulations as if the ITP had never been issued. A termination or revocation by either USFWS or NMFS limited to one or more species but less than all of the Covered Species then provided for in an ITP shall apply only to the affected species. The ITPs and this IA shall continue in full force and effect as to all other Covered Species.

11.4 No Post-Termination Obligations. The Parties acknowledge that United's compliance with the ITPs, the MSHCP, and this IA will result in United's having minimized or mitigated to the maximum extent practicable for any impacts of incidental take of any Covered Species while the ITPs are in effect. Therefore, if United is in compliance with the terms of the ITPs, the MSHCP, and this IA, upon termination, relinquishment, or revocation of an ITP, United shall have no further obligations under the ITPs, the MSHCP, and this IA with regard to Covered Species.

12 REMEDIES AND ENFORCEMENT

12.1. General. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this IA, the ITPs, and the MSHCP.

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

12.3. Enforcement Authority of the United States. Nothing contained in this IA is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

12.4. Dispute Resolution. The Parties recognize that good faith disputes concerning implementation of, or compliance with, or suspension, revocation, or termination of this IA, the MSHCP, or the ITPs may arise from time to time. The Parties agree to work together in good faith to resolve such disputes, using the dispute resolution procedures set forth in this Paragraph or such other procedures upon which the Parties may later agree. If NMFS or USFWS has reason to believe that United may have violated the MSHCP, an ITP, or this IA with respect to any Covered Species, the NMFS or USFWS or the Services, as applicable, will notify United in writing of the specific provisions which may have been violated, the reasons either or both of the Services believes United may have violated them, and the remedy either or both of the Services proposes to impose to correct or compensate for the alleged violation. United will then have sixty (60) days, or such longer time as may be mutually acceptable, to respond. If any issue cannot be resolved within thirty (30) days after United's response is due, or such longer time as may be mutually acceptable, the Parties will consider non-binding mediation and other alternative dispute resolution processes.

13 LIMITATIONS AND EXTENT OF ENFORCEABILITY

13.1. “No Surprises” Assurances. The Services cannot require United to provide additional measures for changed circumstances not provided for in Table 8-1 of the MSHCP, as provided in Section 8.2(b) and the Services “No Surprises” regulations which are codified at 50 C.F.R. §§ 17.22(b)(5)(ii), 17.32(b)(5)(ii) [USFWS regulations] and 50 C.F.R. § 222.307(g)(2) [NMFS regulations]. The Services cannot require United to commit additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise provided for in the MSHCP for Unforeseen Circumstances, as provided in Section 8.2(c) and the Services “No Surprises” regulations which are codified at 50 C.F.R. §§ 17.22(b)(5)(iii), 17.32(b)(5)(iii) [USFWS regulations] and 50 C.F.R. § 222.307(g)(3) [NMFS regulations]. If the Services’ “No Surprises” regulations should be modified, the modified regulations shall not apply unless reliance on the regulations in effect as of the Effective Date is prohibited by statute or court order.

13.2. Property Rights and Legal Authorities Unaffected. Except as otherwise specifically provided in this IA and in the MSHCP as incorporated herein, nothing in this IA shall be deemed to restrict the rights of United to operate the Freeman Diversion Facility and make use of its property or rights under state law consistent with the MSHCP and the ITPs; provided, that nothing in this IA shall absolve United from such other limitations as may apply to the Freeman Diversion Facility and the Plan Area under other laws of the United States and the State of California.

13.3. Limitation of Scope. USFWS and NMFS enter this IA with respect to the species under their respective jurisdictions only, and may act under this IA only as related to such species. Each of United’s commitments in this IA as related to any of the Covered Species runs only to the Party with jurisdiction under the ESA as applicable over such species and relates only to those of the Covered Species to which the commitment pertains.

14 MODIFICATIONS AND AMENDMENTS

14.1. Modifications to this IA. This IA may be amended only with the written consent of each of the Parties hereto; provided, that consent is not required from USFWS or NMFS for an amendment that pertains only to a Covered Species that is under the jurisdiction of the other of the Services.

14.2. Minor Modifications.

- (a) Procedures. Notwithstanding any regulation promulgated by the either of the Services prior to or after the Effective Date, any Party may propose minor modifications to the MSHCP, the ITPs, or this IA (“Minor Modifications”) by providing written notice to the other Parties. Such notice shall include a statement of the reasons for the proposed modification and an analysis of its environmental effects, including its effects on Covered Species and Covered Activities under the MSHCP. The Parties shall use reasonable efforts to respond to proposed modifications within thirty (30) days of receipt of such notice. Proposed Minor Modifications shall become effective, and the MSHCP shall be deemed modified accordingly, immediately upon all applicable Parties’ written approval. Among other reasons, a Party may object to a proposed Minor Modification based on a reasonable belief that such modification would result in adverse effects on the environment that are new or significantly different from those analyzed in the MSHCP or additional take not analyzed in connection with the MSHCP. If a

Party objects to a proposed Minor Modification, the proposal is not approved as a Minor Modification but may be processed as a material amendment of the ITP(s) or the SITP, as the case may be, in accordance with Section 14.3.

- (b) Examples. Subject to the limitations in Section 14.2(a), Minor Modifications to the MSHCP, the ITP(s), and this IA include, but are not limited to: (1) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning; (2) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in an ITP or the MSHCP; (3) minor changes to survey, monitoring, or reporting protocols; (4) clarifications of vague or undefined language or phrases; (5) minor changes to the MSHCP actions that do not diminish the conservation value of the MSHCP to Covered Species, including but not limited to changes or adjustments to conservation measures recommended through the adaptive management program and monitoring; (6) transfer of an ITP, in whole or in part, under section 15.3 of this IA; and (7) the extension of an ITP in accordance with Section 6.2(a) of this IA.

14.3. Material Amendments. Any modification to the MSHCP, the ITP(s), or this IA other than those made pursuant to Section 14.2(a) of this IA shall be processed as a Material Amendment of the MSHCP and the ITP(s) and this IA in accordance with all applicable legal requirements, including, but not limited to, the regulations codified at 50 C.F.R. § 13.23 [USFWS regulations], 50 C.F.R. § 222.306 [NMFS regulations, the ESA, the National Environmental Policy Act, and any other applicable federal and state regulations.

15 MISCELLANEOUS PROVISIONS

15.1. No Agency or Partnership. Neither this IA nor the MSHCP shall make or be deemed to make any Party to this IA the agent or partner of another Party.

15.2. Severability. If any provision of this IA or the MSHCP is found invalid or unenforceable, such provision shall be enforced to the extent it is not found invalid or unenforceable and the other provisions shall remain in effect to the extent they can be reasonably applied in the absence of such invalid or unenforceable provisions.

15.3. Succession, Assignments, and Transfers of the ITPs. This IA and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. Succession, assignments or other transfers of the ITP(s) in whole or in part shall be governed by applicable federal regulations, which are currently codified at 50 C.F.R. § 13.24 (b), (c) [USFWS regulations] and 50 C.F.R. § 222.305(a)(3) [NMFS regulations].

15.4. Defense. The Parties acknowledge that United has a significant and independent interest in maintaining the validity and effectiveness of the ITP(s), the MSHCP, and this IA. In consideration of this interest, the Services, subject to the availability of funds and the responsibilities of the United States Department of Justice, agree to defend, mutually with United, the validity of the ITP(s), the MSHCP, and this IA from lawsuits from entities not a Party to this IA, including citizen suits.

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

may be delivered by email or other electronic means, provided that they are also delivered personally or by certified mail, and such notices shall thereafter be deemed effective upon receipt.

United: General Manager
 United Water Conservation District
 106 North 8th Street
 Santa Paula, CA 93060
 Telephone:
 Email:

USFWS: _____
 United States Fish and Wildlife Service
 2493 Portola Road, Suite B
 Ventura, CA 93003
 Telephone:
 Email:

NFMS: _____
 NOAA – National Marine Fisheries Service
 501 West Ocean Boulevard, Suite 4200
 Long Beach, CA 90802-4250
 Telephone:
 Email:

Any Party may change the person or address to whom any notice is to be given, by giving notice in accordance with this section.

15.6. Elected Officials Not to Benefit. No member of Congress or the California Legislature, or any delegate, representative, or staff member thereof, shall be entitled to any share or part of this IA, or to any benefit that may arise from it.

15.7. Availability of Federal Funds. Implementation of this IA by the Services is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this IA shall be construed by the United or the Services to require the obligation, appropriation, or expenditure of any money from the United States Treasury. United and the Services acknowledge that the Services shall not be required under this IA to expend any federal agency's appropriated funds unless and until an authorized official of each agency affirmatively acts to commit to such expenditures as evidenced in writing.

15.8. Availability of State Funds. Implementation of this IA by the CDFW is subject the requirements of state law and the availability of appropriated funds. Nothing in this IA shall be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the California General Fund. United and the CDFW acknowledge that the Services shall not be required under this IA to expend any state agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

15.9. No Third Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA, the CESA, or any other federal or state law, this IA shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this IA to maintain a suit for personal injuries or damages pursuant to

the provisions of this IA. The duties, obligations, and responsibilities of the Parties to this IA with respect to third parties shall remain as imposed under existing law.

15.10. Relationship to the ESA and Other Authorities. The terms of this IA shall be governed by and construed in accordance with the ESA and other applicable federal. In particular, nothing in this IA is intended to limit the authority of the Services or the United States government to seek civil or criminal penalties or otherwise fulfill their responsibilities under the ESA or the CESA.

15.11. References to Regulations. Any reference in this IA, the MSHCP, or the ITP(s) to any rule or regulation of the Services shall be deemed to be a reference to such rule or regulation in existence at the time an action is taken, except as specifically provided in Section 13.1 of this IA.

15.12. Applicable Laws. All activities undertaken pursuant to this IA, the MSHCP, and the ITP(s) must be in accordance with all applicable federal and state laws and regulations.

15.13. Terms Do Not Run With the Land. Unless otherwise specified in this IA, the terms hereof are not intended to run with the land and will not bind subsequent purchasers of any property of United.

15.14. Coordination With CDFW. The Parties acknowledge that United has applied to CDFW for authorizations for incidental take of certain species under CESA that are also Covered Species under this IA, and that implementation of any permits under CESA or other agreements under state law addressing the same or similar issues as this IA should be coordinated to the extent possible with this IA. The Parties commit to coordination with CDFW as to activities relevant to this IA that also pertain to species or matters under CDFW's jurisdiction, and will seek to maximize efficiency and consistency in such efforts.

15.15. Entire Agreement. This IA constitutes the entire agreement among the Parties. The terms contained in this IA supersede any and all other agreements, either oral or written, among the Parties with respect to the subject matter contained in this IA, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein. The Parties agree that this IA forms an integral part of the MSHCP and the ITPs.

IN WITNESS WHEREOF the Parties hereto have caused this IA to be executed as of the date of the last signature below.

UNITED WATER CONSERVATION DISTRICT

By _____

Its _____

Date: _____

UNITED STATES FISH AND WILDLIFE SERVICE

By _____

Its _____

Date: _____

NATIONAL MARINE FISHERIES SERVICE

By _____

Its _____

Date: _____