MITIGATION BANK ENABLING INSTRUMENT
Table of Contents

RECITALS 1
AGREEMENT 3
Section I: Purpose and Authorities 3
A. Purpose 3
B. Authorities 3
Section II: Definitions 4
Section III: Stipulations 9
A. Baseline Condition 9
B. Disclaimer 9
C. Exhibits 9
Section IV: Bank Evaluation and Development 11
A. Bank Site Assessment by the IRT 11
B. Bank Sponsor's Responsibilities for Bank Development 11
C. Phase I Environmental Site Assessment 11
D. Permits 11
E. Subsequent Phases 11
F. Modification of the Development Plan 12
G. Property Assessment and Warranty 12
Section V: Bank Establishment Date 12
Section VI: Financial Assurances 12
A. Construction Security 12
B. Performance Security 13
C. Interim Management Security 13
D. Letters of Credit 13
E. Endowment Fund 14
Section VII: Credit Release 14
A. 404 Re-establishment Credit Releases 15
B. Porter-Cologne Re-establishment Credit Releases 17
C. *1600 Non-Preservation Credit Release* 18
D. 404, Porter-Cologne, 1600 and Covered Habitat Preservation Credit Release 20
Section VIII: Operation of the Bank 20
A. Service Area 21
B. Transfer of Credits 21
C. Interim and Long-term Management and Monitoring 21
D. Bank Closure Plan 22
E. Financial Operations 22
F. Remedial Action Plan 26
Section IX: Reporting 26
A. Annual Inflation Adjustments to Endowment Fund Report 26
B. Annual Report 26
C. Credit Transfer Reporting 27
D. Reporting Compliance Measures: 28
Section X: Responsibilities of the Bank Sponsor and Property Owner 28

ED_013814_00000904-00001

Section XI: Responsibilities of the IRT 30
A. IRT Oversight 30
B. IRT Review 30
C. IRT Compliance Inspections 30
D. USACE-Specific Responsibilities ..... **Error! Bookmark not defined.**
E. CDFW -Specific Responsibilities 30
F. Lahontan RWQCB-Specific Responsibilities 31
Section XII: Other Provisions 31
A. Force Majeure, Catastrophic Events, or Unlawful Acts 31
B. Dispute Resolution 32
C. Conveyance of Bank Property 32
D. Modification and Termination of the BEI 33
E. Default 34
F. Controlling Language 34
G. Entire Agreement 35
H. Reasonableness and Good Faith 35
I. Successors and Assigns 35
J. Partial Invalidity 35
K. Notices 35
L. Counterparts 37
M. No Third Party Beneficiaries 37
N. Availability of Funds 37
O. No Partnerships 38
P. Governing Law 38
Q. No Federal Contract or Monetary Damages 38
R. CDFW Remedies 38
S. Lahontan RWQCB Remedies 39
Section XIII: Execution 39

ED_013814_00000904-00002

BANK ENABLING INSTRUMENT
PETERSEN RANCH MITIGATION BANK

This Bank Enabling Instrument ("BEI"), dated this _____ day of _____, 20__, is made by and among Land Veritas Corp. ("Bank Sponsor"), LV-BP Investors Ranch, LLC ("Petersen Ranch Property Owner"), LV Lake Elizabeth, LLC ("Elizabeth Lake Property Owner"), and the Los Angeles District of the U.S. Army Corps of Engineers ("USACE"), Region IX of the U.S. Environmental Protection Agency ("USEPA"), California Regional Water Quality Control Board, Region 6v ("Lahontan Regional Water Board"), and the California Department of Fish and Wildlife ("CDFW"), South Coast Region. These agencies comprise and are referred to jointly as the Interagency Review Team ("IRT"). The Bank Sponsor, Petersen Ranch Property Owner, Elizabeth Lake Property Owner, and the IRT are hereinafter referred to jointly as the "Parties." This BEI sets forth the agreement of the Parties regarding the establishment, use, operation and maintenance of the Petersen Ranch Mitigation Bank (the "Bank").

RECITALS

A. The Bank Sponsor is responsible for establishing and operating the Bank.

B. The Petersen Ranch Property Owner is the owner of real property containing approximately 3,912 acres (the "Petersen Ranch Property"), located at the intersection of Elizabeth Lake Road and Johnson Canyon Road, Los Angeles County, State of California, designated Assessor's Parcel No(s). 3205-022-019, 3215-004-003, 3215-018-005, 3215-018-006 (partial), 3215-018-007, 3215-018-013, 3215-018-017, 3215-018-018 (partial), 3215-018-019, 3215-018-020, 3215-018-021 (partial), 3215-018-022 (partial), 3215-018-023, 3215-018-024, 3215-018-025, 3215-018-026, 3215-018-027, 3215-018-028, 3215-018-033, 3215-018-034, 3215-019-006, 3215-019-007, 3215-019-008, 3215-019-013, 3215-019-021, 3215-019-022, 3215-019-023, 3224-001-016, 3224-001-017, 3224-001-018, 3224-001-019, 3224-001-020, 3224-001-021, 3224-001-022, 3224-001-023, 3224-001-024, 3224-001-025, 3224-001-026, 3224-001-027, 3224-001-028, 3224-001-029, 3224-001-030, 3224-001-031, 3224-035-001, 3224-035-002, 3224-035-003, 3224-035-004, 3224-035-005, 3224-035-006, 3224-035-007, 3224-035-008, 3224-035-009, 3224-035-010, 3224-035-011, 3224-035-012, 3224-035-013, 3224-035-014, 3224-035-015, 3224-035-016, 3224-035-017, 3224-035-018, 3224-035-019, 3224-035-020, 3224-035-021, 3224-035-022, 3224-035-023, 3224-035-024 (partial), 3224-035-025 (partial), 3224-035-026, 3224-035-027, 3224-035-028 (partial), 3225-023-004 (partial), 3225-023-005 (partial), 3225-023-006, 3225-023-011, 3225-023-032, 3225-023-033, 3225-023-054, 3225-023-061, 3225-024-001, 3225-024-008, 3225-024-009, 3225-024-010, 3225-024-013, 3225-024-016, 3225-024-020 (partial), 3225-024-021 (partial), 3225-024-022 (partial), 3225-024-024, 3225-024-035, 3225-025-001, 3225-025-006, 3225-025-012. The Petersen Ranch Property is generally shown on the Bank Location Maps (**Exhibit A)** and legally described in the Real Estate Records and Assurances (**Exhibit E**) attached hereto.

ED_013814_00000904-00003

C. The Elizabeth Lake Property Owner is the owner of real property containing approximately 317 acres (the "Elizabeth Lake Property"), located on Elizabeth Lake Road on the western shores of Elizabeth Lake, Los Angeles County, State of California, designated Assessor's Parcel No(s). 3235-005-020, 3235-005-015, 3235-005-026, 3235-005-027, 3235-006-003, 3235-006-001, 3235-006-002, 3235-008-002 (partial), 3235-008-003 (partial), and 3235-008-017 (partial). The Elizabeth Lake Property is generally shown on the Bank Location Maps (**Exhibit A)** and legally described in the Real Estate Records and Assurances (**Exhibit E**) attached hereto.

D. The Petersen Ranch Property Owner and the Elizabeth Lake Property Owner are together referred to as the "Property Owner".

E. Bank Sponsor and Property Owner desire to create the Bank over a 3,789-acre portion of the Petersen Ranch Property (the "Petersen Ranch Bank Property") and a 314-acre portion of the Elizabeth Lake Property (the "Elizabeth Lake Bank Property") together referred to as the "Bank Property" or "Bank Properties". The Bank Properties are generally shown on the Bank Location Maps (**Exhibit A**) and legally described in the Real Estate Records and Assurances (**Exhibit E**) attached hereto. The Bank Properties are to be conserved in perpetuity by the Conservation Easement, which shall be recorded as provided in Section V.

F. The Bank Property is demarcated into six geographic areas (Areas A-F) that will be incorporated into the Bank through IRT approved Subsequent Phases as provided in Section IV.E. The provisions of this BEI apply independently to each area incorporated into the bank through an approved Phase.

G. A 320-acre portion of the Petersen Ranch Bank Property has been sold to Southern California Edison (SCE) as a turn-key mitigation/conservation easement (SCE easement) and includes the parcels 3225-024-008 and 3225-024-009 as well as portions of the parcels 3225-024-020 and 3225-025-012. The SCE easement acreage will not be counted toward bank credit assignment, but the management and endowment for the SCE easement will be merged with the bank management and endowment. This easement, and how it relates to the Bank, is described in greater detail in **Exhibit K-13**.

H. CDFW has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code § 1802.

I. USEPA and USACE have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq*. Waters of the U.S. include jurisdictional wetlands.

J. The State and Regional Water Boards have jurisdiction over waters of the state pursuant to Porter-Cologne Water Quality Control Act , Water Code § 13000 et seq. Waters of the state include any surface water or groundwater, including saline waters, within the boundaries of the state.

K. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Bank.

L. The goals and objectives for the Bank are set forth in the Development Plan (**Exhibit C**) and the Bank Management and Operation Documents (**Exhibit D**).

M. Initially-capitalized terms used and not defined elsewhere in this BEI are defined in Section II.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section I: Purpose and Authorities

A. Purpose

The purpose of this BEI is to set forth the agreement of the Parties regarding the establishment, use, operation, and maintenance of the Bank to compensate for unavoidable impacts to, and conserve and protect, Waters of the U.S, Waters of the State, Covered Species, and Covered Habitat. The Bank Sponsor and Property Owner shall preserve, restore, establish, and/or enhance and then manage and maintain Waters of the U.S., Waters of the State, Covered Species, and Covered Habitat in accordance with this BEI, the Development Plan, Interim Management Plan and Long-term Management Plan.

B. Authorities

The establishment and use of the Bank for off-site compensatory mitigation or conservation is governed by one or more of the following statutes, regulations, policies, and guidelines:

1. Federal

a. Clean Water Act (33 U.S.C. § 1251 *et seq.*);

b. Rivers and Harbors Act (33 U.S.C. § 403);

c. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*);

d. Endangered Species Act (16 U.S.C. § 1531 *et seq.*) ("ESA"), particularly including impacts to federally listed threatened or endangered species and/or critical habitat under § 7 and 10 of ESA;

e. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*);

f. Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*);

g. National Historic Preservation Act (16 U.S.C. § 470);

h. Regulatory Programs of the U.S. Army Corps of Engineers (33 C.F.R. Parts 320-332);

i. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230);

j. Executive Order 11990 - Protection of Wetlands;

k. Executive Order 11988 - Floodplain Management;

l. Memorandum of Agreement between the U.S. Environmental Protection

ED_013814_00000904-00005

Agency and the Department of the Army concerning the Determination of Mitigation Under the Clean Water Act, § 404(b)(1) Guidelines (February 6, 1990);

m. Guidance for the Establishment, Use and Operation of Conservation Banks (U.S. Department of Interior Memorandum, dated May 2, 2003); and

n. USACE San Francisco District Public Notice 02-03, dated March 5, 2003, titled "Mitigation Bank Policy on the Santa Rosa Plain."

2. State

a. California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 et seq.) and State CEQA Guidelines (Tit. 14 Cal. Code Regs., Ch. 3);

b. California Endangered Species Act ("CESA") (Fish and Game Code § 2050 et seq.);

c. California Natural Community Conservation Planning ("NCCP") Act (Fish and Game Code § 2800 et seq.);

d. California State Office of Historical Preservation ("SHPO") (Public Resources Code § 5020 et seq.) Archaeological, Paleontological and Historical Sites (Public Resources Code § 5097 et seq.) Native American Historical, Cultural and Sacred Sites (Public Resources Code § 5097.9); and Historical Resources (Public Resources Code § 21084.1);

e. Conservation of Wildlife Resources (Fish and Game Code § 1800 et seq.);

f. Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish and Game Code § 1600 et seq.);

g. Official Policy on Conservation Banks, April 7, 1995, by California Resources Agency and California Environmental Protection Agency, jointly; and

h. Supplemental Policy Regarding Conservation Banks within the NCCP Area of Southern California, January 24, 1996, by U.S. Fish and Wildlife Service and California Department of Fish and Game.

i. Porter-Cologne Water Quality Control Act of 1969 (California Water Code §13000 et seq.)

j. Conservation Bank and Mitigation Bank Applications and Fees (Fish and Game Code § 1797 et seq.).

k. California Government Code Title 7. Planning and Land Use, Division 1. Planning and Zoning, Chapter 4.6, § 65965-65968 Mitigation Lands: Nonprofits Organizations.

Section II: Definitions

The initially-capitalized terms used and not defined elsewhere in this BEI are defined as set forth below.

ED_013814_00000904-00006

"1600 Credits" are credits that can be transferred to offset impacts to aquatic resources under California Department of Fish and Wildlife jurisdiction through the Lake and Streambed Alteration Program.

"404 Credits" are credits that can be transferred to offset impacts to Waters of the U.S.

"Adaptive Management" means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Bank Sponsor and/or the Property Owner, as appropriate, based upon Bank annual report results and IRT review of overall Bank performance and compliance.

"Bank Establishment Date" is the date determined pursuant to Section V, when the Bank is considered established and Transfer of Credits may begin.

"Buffer" means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, streams, lakes, marine, and estuarine systems from disturbances associated with adjacent land uses.
"Catastrophic Event" shall mean an unforeseen event including, without limitation, natural or man-made fire, flood, storm, terrorist acts, criminal acts, and earth movements, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on the Bank Property, and over which neither the Bank Sponsor nor the Property Owner has control.

"Conservation Easement" means a perpetual conservation easement, as defined by California Civil Code § 815.1, in the form of **Exhibit E-4** attached hereto.

"Construction Security" means the financial assurance specified in Section VI.A. and **Exhibit C-2,** to be provided by the Bank Sponsor to guarantee the completion of construction and planting to establish, restore or enhance Waters of the U.S., Waters of the State, and Covered Habitat on the Bank Property in accordance with the Development Plan.

"Covered Habitat" means habitat of concern or habitat upon which the Covered Species depend for their continued viability that the IRT determines will be adequately conserved as a result of implementation of this BEI. Covered Habitat Credits are identified in **Exhibit F-1**.

"Covered Species" means the species for which the Bank has been established and for which Credits have been allocated as set forth in **Exhibit F-1**.

"Credits" are units of measure representing the accrual, attainment, or protection of aquatic functions and/or the Covered Species or Covered Habitat on the Bank Property. One Credit is equivalent to one acre, or as otherwise defined in **Exhibit F-1**.

"Credit Release" means an action to make specified Credits available for Transfer pursuant to this BEI by the appropriate agency that has jurisdiction over specified Credits.

"Development Plan" means the document attached as **Exhibit C-1** that is the overall plan governing construction and habitat establishment, restoration, enhancement and preservation activities required to be conducted on the Bank Property to establish Credits.

"Endowment Agreement" means the agreement, including the mitigation agreement within

the meaning of Government Code section 65965(f)(1), attached as **Exhibit D-3** that establishes the terms and conditions pursuant to which the Endowment Holder will accept custody of and manage the Endowment Fund and disperse funds to the Property Owner.

"Endowment Amount" is the amount, determined in **Exhibit D-2**, that is required to be provided, in accordance with Section VI.E, by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund.

"Endowment Deposit" is the deposit or series of deposits made or required to be made by the Bank Sponsor to the Endowment Holder to fund the Endowment Fund. Endowment Deposits received by the Endowment Holder shall be deposited into the Endowment Fund, held in trust, and administered in strict accordance with the Endowment Agreement.

"Endowment Fund" is a sum of money in a long-term stewardship account, held in trust in a fund designated in the Endowment Agreement. The Endowment Fund is to be maintained and managed in perpetuity in strict accordance with Government Code sections 65965-69568, Probate Code sections 18501-18510, the BEI, and the Endowment Agreement to generate earnings and appreciation in value for use in funding perpetual management, maintenance, monitoring, and other activities as required by the Long-term Management Plan. The term "Endowment Fund" as used in this BEI shall comprise the Endowment Deposits and all interest, dividends, gains, other earnings, additions and appreciation thereon, as well as any additions thereto.

"Endowment Holder" is the entity qualified to hold the Endowment Fund in trust, in accordance with the Endowment Agreement (**Exhibit D-3**), and California Government Code Sections 65965-65968.

"Enhancement" means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

"Establishment (creation)" means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

"Force Majeure" shall mean war, insurrection, riot or other civil disorder, flood, earthquake, fire, disease, governmental restriction or the failure by any governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction, which has a material and detrimental impact on the Bank or the Bank Property and over which neither the Bank Sponsor nor the Property Owner has control; *provided, however,* that (i) a riot or other civil disorder shall constitute an event of Force Majeure only if the event has broad regional impacts and is not endemic to the Bank Property and its immediate locale; (ii) a flood shall be considered an event of Force Majeure only if it is greater than a presently projected 100-year flood, where "flood" refers to a runoff event; (iii) an earthquake shall constitute an event of Force Majeure only if the ground motion it generates at the Bank Property is greater than that presently projected from an earthquake with a return period of 475 years; (iv) disease shall constitute an event of Force Majeure only if such event has broad regional impact and is not endemic to the Bank Property and its immediate locale; and (v) governmental restriction or the failure by any

ED_013814_00000904-00008

governmental agency to issue any requisite permit or authority, or any injunction or other enforceable order of any court of competent jurisdiction shall not constitute an event of Force Majeure unless there is no other feasible means of Remedial Action.

"Grantee" means the entity, other than the Bank Sponsor or Property Owner, authorized to hold the conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65966 and 65967. Specifically, Grantee 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.

"HCP" means a Habitat Conservation Plan prepared pursuant to § 10(a)(2)(A) of the ESA (16 U.S.C. § 1539(a)(2)(A)).

"Implementation Fee" is the fee the Fish and Game Code Section 1799(e)(2) requires CDFW to collect to pay for all or a portion of its bank implementation and compliance costs.

"Interim Management Period" means the period from the Bank Establishment Date until the Performance Standards in the Development Plan have been met and the third anniversary of the full funding of the Endowment Amount has occurred.

"Interim Management Plan" means the document attached as **Exhibit D-4** that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Bank Sponsor during the Interim Management Period.

"Interim Management Security" is the financial assurance specified in Section VI.C. and **Exhibit D-1**, to be provided by the Bank Sponsor to guarantee the implementation of the Interim Management Plan.

"Long-term Management Period" means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which the Bank Property is to be managed, monitored and maintained pursuant to the Long-term Management Plan.

"Long-term Management Plan" means the document attached as **Exhibit D-5** that provides measures intended to ensure the Bank Property is managed, monitored and maintained in perpetuity to conserve and protect its Waters of the U.S, Waters of the State, Covered Species and Covered Habitat.

"NCCP" is a Natural Community Conservation Plan created pursuant to Fish and Game Code § 2800, *et seq.*

"Performance Security" means the financial assurance specified in Section VI.B. and **Exhibit C-3**, to be provided by the Bank Sponsor to guarantee that the Performance Standards are met and all Remedial Action required under Section VIII.F is completed through Bank closure.

"Performance Standards" means the minimum standards set forth in the Development Plan to define the successful development of Waters of the U.S., Waters of the State, and Covered Habitat.

"Phase I Environmental Site Assessment" is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process," or any successor to such ASTM Standard which is active at the time of the assessment.

"Porter Cologne Credits" are credits created within the Antelope Fremont Watershed that can be transferred to offset impacts to Waters of the State under Lahontan Regional Water Quality Control Board jurisdiction.

"Preservation" means the removal of a threat to, or preventing the decline of, aquatic or sensitive upland resources by an action in or near those aquatic or sensitive upland resources. This term includes activities commonly associated with the protection and maintenance of aquatic or sensitive upland resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic or sensitive upland resource area or functions.

"Property Assessment and Warranty" means the written Property evaluation and assurance signed by the Property Owner and attached as **Exhibit E-2**.

"Property Owner" means the owner(s) of fee simple title to the Bank Property.

"Remedial Action" means any corrective measures which the Bank Sponsor or Property Owner is required to take to ameliorate any injury or adverse impact to the Bank Property as Preserved, established, restored or enhanced or as a result of a failure to achieve the Performance Standards.

"Re-establishment" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a net gain in aquatic resource area.

"Restoration" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

"Rehabilitation" means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area

"RIBITS" means the Regulatory In-lieu Fee and Bank Information Tracking System.

"Service Area" means the geographic area(s) within which impacts to Waters of the U.S., Waters of the State, Covered Species or Covered Habitat that occur may be mitigated or compensated through Credits from the Bank.

ED_013814_00000904-00010

"Subordination Agreement" means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the Bank Property makes the lien or encumbrance subject to and of lower priority than the Conservation Easement, even though the lien or encumbrance was recorded before the Conservation Easement.

"Transfer" means the use, sale, or conveyance of Credits by the Bank Sponsor.

"Unlawful Act" shall mean the act of any person or entity other than the Bank Sponsor or Property Owner and shall include an event or series of events, such as the intentional release within the Bank Property, or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the Bank Property.

"Waters of the State" is defined as "any surface water or groundwater, including saline waters, within the boundaries of the state" in the California Water Code section 13050. All Waters of the State which the State and Regional Water Boards have jurisdiction over are afforded protections under the Porter-Cologne Water Quality Control Act of 1969. Waters of the State consisting of streams, lakes and associated riparian habitat over which CDFW is granted jurisdiction are afforded protections under the Lake and Streambed Alteration Program (Fish and Wildlife Protection and Conservation, Fish, and Game Code § 1600, *et seq.*).

"Waters of the U.S." means all waters and wetlands over which the USACE and the USEPA is granted jurisdiction in the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, and the River and Harbor Act, 33 U.S.C. § 401, *et seq* and for which Credits have been allocated as set forth in **Exhibit F-1**. This definition encompasses both the term "waters of the United States" as defined in 33 C.F.R. Part 328 and "navigable waters" as defined in 33 C.F.R. Part 329.

Section III: Stipulations

A. Baseline Condition

The current condition of the Bank Property is described in the Development Plan (**Exhibit C-1**) and the Biological Resources Survey (**Exhibit H**).

B. Disclaimer

This BEI does not in any manner limit the legal authorities or responsibilities of the IRT, or of any IRT agency, but is, instead, an implementation of such authorities and responsibilities.

C. Exhibits

The following Exhibits are attached to and incorporated by this reference into this BEI:

1. "Exhibit A" - Bank Location Maps

   A-1 General Vicinity Map

   A-2 Map of Property, including Bank Property

A-3 Map of Conserved Areas in Bank Property Vicinity

2. "Exhibit B" - Service Area Maps and Descriptions

B-1 Maps of the Bank's Service Areas

B-2 Narrative Descriptions of the Bank's Service Areas

3. "Exhibit C" - Development Plan

C-1 Development Plan

C-2 Construction Security Analysis and Schedule

C-3 Performance Security Analysis and Schedule

4. "Exhibit D" - Bank Management and Operation Documents

D-1 Interim Management Security Analysis and Schedule

D-2 Endowment Fund Analysis and Schedule

D-3 Agreements, Instructions and Forms for Submission or Disbursement of Endowment Funds

D-4 Interim Management Plan

D-5 Long-Term Management Plan

D-6 Bank Closure Plan

5. "Exhibit E" - Real Estate Records and Conservation Easement

E-1 Preliminary Title Report, Legal Description, and Parcel Maps

E-2 Property Assessment and Warranty

E-3 Plat Maps

E-4 Conservation Easement

E-5 Title Insurance

6. "Exhibit F" - Bank Crediting and Credit Transfers

F-1 Credit Evaluation and Credit Table

F-2 Credit Purchase Agreement and Payment Receipt Templates

F-3 Credit Transfer Ledger Template

7. "Exhibit G" - Phase I Environmental Site Assessment

8. "Exhibit H" - Biological Resources Survey

9. "Exhibit I" - Waters of U.S. Jurisdictional Determination and Delineation

10. "Exhibit J" - Cultural, Historical, Archeological, and Native American Resources ("Cultural Resources").

    J-1 Identification, Inventory and Evaluation

11. "Exhibit K" - Other Documentation, Permits, Amendments or Revisions

Section IV: Bank Evaluation and Development

A. Bank Site Assessment by the IRT

Representatives of the IRT have inspected and evaluated the Bank's Waters of the U.S., Waters of the State, Covered Species and Covered Habitat and have agreed upon the assignment of Credits set forth in **Exhibit F-1**.

B. Bank Sponsor's Responsibilities for Bank Development

The Bank Sponsor agrees to perform all necessary work, in accordance with the provisions of this BEI, to establish, monitor, and maintain the Waters of the U.S. Waters of the State, Covered Species and Covered Habitats, as described in the Development Plan, on the Bank Property until the Bank Sponsor has demonstrated to the satisfaction of the IRT that the Bank complies in all respects with all requirements contained in this BEI pertaining to Bank development.

C. Phase I Environmental Site Assessment

The Property Owner has provided a current Phase I Environmental Site Assessment of the Bank Property, attached hereto as **Exhibit G**, showing that the Bank Property is not subject to any recognized environmental conditions as defined by the American Society for Testing and Materials (ASTM) Standard E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process" (i.e., the presence or likely presence of any Hazardous Substances or petroleum products). If the Phase I Environmental Site Assessment identified any recognized environmental conditions, the Property Owner represents and warrants to the IRT that all appropriate assessment, clean-up, remedial or removal action has been completed.

D. Permits

The Bank Sponsor will obtain all appropriate permits and other authorizations needed to construct and maintain the Bank. This BEI does not constitute or substitute for any such approval.

E. Subsequent Phases

This Bank will be established in multiple phases. The Bank Property is comprised of six geographic area (Area A-F). Phase 1 of the Bank will include recordation of Conservation Easements and implementation of the Development Plan within Area A of the Petersen Ranch Bank Property and Area E of the Elizabeth Lake Bank Property. Subsequent phases will be constructed and incorporated into the Bank over time. A separate conservation easement will be recorded for each area in each subsequent phase. The Bank Sponsor shall submit a written request to the IRT for approval of each subsequent phase. Subsequent phases will need to comply with IRT documentation

requirements in effect on the date of submission of the complete documentation for the proposed phase. Establishment of each subsequent phase must be approved in writing by the IRT.

F. Modification of the Development Plan

In the event the Bank Sponsor and the IRT determine that modifications must be made to the Development Plan, the Parties shall meet to discuss the modifications, and the Bank Sponsor shall submit a written request for approval of such modifications to the IRT within 60 calendar days of the meeting. Upon written approval from the IRT, the Bank Sponsor shall then implement all approved modifications. Modification of the Development Plan may constitute an amendment.

G. Property Assessment and Warranty

Property Owner shall notify the IRT of any errors or discrepancies in the Property Assessment and Warranty (**Exhibit E-2**) discovered subsequent to Property Owner's signing of this BEI. The IRT shall evaluate any impacts of the errors or discrepancies on the Bank Property and the Conservation Easement, and may reduce the number of available Credits as a result of such impacts according to the policies of the IRT in effect at the time of notice to the IRT.

Section V: Bank Establishment Date

The Bank Establishment Date will occur and Transfer of Credits may begin only when all of the following actions have occurred:

1. The BEI has been fully executed by all of the Parties;
2. The Conservation Easement has been accepted by a Grantee approved by the IRT and has been recorded in the Official Records of the county in which the Bank Property is located, and;
3. The Bank Sponsor has complied with its obligation to furnish financial assurances in accordance with Section VI.

Within 30 days of the Bank Establishment Date, the Bank Sponsor shall upload the final, signed BEI including all of its Exhibits, to RIBITS and provide an electronic copy to each member of the IRT.

Section VI: Financial Assurances

The Bank Sponsor is responsible for providing financial assurances for the performance and completion of Bank construction, management, monitoring, and Remedial Action in accordance with this BEI, as set forth in this Section VI. The financial assurances shall be held in accordance with Section VIII.E. The Bank Sponsor shall notify each IRT agency in accordance with Section XII.K. upon furnishing each of the following financial assurances:

A. Construction Security

Prior to the first Credit Release, the Bank Sponsor shall furnish to USACE Construction Security in the amount of 100% of a reasonable third party estimate or contract to establish, restore, or enhance Waters of the U.S., Waters of the State, and Covered Habitat on the Bank Property in accordance with the Development Plan as specified in **Exhibit C-2**. The Construction Security shall be in the form of an irrevocable standby

ED_013814_00000904-00014

letter of credit. The Bank Sponsor shall ensure that the full amount of the Construction Security shall remain in effect throughout the performance of construction and planting to establish, restore, or enhance Waters of the U.S., Waters of the State, and Covered Habitat on the Bank Property in accordance with the Development Plan. *Provided, however*, that if all such construction and planting is completed in accordance with the Development Plan prior to the date on which Bank Sponsor would otherwise be required to furnish the Construction Security then no Construction Security shall be required.

B. Performance Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish to USACE Performance Security in the amount of 20% of the Construction Security as specified in **Exhibit C-3** ***or*** 20% of the Endowment Fund Analysis and Schedule as specified in **Exhibit D-2**, whichever is higher. The Performance Security shall be in the form of an irrevocable standby letter of credit. The Bank Sponsor shall ensure that the full amount of the Performance Security shall remain available in accordance with Section VIII.E.1.b.2. until the IRT determines that all of the Performance Standards, all Remedial Action(s), and any additional Performance Standards required by such Remedial Action(s) under Section VIII.F are met.

C. Interim Management Security

Concurrent with the Transfer of the first Credit, Bank Sponsor shall furnish to USACE Interim Management Security in the amount specified in **Exhibit D-1**. The amount of the Interim Management Security shall be equal to the estimated cost to implement the Interim Management Plan during the first three years of the Interim Management Period, as set forth in the Interim Management Security Analysis and Schedule (**Exhibit D-1**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars. The Interim Management Security shall be in the form of an irrevocable standby letter of credit. The Bank Sponsor shall ensure that the full amount of the Interim Management Security shall remain available in accordance with Section VIII.E.1.c. until the end of the Interim Management Period.

D. Letters of Credit

Letters of credit shall be submitted to and approved by USACE before they satisfy any financial assurance requirement. The USACE shall be the beneficiary of the letter of credit. Any letter of credit shall be issued for a period of at least one year, and shall provide that the expiration date will be automatically extended for at least one year on each successive expiration date unless, at least 120 calendar days before the current expiration date Bank Sponsor and the USACE have received notice from the issuing institution of its decision not to extend the expiration date, as evidenced by the return receipts. The letter of credit shall provide that any unused portion shall be available for 120 calendar days after the date Bank Sponsor and the USACE have received such notice, as shown on the signed return receipts. If the issuer elects to not extend the expiration date of any letter of credit, Bank Sponsor shall provide the USACE with replacement security in the form of a letter of credit, within 60 calendar days after receiving notice of the issuer's decision not to extend the expiration date. If Bank Sponsor does not provide such replacement security on or before the expiration of the 60-day period, then the USACE shall have the right to immediately draw upon the letter of credit for which the replacement security was required.

ED_013814_00000904-00015

E. Endowment Fund

1. The Endowment Fund shall be in an amount sufficient to fully provide for the financial requirements of the long-term management of the Bank Property in accordance with the Long-term Management Plan and the Endowment Fund Analysis and Schedule (**Exhibit D-2**). Cost estimates should be based on tasks implemented by a third party in present day dollars or equipment prices in present day dollars.

2. The Bank Sponsor shall fund the Endowment Fund through Endowment Deposits according to the schedule below. The Endowment Fund shall be funded as follows:

    a. A minimum of 15% of the Endowment Amount shall be funded prior to the earliest of: 1) the second 404, Porter-Cologne and 1600 Credit Release; or 2) the second Covered Species and Covered Habitat Preservation Credit Release; or 3) the second Covered Species and Covered Habitat Establishment Credit Release;

    b. A minimum of 40% of the Endowment Amount shall be funded prior to the earliest of: 1) the third 404, Porter-Cologne and 1600 Credit Release; or 2) the third Covered Species and Covered Habitat Preservation Credit Release; or 3) the third Covered Species and Covered Habitat Establishment Credit Release;

    c. A minimum of 70% of the Endowment Amount shall be funded prior to the earliest of: 1) the fourth 404, Porter-Cologne and 1600 Credit Release; or 2) the fourth Covered Species and Covered Habitat Preservation Credit Release; or 3) the fourth Covered Species and Covered Habitat Establishment Credit Release;

    d. 100% of the Endowment Amount shall be funded prior to the earliest of: 1) the fifth 404, Porter-Cologne and 1600Credit Release; or 2) the fifth Covered Species and Covered Habitat Preservation Credit Release; or 3) the fifth Covered Species and Covered Habitat Establishment Credit Release.

3. Each year the Endowment Fund is not fully funded, the Endowment Amount must be adjusted for inflation. The Bank Sponsor must make this adjustment using annual Consumer Price Index (CPI) data that is published every February by the California Department of Industrial Relations, Division of Labor Statistics and Research. When completing the calculation, the Bank Sponsor shall use the CPI value for all urban consumers. The Bank Sponsor will report the adjustment, utilizing the prior year's annual verses quarterly CPI, to the IRT by March 1st each year, until the Endowment Fund is fully funded. The Bank Sponsor must apply the adjustment to the amount of the original Endowment Amount. If the annual CPI is less than or equal to zero, then no adjustment is made for that year. The Endowment Fund Analysis and Schedule, which contains the Endowment Amount, is attached as **Exhibit D-2.**

4. Bank Sponsor shall provide each member of the IRT a copy of the receipt for each Endowment Deposit made, within 30 days of such deposit.

Section VII: Credit Release

Each Credit Release must be requested in writing by the Bank Sponsor and must be approved in writing by the IRT agency(ies) under whose jurisdiction the Credits reside. The Bank Sponsor may request that a portion of the anticipated Credit Release be released and not the entirety. The percentage of the anticipated Credit Release requested by the Bank Sponsor must be included in the written Credit Release request to the IRT. Credits not requested by the Bank Sponsor during a specific Credit Release can subsequently be requested and shall not be considered retired.The credit schedules described below apply to each phase of the Bank. Each credit release schedule for each phase of the Bank is independent of other phases.

A. 404 Re-establishment Credit Releases

1. Upon Bank Sponsor's compliance with all applicable requirements set forth in this Section VII.A, 404 Credits as described in the Credit Table (**Exhibit F-1**) may be released for Transfer, as described below. Monitoring for Performance Standards as provided for in the Development Plan (Exhibit C-1) for Credit Releases is for a minimum of five years. The actual number of Credits released shall be determined in writing by the USACE, in consultation with the other IRT agencies, based upon as-built conditions, extent of Waters of the U.S. and buffers re-established, rehabilitated, or Enhanced, attainment of the Performance Standards, funding of the Endowment Fund in accordance with Section VI.E, and compliance with requirements of this BEI and any associated authorization. Upon each Credit Release, USACE shall enter the number of Credits released into RIBITS. No Credit Transfer shall occur until the applicable Credit Release has occurred. Credits may be released as follows:

    a. Release 1: Up to 15% of the total anticipated 404 Credits upon the Bank Establishment Date.

    b. Release 2: Up to an additional 25% of the total anticipated 404 Credits (40% cumulative total) when: i) the Bank Sponsor has submitted as-built drawings pursuant to Section VII.A.2, ii) the USACE has approved the as-built condition in writing, and iii) the Bank Sponsor has funded a minimum of 15% of the Endowment Fund per Section VI.E.2.a. Release 1 is a prerequisite for release 2.

    c. Release 3: Up to an additional 15% of the total anticipated 404 Credits (55% cumulative total) when: i) the Bank Sponsor has submitted the Third Year Monitoring Report as required by the Development Plan, ii) Year 3 Performance Standards have been attained as described in sections 6.1.1-6.1.2 in Exhibit C-1 or as determined by the USACE, and iii) the Bank Sponsor has funded a minimum of 40% of the Endowment Amount per Section VI.E.2.b. Release 2 is a prerequisite for Release 3. A site-wide delineation will be conducted within the Bank Properties in year 3 following implementation of the Development Plan and approved by USACE. Release 2 is a prerequisite for release 3.

    d. Release 4: Up to an additional 15% of the total anticipated 404Credits (70% cumulative total) when: i) the Bank Sponsor has submitted the Fourth Year Monitoring Report as required by the Development Plan, ii) Year 4 Performance Standards have been attained as described in sections 6.1.1-6.1.2 in Exhibit C-1 or as determined by the USACE, and iii) the Bank Sponsor has funded a minimum of 70% of the Endowment Amount per Section VI.E.2.c. Release 3 is a prerequisite for release 4.

ED_013814_00000904-00017

e. Release 5: Up to an additional 15% of the total anticipated 404 Credits (85% cumulative total) when: i) the Bank Sponsor has submitted the Fifth Year Monitoring Report as required by the Development Plan, ii) Year 5 Performance Standards have been attained as described in sections 6.1.1-6.1.2 in Exhibit C-1 or as determined by the USACE, iii) submittal of a Waters of the U.S. jurisdictional determination and delineation for the Bank Property by the Bank Sponsor to the USACE, and iv) the Bank Sponsor has funded 100% of the Endowment Amount per Section VI.E.2.d. Release 4 is a prerequisite for release 5.

f. Final Release: Any remaining balance of 404 Credits (100% cumulative total) when i) the Bank Sponsor has submitted the Final Monitoring Report as required by the Development Plan, ii) final Performance Standards have been attained as described in sections 6.1.1-6.1.2 in Exhibit C-1, iii) any required Remedial Actions are completed, iv) any additional performance standards required as a result of required Remedial Actions have been attained, and v.) a final site-wide delineation has been conducted and delineation report has been submitted and approved by the USACE. Release 5 is a prerequisite for the final release.

2. The Bank Sponsor shall submit as-built drawings, with accurate maps of the established, enhanced, and/or restored Waters of the U.S. to the IRT no later than 90 calendar days following completion of construction associated with the establishment, restoration and/or enhancement of the Waters of the U.S. on the Bank Property. The as-built drawings shall consist of full size construction plans, with as-built conditions clearly shown. The as-built drawings and any attachments must describe in detail any deviation from the Development Plan.

3. Each 404 Credit Release, with the exception of the first and the second, is also contingent upon the Bank Sponsor's submission of the annual mitigation and monitoring report for the current reporting period in accordance with Section IX.B., and a site visit at the appropriate time of year, as determined by the USACE.

4. Any modification or unapproved deviation from the Development Plan or failure to meet Performance Standards may reduce the number of 404 Credits available for release as determined by the USACE, in consultation with the other IRT agencies. The Bank Sponsor shall revise the Credit Table in **Exhibit F-1** as directed by USACE to reflect any reduction in the available 404 Credits.

B. Porter-Cologne Re-establishment Credit Releases

1. Upon Bank Sponsor's compliance with all applicable requirements set forth in this Section VII.B, Porter-Cologne Credits as described in the Credit Table (**Exhibit F-1**) may be released for Transfer, as described below. Monitoring for Performance Standards for Credit Releases is for a minimum of five years. The actual number of Credits released shall be determined in writing by the Lahontan RWQCB, in consultation with the other IRT agencies, based upon as-built conditions, extent of Waters of the State and buffers re-established, rehabilitated or enhanced, attainment of the Performance Standards funding of the Endowment Fund in accordance with Section VI.E, and compliance with requirements of this BEI and any associated authorization. No Credit Transfer shall occur until the applicable Credit Release has occurred. Credits may be released as follows:

    a. Release 1: Up to 15% of the total anticipated Porter-Cologne Credits upon the Bank Establishment Date.

    b. Release 2: Up to an additional 25% of the total anticipated Porter-Cologne Credits (40% cumulative total) when: i) the Bank Sponsor has submitted as-built drawings pursuant to Section VII.B.2, ii) the Lahontan RWQCB have concluded the as-built drawings are consistent with the Development Plan, and iii) the Bank Sponsor has funded a minimum of 15% of the Endowment Fund per Section VI.E.2.a. Release 1 is a prerequisite for release 2.

    c. Release 3: Up to an additional 15% of the total anticipated Porter-Cologne Credits (55% cumulative total) when: i) the Bank Sponsor has submitted the Third Year Monitoring Report as required by the Development Plan, ii) Year 3 Performance Standards have been attained or as determined by the Lahontan RWQCB, and iii) the Bank Sponsor has funded a minimum of 40% of the Endowment Amount per Section VI.E.2.b. A site-wide delineation will be conducted within the Bank Properties in year 3 following implementation of the Development Plan. Release 2 is a prerequisite for release 3.

    d. Release 4: Up to an additional 15% of the total anticipated Porter-Cologne Credits (70% cumulative total) when: i) the Bank Sponsor has submitted the Fourth Year Monitoring Report as required by the Development Plan, ii) Year 4 Performance Standards have been attained as determined by the Lahontan RWQCB herein, and iii) the Bank Sponsor has funded a minimum of 70% of the Endowment Amount per Section VI.E.2.c. Release 3 is a prerequisite for release 4.

    e. Release 5: Up to an additional 15% of the total anticipated Porter-Cologne Credits (85% cumulative total) when: i) the Bank Sponsor has submitted the Fifth Year Monitoring Report as required by the Development Plan, ii) Year 5 Performance Standards have been attained as determined by the Lahontan RWQCB herein, iii) submittal of a Waters of the State (Porter-Cologne) jurisdictional determination and delineation for the Bank Property by the Bank Sponsor to the Lahontan RWQCB, and iv) the Bank Sponsor has funded 100% of the Endowment Amount per Section VI.E.2.d. Release 4 is a prerequisite for release 5.

f. Final Release: All of the remaining Porter-Cologne Credits (100% cumulative total) when i) the Bank Sponsor has submitted the Final Monitoring Report as required by the Development Plan, ii) final Performance Standards have been attained, iii) any required Remedial Actions are completed, iv) any additional performance standards required as a result of required Remedial Actions have been attained, and v.) a final site-wide delineation has been conducted and delineation report has been submitted. Release 5 is a prerequisite for the final release.

2. The Bank Sponsor shall submit as-built drawings, with accurate maps of the established, enhanced, and/or restored Waters of the State (Porter-Cologne) to the IRT no later than 90 calendar days following completion of construction associated with the establishment, restoration and/or enhancement of the Waters of the State (Porter-Cologne) on the Bank Property. The as-built drawings shall consist of full size construction plans, with as-built conditions clearly shown. The as-built drawings and any attachments must describe in detail any deviation from the Development Plan.

3. Each Porter-Cologne Credit Release, with the exception of the first and the second, is also contingent upon the Bank Sponsor's submission of the annual mitigation and monitoring report for the current reporting period in accordance with Section IX.B., and a site visit at the appropriate time of year, if determined necessary by the Lahontan RWQCB.

4. Any modification or unapproved deviation from the Development Plan or failure to meet Performance Standards may reduce the number of Porter-Cologne Credits available for release as determined by the Lahontan RWQCB, in consultation with the other IRT agencies. The Bank Sponsor shall revise the Credit Table in **Exhibit F-1** as directed by Lahontan RWQCB to reflect any reduction in the available Porter-Cologne Credits.

C. *1600 Non-Preservation Credit Release*

1. 1600 Credits shall be determined and released as described in this Section VII.C and the Credit Table (**Exhibit F-1).** Anticipated 1600 Credits have been assigned to the Bank based upon Credit methodologies developed by CDFW. Upon the Bank Sponsor's submittal of all documentation required under this BEI, and approval by the CDFW, CDFW will release 1600 Credits as described below. The actual number of Credits Released shall be determined by CDFW, in coordination with the IRT, based upon attainment of the Performance Standards (if applicable) and upon funding of the Endowment Amount in accordance with Section VI.E. No Credit Transfer shall occur until the applicable Credit Release has occurred.

a. Release 1: 15% of the total anticipated 1600 Credits upon the Bank Establishment Date.

b. Release 2: Up to an additional 25% of the total anticipated 1600 Credits (40% cumulative total) when: i) Bank Sponsor has submitted as-built drawings pursuant to Sections VII.C.2, ii) the CDFW has approved the as-built condition in writing, and iii) the Bank Sponsor has deposited a minimum of 15% of the Endowment Amount per Section VI.E.2.a. Release 1 is a prerequisite for release 2.

c. Release 3: Up to an additional 15% of the total anticipated 1600 Credits

ED_013814_00000904-00020

(55% cumulative total) when: i) the Bank Sponsor has submitted the Second Year Monitoring Report as required by the Development Plan, ii) Year 2 Performance Standards have been attained, and iii) the Bank Sponsor has deposited a minimum of 40% of the Endowment Amount per Section VI.E.2.b. Release 2 is a prerequisite for release 3.

d. Release 4: Up to an additional 15% of the total anticipated 1600 Credits (70% cumulative total) when: i) the Bank Sponsor has submitted the Third Year Monitoring Report as required by the Development Plan, ii) Year 3 Performance Standards have been attained, and, and iv) the Bank Sponsor has deposited a minimum of 70% of the Endowment Amount per Section VI.E.2.c. Release 3 is a prerequisite for release 4.

e. Release 5: Up to an additional 15% of the total anticipated 1600 Credits (85% cumulative total) when: i) the Bank Sponsor has submitted the Fourth Year Monitoring Report as required by the Development Plan, ii) Year 4 Performance Standards have been attained, and iii) the Bank Sponsor has deposited 100% of the Endowment Amount per Section VI.E.2.d. Release 4 is a prerequisite for release 5.

f. Final Release: Up to an additional 15% of the total anticipated 1600 Credits (100% cumulative total) when i) the Bank Sponsor has submitted the Final Monitoring Report as required by the Development Plan, ii) final Performance Standards have been attained, iii) any required Remedial Actions are completed, and iv) any additional Performance Standards required as a result of required Remedial Actions have been attained. Release 5 is a prerequisite for the final release.

2. The Bank Sponsor shall submit as-built drawings, with accurate maps of the established, enhanced, and/or restored Waters of the State (1600) to the IRT no later than 90 calendar days following completion of construction associated with the establishment, restoration and/or enhancement of the Waters of the State (1600) on the Bank Property. The as-built drawings shall consist of full size construction plans, with as-built conditions clearly shown. The as-built drawings and any attachments must describe in detail any deviation from the Development Plan.

3. Each 1600 Credit Release, with the exception of the first and the second, is also contingent upon the Bank Sponsor's submission of the annual report for the current reporting period in accordance with Section IX.B, and an IRT site visit at the appropriate time of year, as determined by the CDFW.

4. Any deviation from the Development Plan or failure to meet Performance Standards may reduce the number of 1600 Credits available for release as determined by CDFW, in coordination with the IRT. The Bank Sponsor shall revise the Credit Table in Exhibit F-1 as directed by CDFW, to reflect any reduction in the available 1600 Credits.

5. Each CDFW approved Credit Release is also contingent upon the Bank Sponsor's payment of the Implementation Fee to CDFW. Pursuant to Fish and Game Code 1799(e)(2), CDFW shall collect an Implementation Fee per Bank, which may be apportioned by an amount that equals the ratio of the number of CDFW Credits released to the total number of CDFW Credits in the Bank. The payments shall be submitted following each CDFW Credit Release and no later than the time of the submission of the Bank's annual report. The CDFW may require the Bank Sponsor

ED_013814_00000904-00021

to cease selling CDFW Credits and may stop CDFW Credit Releases until these fees are paid in full. The Credit Release Fee shall be paid in full by the Bank closure date. The CDFW shall assess a penalty of 10 percent of the amount of fees due if there is a failure to remit the amount payable when due.

D. 404, Porter-Cologne, 1600 and Covered Habitat Preservation Credit Release

1. Credits for 404, Porter-Cologne, 1600, and Covered Habitat shall be determined and released as described in this Section VII.D and the Credit Table (**Exhibit F-1).** Anticipated Credits have been assigned to the Bank based upon Credit methodologies developed by the IRT.

2. Upon the Bank Sponsor's submittal of all documentation required under this BEI by the Bank Sponsor, and approval by the IRT, the IRT will release Preservation Credits as described below. The actual number of Credits released shall be determined by the IRT, as appropriate, in consultation with the other IRT agencies, based upon attainment of the Performance Standards (if applicable) and upon funding of the Endowment Principal in accordance with Section VI.E.. No Credit Transfer shall occur until the applicable Credit Release has occurred.

   a. Preservation Credits described in the Credit Tables (**Exhibit F-1**) shall be released as follows:

      1) 15% of the total anticipated Preservation Credits upon the Bank Establishment Date.

      2) 25% of the total anticipated Preservation Credits upon funding the Endowment Principal according to Section VI.E.2.a.

      3) 15% of the total anticipated Preservation Credits upon funding the Endowment Principal according to Section VI.E.2.b.

      4) 15% of the total anticipated Preservation Credits upon funding the Endowment Principal according to Section VI.E.2.c.

      5) The remaining Preservation Credits upon full funding of the Endowment Principal according to Section VI.E.2.d.

   b. Each CDFW approved Credit Release is also contingent upon the Bank Sponsor's payment of the Implementation Fee to CDFW. Pursuant to Fish and Game Code 1799(e)(2), CDFW shall collect an Implementation Fee per Bank, which may be apportioned by an amount that equals the ratio of the number of CDFW Credits released to the total number of CDFW Credits in the Bank. The payments shall be submitted following each CDFW Credit Release and no later than the time of the submission of the Bank's annual report. The CDFW may require the Bank Sponsor to cease selling CDFW Credits and may stop CDFW Credit Releases until these fees are paid in full. The Credit Release Fee shall be paid in full by the Bank closure date. The CDFW shall assess a penalty of 10 percent of the amount of fees due if there is a failure to remit the amount payable when due.

Section VIII: Operation of the Bank

ED_013814_00000904-00022

A. Service Area

The Service Areas for different bank Credits are described and shown in **Exhibit B**.

B. Transfer of Credits

1. The Transfer of Credits may begin only upon the Bank Establishment Date. Bank Sponsor shall have the exclusive right to determine the price for any and all Bank Credits it offers for sale. Credits sold by the Bank will be used to satisfy compensatory mitigation requirements of USACE, Lahontan RWQCB, and CDFW permits. The use of Credits sold by the Bank for compensatory mitigation requirements is at the sole discretion of the respective permitting agency. The minimum Credit unit that may be Transferred is 0.01 Credit.

2. In no case shall the number of Credits of any particular type Transferred or obligated exceed the total number of Credits of that type which have been released for Transfer, as evidenced by written approval of the IRT member under whose jurisdiction the Credits reside.

3. Use of Credits at the Bank to mitigate or compensate impacts to Waters of the U.S., Waters of the State (Porter-Cologne and 1600), Covered Species or Covered Habitat must be authorized by the appropriate IRT agencies on a case-by-case basis.

4. Bank Sponsor shall notify the IRT upon any Credit Transfer in accordance with Section IX.C. of this BEI. Notifications should be made electronically and by regular mail. Upon Transfer of Credits, the Bank Sponsor shall enter the Credit Transfer into RIBITS.

5. If the Bank Property is damaged after the Bank Establishment Date, and such damage materially impairs Waters of the U.S., Waters of the State, or habitat values on such damaged Bank Property, then the IRT may, at their discretion, direct Bank Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to the Bank in proportion to such damaged area unless and until the Bank Sponsor has reasonably restored such damaged area pursuant to a Remedial Action plan approved by the IRT.

6. Each Credit Transfer shall be made pursuant to a written purchase agreement in the form of **Exhibit F-2**.

7. This BEI applies only to those Credits assigned by agencies that are signatory to this BEI and set forth in **Exhibit F-1**. Any proposed use of the Bank Property not specifically established by this BEI and not prohibited by the Conservation Easement shall be submitted to the IRT and Grantee for review and may only proceed upon a written determination by the IRT and Grantee that such proposed use would not conflict with the approved use of the Bank Property or the terms and conditions of the Conservation Easement.

8. The Permitting Agency is responsible for determining the adequate amount of mitigation Credit needed for proposed projects. Reservation agreements that reserve Credits for future use by a permittee without the Permitting Agency's approval is at the risk of the proposed project applicant and the Bank Sponsor.

C. Interim and Long-term Management and Monitoring

ED_013814_00000904-00023

1. Interim Management and Monitoring

   Bank Sponsor shall be responsible for conducting management and monitoring activities according to the Interim Management Plan (**Exhibit D-4**) until the end of the Interim Management Period.

2. Long-term Management and Monitoring

   At the end of the Interim Management Period, the Property Owner shall implement long-term management and monitoring of the Bank Property according to the Long-term Management Plan. Property Owner shall be obligated to manage and monitor the Bank Property in perpetuity to preserve its habitat and conservation values in accordance with this BEI, the Conservation Easement and the Long-term Management Plan (**Exhibit D-5**). Such activities shall be funded through the Endowment Fund according to Section VIII.E.2.b and Endowment Management Agreement (**Exhibit D-3**). Property Owner and the IRT members shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan and Endowment Analysis and Schedule (Exhibit D-2) which may be necessary or appropriate to better conserve the habitat and conservation values of the Bank Property. During the Long-term Management Period, Property Owner shall be responsible for submitting annual reports to each IRT agency in accordance with Section IX.B of this BEI. The Property Owner shall upload annual reports into RIBITS.

D. Bank Closure Plan

1. Upon Bank closure, no further Credit Transfer shall occur.

2. The Bank closure shall be deemed to take place upon occurrence of all of the following:

   a. All Performance Standards have been met and all Remedial Action required under Section VIII.F has been completed as evidenced by 1) timely submission of all required annual reports in accordance with Section IX.B; 2) the third anniversary of the completion of all Remedial Action, if any, in accordance with the applicable Remedial Action plan(s); 3) an on-site inspection by the IRT; 4) written approval from the IRT; and

   b. Either:

      1) The last authorized Credit has been Transferred; or

      2) The Bank Sponsor requests bank closure by written notice to the IRT and the IRT provide written approval of the closure; and

   c. All financial responsibilities of the Bank Sponsor have been met, including 100% funding of the Endowment Amount for not less than three years, and payment of all CDFW Implementation Fees.

E. Financial Operations

All financial transactions shall be reported in accordance with Section IX.

1. Securities

ED_013814_00000904-00024

a. Construction Security

1) The USACE, as the holder of the security, in coordination with CDFW, shall be entitled to draw upon the Construction Security if:

a) any Transfer of Credits has been made; and

b) either (i) at any time after the Bank Establishment Date, but no later than the first full growing season after the date of first Credit Transfer, the USACE, in coordination with CDFW, determines that the Bank Sponsor has not initiated construction and planting in accordance with the Development Plan, or (ii) two years has elapsed since the Bank Sponsor has initiated implementation of the Development Plan, and construction and planting in accordance with the Development Plan is not complete; and

c) Prior coordination with the IRT

2) If any portion of the Construction Security is drawn upon pursuant to this Section, then the Bank Sponsor shall replenish the Construction Security in the amount specified in **Exhibit C-2** within 90 days after written notice from USACE.

3) The Construction Security shall be released to the Bank Sponsor by USACE, in coordination with CDFW, only after the Bank Sponsor completes the construction and planting activities in accordance with the Development Plan, as demonstrated by:

a) Bank Sponsor's submission of as-built drawings in accordance with Sections VII.A.2, VII.B.2, and VII.C.2

b) An on-site inspection by the IRT; and

c) Prior coordination with the IRT.

b. Performance Security

1) The USACE, as the holder of the Performance Security, in coordination with CDFW, shall be entitled to draw upon the Performance Security in accordance with this Section.

2) If any portion of the Performance Security is drawn upon pursuant to this Section, then the Bank Sponsor shall replenish the Performance Security to the amount specified in Exhibit C-3 within 90 days after written notice from USACE.

3) The Performance Security shall be cancelled after all of the Performance Standards, all Remedial Action(s), and any additional Performance Standards required by such Remedial Action(s) under Section VIII.F are met.

c. Interim Management Security

1) The USACE, as the holder of the security, in coordination with CDFW, shall be entitled to draw upon the Interim Management Security if any Transfer of Credits has been made and the IRT

determines that during any 12-month period the Bank Sponsor has not performed all tasks as required under the Interim Management Plan.

2) In the event that the Interim Management Security is drawn upon pursuant to this section, the Bank Sponsor shall replenish the Interim Management Security to the amount specified in Exhibit D-1 within 90 days after written notice from USACE.

3) Provided that the Bank Property has been managed in accordance with the Interim Management Plan, the Interim Management Security (or any portion of such security then remaining) shall be released to the Bank Sponsor by USACE at the end of the Interim Management Period.

2. Endowment Fund

a. Endowment Fund Deposits

1) In accordance with the Endowment Agreement, the Endowment Deposits the Endowment Holder receives are to be deposited into a fund held in trust and designated by the Endowment Agreement (Exhibit D-3).

b. Endowment Fund Management

1) Notwithstanding Probate Code section 18501-18510, the Endowment Amount should not decrease in value through expenditure or investment strategy. The Endowment Amount is intended to increase in value to keep up with inflation. A portion of the interest and earnings on the Endowment Amount balance shall be reinvested by the Endowment Holder into the Endowment Fund in accordance with the Endowment Agreement. After the Endowment Fund is fully funded, no additional Endowment Fund monies will be required from the Bank Sponsor.

2) Any Endowment Fund interest earnings beyond those necessary to provide for growth of the Endowment Fund commensurate with inflation may, the Parties anticipate, be made available by the Endowment Holder to the Property Owner to fund annual management of the Bank Property in accordance with the Endowment Agreement.

3) In accordance with the Endowment Agreement, any Endowment Fund revenues (including earnings and interest) remaining after the Endowment Fund is adjusted for inflation that exceed the anticipated annual management expenses of the Bank Property are to be retained in the Endowment Fund by the Endowment Holder and may be made available by the Endowment Holder to the Property Owner to fund unexpected expenses and Adaptive Management needs. Unexpected expenses could include increased costs due to unanticipated issues, including but not limited to increased fence maintenance costs due to vandalism or vehicular collision, natural disaster, or increased weed

management due to the arrival of a new invasive species. The adaptive management plan would allow for flexibility in addressing these unanticipated issues.

4) Property Owner shall invoice the Endowment Holder for management activities following the invoicing instructions in **Exhibit D-3**.

5) Notwithstanding Probate Code sections 18501-18510, in the event there is insufficient funding available from the Endowment Fund revenues or if Long-term Management expenses exceed those estimated in the Endowment Fund Analysis and Schedule **(Exhibit D-2)**, the Property Owner shall consult with the IRT to identify the most effective means to implement the management measures and tasks with the resources available. After consultation with the IRT, Property Owner shall submit proposed revised Long-term Management Plan and Endowment Fund Analysis and Schedule in writing to the IRT within 60 days after completion of its consultation with the IRT. Upon written approval of the IRT, in coordination with the other members of the IRT, and any required notification to the Endowment Holder, in accordance with the Endowment Agreement, the Property Owner shall implement the approved revised management measures and tasks. Should sufficient funding become available from the Endowment Fund revenues to fund originally anticipated annual long-term management costs, the original Long-term Management Plan shall be restored in full force and effect.

3. Financial Records and Auditing

The Bank Sponsor and/or Property Owner, as appropriate, are required to maintain complete and accurate records relating to the financial operation of the Bank using generally accepted accounting principles (GAAP), developed by the Federal Accounting Standards Advisory Board. At the request of the IRT, no more frequently than annually, the Bank Sponsor and/or Property Owner, as appropriate, shall have records relating to the financial operation of the Bank audited by an independent, licensed Certified Public Accountant and shall submit the auditor's report to the IRT upon completion. In this scenario, an auditor may request any financial records from the Bank that are necessary. However, it is expected that an auditor will request the following financial records: credit sales documents, credit ledger records, endowment payment records, and endowment distribution records.

The IRT or their designated representatives shall also have the right to review and copy any records and supporting documentation pertaining to the performance of this BEI. Bank Sponsor and Property Owner agree to maintain such records for possible audit for a minimum of three years after Bank closure, or three years after the date of performance, whichever is later. Bank Sponsor and Property Owner agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employee or representative who might reasonably have information related to such records. Further, Bank Sponsor and Property Owner agree to include a similar right of State and federal auditors to audit records and interview employees and representatives in any contract related to the

ED_013814_00000904-00027

performance of this BEI.

F. Remedial Action Plan

Prior to Bank closure, if any Party discovers any failure to achieve the Performance Standards or any injury or adverse impact to the Bank Property as preserved, restored, or enhanced, the Party making the discovery shall notify the other Parties. The IRT may require the Bank Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section IX.B. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

1. Within 60 days of the date of written notice from the IRT, the Bank Sponsor shall develop a Remedial Action plan and submit it to the IRT for written approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse impact to the Bank Property and set forth a schedule within which the Bank Sponsor will implement those actions. The Bank Sponsor shall, at Bank Sponsor's cost, implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the IRT. In the event the Bank Sponsor fails to submit a Remedial Action plan to the IRT in accordance with this section, the IRT will notify the Bank Sponsor that the Bank Sponsor is in default and may identify Remedial Action the IRT deems necessary. If (a) the Bank Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the IRT, in accordance with this section, or (b) conditions have not improved or continue to deteriorate two years after the date that the IRT approved a Remedial Action plan or notified Bank Sponsor of Remedial Actions the IRT deemed necessary, then the holder of the Performance Security may draw upon that security to undertake Remedial Action on the Bank Property.

2. If the IRT determines that the Bank is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this BEI), then the IRT shall notify the Bank Sponsor. Upon the IRT giving such notice, Bank Sponsor shall immediately cease Transfer of Credits. The IRT will determine what Remedial Action is necessary to correct the Credit deficit, and Bank Sponsor shall implement such Remedial Action, in accordance with this Section VIII.F.

Section IX: Reporting

A. Annual Inflation Adjustments to Endowment Fund Report

By March 1st of each year following the Bank Establishment Date and until the Endowment Fund is 100% funded, the Bank Sponsor shall report to the IRT and the Endowment Holder, in hard copy and in editable electronic format, the following values:

1. The adjusted Endowment Amount determined in accordance with Section VI.E.3; and

2. The resulting adjusted Endowment Deposit amounts.

B. Annual Report

ED_013814_00000904-00028

Bank Sponsor or Property Owner, as appropriate, shall submit an annual report to each member of the IRT, in hard copy and in editable electronic format, on or before November 15th of each year following the Bank Establishment Date. Each annual report shall cover the period from November 1 of the preceding year (or if earlier, the Bank Establishment Date for the first annual report) through October 31st of the current year (the "Reporting Period"). Prior to Bank closure, the Bank Sponsor or Property Owner, as appropriate, shall be responsible for the reporting tasks described below. After Bank closure, the Property Owner shall be responsible for such reporting, annually, as per the Long-term Management Plan. The annual report shall address the following:

1. Bank Development

   The annual report shall document the degree to which the Bank is meeting the Performance Standards. The annual report shall describe any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If Remedial Action has been completed, the annual report shall also evaluate the effectiveness of that action.

2. Interim Management and Long-term Management

   The Interim and Long-term Management Plans contain reporting requirements that are separate from, and in addition to, the requirements listed below for the annual report.

   The annual report shall contain an itemized account of the management tasks and any Remedial Actions conducted during the Reporting Period in accordance with the Interim Management or Long-term Management Plan, including the following:

   a. The time period covered, i.e. the dates "from" and "to";
   b. A description of each management task conducted, the dollar amount expended and time required;
   c. The total dollar amount expended for management tasks conducted during the Reporting Period;
   d. A description of the management and maintenance activities proposed for the next reporting year; and
   e. A description of the overall condition of the Bank, including photos documenting the status of the Bank and a map documenting the location of the photo points.

3. Transfer of Credits

   The annual report shall include an updated Credit Transfer Ledger (**Exhibit F-3**) showing all Credits transferred since the Bank Establishment Date and an accounting of remaining Credits.

4. Financial Operation

   The annual report shall provide Endowment Fund data, including but not limited to annual Consumer Price Index (CPI) adjustments, deposits, annual long-term management expenses, and disbursements.

C. Credit Transfer Reporting

Upon the Transfer of each and every Credit the Bank Sponsor shall enter the Credit Transfer into RIBITS and submit to each member of the IRT:

1. A copy of the fully executed Credit Purchase Agreement in the form provided at **Exhibit F-2**; and

2. An updated Credit Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit F-3.**

D. Reporting Compliance Measures:

Failure to submit complete reports in a timely manner shall result in the Bank being subject to the IRT suspending all Credit Transfers or decreasing the number of available Credits.

1. Extension requests

   Requests to extend report deadlines shall be submitted to the IRT no later than 30 days prior to the original deadline. The IRT will have 15 calendar days to approve or deny the extension request.

2. Reports not received by the IRT in a timely manner

   Missing reports will result in automatic Credit Transfer suspension beginning at 0800 hours on the 30th day that the report is late, given that there has been no approved extension request. The suspension will be lifted within 5 days after the report has been received by the IRT.

3. Incomplete reports

   The IRT will have 30 days to notify the Bank Sponsor, or Property Owner, as appropriate, that the report is incomplete, in which the Bank Sponsor or Property Owner will be given a new deadline for complying with the requirements set forth in this BEI. This deadline is at the discretion of the IRT based on the amount of time it should reasonably take to complete the report. The IRT may:

   a. Temporarily decrease the number of available Credits until the report has been properly submitted, and

   b. Automatically suspend all Credit sales beginning at 0800 hours on the day after the new deadline has passed, given the report has not been received by the IRT, and there has been no approved extension request.

   If the Bank Sponsor or Property Owner have not been notified of incompleteness as of 0800 hours on the 45th day past the report due date, the report shall be deemed complete.

Section X: Responsibilities of the Bank Sponsor and Property Owner

1. Without limiting any of its other obligations, including without limitation, under the Conservation Easement, Bank Sponsor and Property Owner each hereby agrees and covenants that:

   a. If the entity proposed to hold the Conservation Easement is not an IRT agency, Bank Sponsor and Property Owner shall, prior to the execution of

ED_013814_00000904-00030

the Conservation Easement at Exhibit E-4 hereof, provide the IRT with satisfactory evidence that the entity proposed to hold the Conservation Easement (Grantee) is authorized to do so pursuant to California Civil Code § 815.3 and Government Code § 65966 and 65967, has a primary purpose of long-term land stewardship for conservation purposes, has agreed to hold said Conservation Easement, and has been approved by the IRT.

b. Bank Sponsor shall be responsible for all activities and costs associated with the establishment and operation of the Bank, including but not limited to construction, planting, Remedial Action, documentation, maintenance, management, monitoring, and reporting, until completion of the Interim Management Period.

c. Bank Sponsor agrees to assume responsibility for compensatory mitigation requirements of USACE and Lahontan RWQCB permits for which it Transfers Credits once a permittee has secured the appropriate number and type of Credits from the Bank Sponsor and to provide USACE and Lahontan RWQCB with the written Credit Purchase Agreement (Exhibit F-2) that confirms that the Bank Sponsor has accepted the responsibility for providing the required compensatory mitigation.

d. It shall not discharge or release to or from the Bank Property, or knowingly permit others to discharge or release to or from the Bank Property, any material, waste or substance designated as hazardous or toxic or as a pollutant or contaminant under any federal, state, or local environmental law or regulation (each a "Hazardous Substance").

e. Property Owner shall not create or suffer any lien or encumbrance upon the Bank Property other than as set forth in the Property Assessment and Warranty approved by the IRT, and Property Owner shall not execute, renew, or extend any lien, lease, license, or similar recorded or unrecorded right or interest in the Bank Property without the prior written consent of the IRT and the holder of the Conservation Easement.

f. It shall not construct or install any structure or improvement on, or engage in any activity or use of, the Bank Property, including mineral exploration or development, excavation, draining, dredging, or other alteration of the Bank Property that is not consistent with and in accordance with this BEI and its Exhibits.

g. Bank Sponsor shall ensure that the Bank Property is managed and maintained in accordance with the Interim Management Plan, this BEI and its Exhibits.

h. Property Owner shall allow, or otherwise provide for, access to the Bank Property by Bank Sponsor, Grantee, the IRT agencies and third parties, as described in the Conservation Easement.

i. The Property Owner shall grant to Bank Sponsor all rights and authority necessary to carry out, and shall not limit the Bank Sponsor in performing, its responsibilities and obligations on and affecting the Bank Property in accordance with this BEI.

j. Property Owner shall ensure that the Bank Property is managed and

ED_013814_00000904-00031

maintained in accordance with the Long-Term Management Plan, this BEI and its Exhibits.

2. Reasonably foreseeable technical problems, or unanticipated or increased costs or expenses associated with the implementation of actions called for by this BEI, or changed financial or business circumstances in and of themselves shall not serve as the basis for modifications of this BEI or extensions for the performance of the requirements of this BEI.

3. An extension of one compliance date based upon or related to a single incident shall not extend any subsequent compliance dates. The Bank Sponsor or Property Owner must show cause for any or every delayed step or requirement for which an extension is sought. Nevertheless, extension of compliance dates shall not be unreasonably withheld by the IRT when requested by the Property Owner or Bank Sponsor.

4. The Property Owner shall retain the right to utilize additional benefits, if any, which may result from preservation of the Bank Property and that do not conflict with the BEI, Conservation Easement, the Long-term Management Plan, or diminish the conservation values or operation of the Bank. These benefits may include but are not limited to greenhouse gas reduction. Any utilization of said benefits must be approved by the IRT in writing.

Section XI: Responsibilities of the IRT

A. IRT Oversight

The IRT agree to provide oversight in carrying out provisions of this BEI including overseeing Bank development, Bank establishment, finances and financial assurances, credit releases, bank operation, and reporting.

B. IRT Review

The IRT will make a good faith effort to provide comments on the annual reports and Remedial Action plans within 60 days from the date of complete submittal. If the IRT are unable to review Remedial Action plans within the time specified, this fact will be reflected in any schedule established for performance of Remedial Action and any evaluation of timely performance of Remedial Action by Bank Sponsor.

C. IRT Compliance Inspections

The IRT shall conduct compliance inspections as necessary after providing 24-hour advance notice by phone or email to the Property Owner, except in the case of emergencies:

1. To verify the Credits currently available in the Bank; and/or

2. Recommend Remedial Action as needed; or

3. For any other purpose determined by the IRT as necessary to assess compliance with this BEI.

D. CDFW -Specific Responsibilities

In addition to the responsibilities listed above (Section XI.A-C), the CDFW will fulfill the specific roles and responsibilities described below.

ED_013814_00000904-00032

1. CDFW will determine, in writing, the number of Credits Released, in consultation with other IRT agencies, for 1600 Credit Releases, based on the factors described above in Section VII.C and VII.D.

2. CDFW will review the as-built conditions of the Bank; following review, the CDFW will submit written approval of the as-built conditions.

3. The CDFW will determine, in writing, the number of Credits released, in consultation with other IRT agencies, for Covered Habitat Credit Releases, based on the factors described above in Section VII.D.

E. Lahontan RWQCB-Specific Responsibilities

Despite being identified as an IRT agency, the Lahontan RWQCB will only have to fulfill the specific roles and responsibilities described below, and will not be responsible for carrying out other responsibilities related to the review and oversight of the Bank, including overseeing bank development, establishment, operations, finances and financial assurances, and reviewing annual reports.

1. Lahontan RWQCB will determine, in writing, the number of Porter-Cologne Credits Released, in consultation with other IRT agencies, based on the factors described above in Section VII.B and VII.D.

2. Lahontan RWQCB will review the as-built conditions of the Bank; following review, the Lahontan RWQCB will submit written approval of the as-built conditions.

3. The Lahontan RWQCB will conduct compliance inspections to verify credits available and recommend Remedial Actions.

Section XII: Other Provisions

A. Force Majeure, Catastrophic Events, or Unlawful Acts

1. Neither the Bank Sponsor, nor the Property Owner shall be responsible for damage or non-compliance caused by Catastrophic Events, events of Force Majeure, or Unlawful Acts. In order for this exception to apply, the Bank Sponsor or Property Owner, as appropriate, shall bear the burden of demonstrating all of the following:

    a. That the damage or non-compliance was caused by circumstances beyond the control of the Bank Sponsor, Property Owner, and any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants;

    b. That neither the Bank Sponsor, Property Owner, nor any person or entity under the direction or control of the Bank Sponsor or Property Owner, including its employees, agents, contractors and consultants, could have reasonably foreseen or prevented such damage or non-compliance; and

    c. The period of damage or non-compliance was a direct result of such circumstances.

2. The Bank Sponsor or Property Owner, as appropriate, shall notify the IRT within 24 hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Bank Sponsor, Property Owner, and the IRT shall meet to discuss the course of action in response to such

ED_013814_00000904-00033

occurrence. In the meantime, Bank Sponsor or Property Owner, as appropriate, shall continue to manage and maintain the Bank Property to the full extent practicable.

B. Dispute Resolution

1. The Parties agree to work together in good faith to resolve disputes concerning this BEI, but any of the Parties may seek any available remedy. Unless any of the Parties has initiated legal action, any Party may elect to employ an informal dispute resolution process whereby:

    a. The electing Party shall notify the other Parties of the dispute, the position of the aggrieved Party (including, if applicable, the basis for contending that a violation has occurred), and the remedies the electing Party proposes;

    b. The notified Parties shall have 30 days (or such other time as the Parties may mutually agree) to respond. During this time, any such other Parties may seek clarification of the initial notice;

    c. Within 30 days after such notified Parties' response was provided or due, whichever is later, the Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution, or shall establish a specific process and timetable to seek such resolution; and

    d. The dispute resolution process may be terminated by any Party upon written notice to all other Parties.

C. Conveyance of Bank Property

1. All transfers of any interest in the Bank Property are subject to the applicable provisions of the Conservation Easement.

2. The Property Owner shall have the right to sell, assign, transfer or convey (each a "transfer") its interest in the Bank Property at any time; *provided, however*, that any such transfer on or after the execution date of this BEI must be made in accordance with this BEI and the Conservation Easement, and shall be subject to written concurrence by the IRT, in coordination with the other members of the IRT, and Bank Sponsor, which concurrence shall not be unreasonably withheld. Such concurrence shall be subject to the requirement that the transferee assumes and agrees in writing to observe and perform all of the Property Owner's obligations pursuant to this BEI and the Conservation Easement. From and after the date of any transfer by Property Owner of its interest in the Bank Property in which the transferee has assumed and agreed in writing to observe and perform all of the transferor's obligations pursuant to the BEI, the transferor shall have no further obligations hereunder and all references to Property Owner in this BEI shall thereafter refer to such transferee, except that the transferor's liability for acts, omissions, or breaches occurring prior to the transfer shall survive the transfer. Any transfer of the Property Owner's interest in the Bank Property made without the prior written concurrence of the IRT may, at the discretion of the IRT, result in the termination of this BEI according to Section XII.D.3.c.

3. The Bank Sponsor may sell or convey its interest in the Bank at any time, provided that Bank Sponsor is in full compliance with all requirements of this BEI (including all financial assurance requirements), and subject to the prior written approval of the

ED_013814_00000904-00034

IRT. If any of the financial assurances required under this BEI are not completely funded (except for the Endowment Fund) at the time the Bank Sponsor requests IRT approval of a sale or conveyance, then the IRT shall not approve such sale or conveyance unless and until either the current Bank Sponsor, or the proposed replacement Bank Sponsor, shall have provided all required financial assurances (except fully funding the Endowment Fund). In addition, prior to sale or conveyance, the Bank Sponsor shall provide to each member of the IRT a written agreement signed by the replacement Bank Sponsor in which the Bank Sponsor assigns to the replacement Bank Sponsor, and the replacement Bank Sponsor assumes and agrees to perform, all of the responsibilities and obligations of the Bank Sponsor under the BEI. Any such sale or conveyance made without the prior written concurrence of the IRT may, at the discretion of the IRT, result in the termination of this BEI according to Section XII.D.3.c.

D. Modification and Termination of the BEI

1. Amendment and Modification

This BEI, including its Exhibits, may be amended or modified only with the written approval of the Parties. All amendments and modifications shall be fully set forth in a separate document signed by all Parties that shall be appended to this BEI. Pursuant to Fish and Game Code 1798.6(a), any person seeking to amend any CDFW bank shall submit to the CDFW the appropriate review fee, a complete bank amendment package containing each of the original bank agreement package documents, including any prior amendments, as well as any documents proposed to be amended or that would be affected by the proposed amendment.

2. If an NCCP and/or HCP is approved which covers all or any part of the Service Area, and that plan uses habitat categories different from those set forth in **Exhibit F-1**, then, at the request of the Bank Sponsor, the remaining Credits for Covered Species or Covered Habitat may be reallocated at the discretion of the IRT to conform to the habitat categories in the approved NCCP or HCP, as applicable.

3. Termination

a. The Bank Sponsor and Property Owner may jointly withdraw the entire Bank Property and terminate this BEI at any time prior to any Credit Transfer, provided that Waters of the U.S., Waters of the State, and other habitat values existing on the Bank Property prior to the initiation of any efforts to restore or enhance the Bank Property shall be preserved in a condition at least equal to that which existed prior to initiation of Bank establishment efforts, and as the Conservation Easement may require.

b. In the event this BEI is terminated or the Bank is closed prior to the Transfer of all authorized Credits, any remaining Credits shall be extinguished and will no longer be available for Transfer.

c. The IRT may terminate this BEI if the Bank Sponsor or Property Owner sells or conveys the Bank or the Bank Property without the prior written concurrence of the IRT, as required by Section XII.C.

d. USEPA may terminate its participation upon 30 days written notice to all other Parties.

e. The USACE, CDFW, and Lahontan RWQCB may each terminate its

ED_013814_00000904-00035

participation in this BEI upon 30-days notice to the other Parties, on the condition that each of the following has occurred:

1) Bank Sponsor or Property Owner has breached one or more covenants, terms or conditions set forth herein;

2) Bank Sponsor or Property Owner, as applicable, has received notice of such breach from the terminating IRT agency in accordance with paragraph XII.B., if applicable, and XII.K.; and

3) Bank Sponsor or Property Owner, as applicable, has failed to cure such breach within 30 days after such notice; provided that in the event such breach is curable in the judgment of the terminating IRT agency, but cannot reasonably be cured within such 30 day period, the terminating IRT agency shall not terminate this BEI so long as Bank Sponsor or Property Owner has commenced the cure of such breach and is diligently pursuing such cure to completion.

f. If any IRT agency so requests, the Party proposing to terminate participation in the BEI agrees to meet with the other Parties to discuss the reason(s) for such termination, prior to the termination taking effect. Notice of a request for such meeting shall be made by the requesting IRT agency not later than 15 calendar days from receipt of the notice of termination.

g. Termination by one IRT agency of its involvement in this BEI shall not terminate or affect the relationship between the remaining IRT, toward each other or the Bank Sponsor, or Property Owner, under this BEI. Remaining Credits authorized under the authority of the terminating IRT agency will no longer be available for Transfer.

h. Nothing in this Section XII.D.3 is intended or shall be construed to limit the legal or equitable remedies (including specific performance and injunctive relief) available to the USACE, CDFW, USEPA, and Lahontan RWQCB in the event of a threatened or actual breach of this BEI.

E. Default

The Bank Sponsor and/or Property Owner shall be in default if that Party fails to observe or perform any obligations or responsibilities required of it by this BEI. In the event the Bank Sponsor and/or Property Owner realizes it is in default, it shall promptly notify the other Parties. Once the Parties receive notification or otherwise become aware that the Bank Sponsor and/or Property Owner is in default, the Parties may elect to either pursue informal dispute resolution consistent with Section XII.B or may cause the holder to draw upon and expend the appropriate financial security as necessary to continue Bank development, management, or operation, as provided in Section VI and VIII.E. In the event the informal dispute resolution process is invoked, the IRT shall not draw upon financial securities until such time as the informal dispute resolution process has been terminated. This Section XII.E shall not be construed to modify or limit any specific right, remedy, or procedure in any Section of this BEI or any remedy available under applicable State and/or Federal Law.

F. Controlling Language

The Parties intend the provisions of this BEI and each of the documents incorporated by

ED_013814_00000904-00036

reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this BEI conflicts with specific language in any document that is incorporated into this BEI by reference, the specific language within the BEI shall be controlling. The captions and headings of this BEI are for convenient reference only, and shall not define or limit any of its terms or provisions.

G. Entire Agreement

This BEI, and all exhibits, appendices, schedules and agreements referred to in this BEI, constitute the final, complete and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Bank, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this BEI or incorporated herein by reference, shall be binding or valid, with respect to the subject matter hereof. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section XII.D.1. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

H. Reasonableness and Good Faith

Except as specifically limited elsewhere in this BEI, whenever this BEI requires a Party to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If the Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

I. Successors and Assigns

This BEI 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 subject to the limitations on transfer set forth in this BEI.

J. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this BEI to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this BEI would be defeated by loss of the invalid or unenforceable provision.

K. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this BEI shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.

ED_013814_00000904-00037

2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.

3. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section XII.K.

Bank Sponsor:

Land Veritas Corp.
1001 Bridgeway #246
Sausalito, CA 94965
(415) 729-3734
Contact: Tracey Brownfield
tracey@landveritas.com

Petersen Ranch Property Owner:

LV-BP Investors Ranch, LLC
1001 Bridgeway #246
Sausalito, CA 94965
(415) 729-3734
Contact: Tracey Brownfield
tracey@landveritas.com

Elizabeth Lake Property Owner:

LV Lake Elizabeth, LLC
1001 Bridgeway #246
Sausalito, CA 94965
(415) 729-3734
Contact: Tracey Brownfield
tracey@landveritas.com

IRT Members:

Department of the Army
Los Angeles District U.S. Army Corps of Engineers
915 Wilshire Boulevard
Suite 930
Los Angeles, CA 90017
Attn: Regulatory Division, CESPL-RG

U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

ED_013814_00000904-00038

Attn: Director, Water Division

California Regional Water Quality Control Board
Lahontan Region
14440 Civic Drive, Suite 200
Victorville, CA 92392
Attn: Executive Officer

California Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
Attn: Regional Banking Coordinator

California Department of Fish and Wildlife
Habitat Conservation Planning Branch
1416 Ninth Street, 12th Floor
Sacramento, CA 95814
Attn: Branch Chief
Telephone: 916-653-4875
Fax: 916-653-2588

Grantee:

Southwestern Resource Management Association
4500 Glenwood Dr.
Riverside, CA 92501
Attn: Shelli Lamb

L. Counterparts

This BEI may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

M. No Third Party Beneficiaries

This BEI shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this BEI. The duties, obligations and responsibilities of the Parties to this BEI with respect to third parties shall remain as otherwise provided by law in the event this BEI had never been executed.

N. Availability of Funds

Implementation of this BEI by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in

ED_013814_00000904-00039

this BEI may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this BEI to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

O. No Partnerships

This BEI shall not make or be deemed to make any Party to this BEI an agent for or the partner or joint venturer of any other Party.

P. Governing Law

Among the Bank Sponsor, Property Owner and the Federal agencies, the applicable statutes, regulations, policies, directives, and procedures of the United States will govern this BEI and all documents and actions pursuant to it. Among the Bank Sponsor, Property Owner and State of California agencies, this BEI shall be governed by and construed according to the applicable laws, statutes, regulations, orders, policies and requirements of the State of California and its agencies with jurisdiction, including without limitation the authorities identified in Section I.B of this BEI as applicable.

Q. No Federal Contract or Monetary Damages

USACE approval of this BEI constitutes a regulatory approval required for the Bank to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This BEI is not a contract between the Bank Sponsor, or Property Owner and USACE or any other agency of the federal government. Any dispute arising under this BEI will not give rise to any claim by the Bank Sponsor or Property Owner for monetary damages. This provision is controlling notwithstanding any other provision or statement in the BEI to the contrary.

R. CDFW Remedies

CDFW is entering into this BEI in its own right and not as the agent or representative of any other entity, including without limitation the IRT or any other member of the IRT. If CDFW defaults in the performance of any of its obligations under this BEI, Bank Sponsor and Property Owner will have the right to seek, subject to the limitations set forth below, damages or specific performance as provided by law as the exclusive remedy for such defaults.

Despite the foregoing, Bank Sponsor and Property Owner each hereby waives:

a. Any right to receive consequential or punitive damages against CDFW or any officer, employee, agent or representative of CDFW; and

b. Any right to seek specific performance against CDFW based on a dispute relating to any CDFW decisions, made either independently or as a member of the IRT, directly related to Credits for Covered Species and Covered Habitat creation or preservation under the jurisdiction of CDFW, including but not limited to decisions under Sections VII.C (Covered Species and Covered Habitat Credit Release), VIII.B (Transfer of Credits), and XII.A.5 (Force Majeure) of this BEI. This waiver shall not preclude Bank Sponsor or Property Owner from the

ED_013814_00000904-00040

recovery of any compensatory damages directly related to CDFW decisions regarding Credits for Covered Species and Covered Habitat creation or preservation provided for in the BEI, which Credits are under the sole jurisdiction of CDFW.

Recovery of damages due to a default by CDFW will only be available after CDFW and the Bank Owner or Property Owner have undergone informal dispute resolution as specified in Section XII.B of this BEI."

S. Lahontan RWQCB Remedies

The actions by the Lahontan RWQCB constitutes a regulatory action. Approval, reduction or denial of credits is at the sole discretion of the IRT agencies, and Bank Sponsor or Property Owner may only seek specific performance of Lahontan RWQCB's responsibilities under this BEI, and does not give rise to claim for damages.

Section XIII: Execution

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this BEI. This BEI shall be deemed executed on the date of the last signature by the Parties.

IN WITNESS WHEREOF, the Parties have executed this BEI as follows:

ED_013814_00000904-00041

Bank Sponsor

By: Land Veritas Corp.

By: _____ _____
H. Tracey Brownfield, President Date

Petersen Ranch Bank Property Owner

LV-BP Investors Ranch, LLC, a Delaware Limited Liability Company

By: LV Petersen Ranch, LLC, a California Limited Liability Company, its Manager

By: Land Veritas Corp., its Manager

By: _____ _____
H. Tracey Brownfield, President Date

Elizabeth Lake Property Owner

LV Lake Elizabeth, LLC, a California limited liability company

By: Land Veritas Corp., its manager

By: _____ _____
H. Tracey Brownfield, President Date

ED_013814_00000904-00042

U.S. Army Corps of Engineers, Los Angeles District

By: _____ _____
David J. Castanon Date
Chief, Regulatory Division

ED_013814_00000904-00043

California Department of Fish and Wildlife, South Coast Region

By: _____ _____
Edmund Pert Date
Regional Manager

ED_013814_00000904-00044

California Regional Water Quality Control Board, Lahontan Region

By: _____ _____
Patty Z. Kouyoumdjian Date
Executive Officer

ED_013814_00000904-00045

U.S. Environmental Protection Agency, Region IX

By: _____ _____
Jason Brush Date
Wetlands Office Manager

ED_013814_00000904-00046