Peterson Ranch Mitigation Bank
Bank Agreement Package
CA Dept. of Fish and Wildlife Comments
David Lawhead
December 16, 2014

1. **BEI** – Comments in separate file in Track Changes.
2. **Exhibit A-2**. Exhibits A-2.1 and A-2.2 have different geographic areas on the bank property divided into five "phases." However, it is proposed by the Bank Sponsor that "Phase 1" and "Phase 4" both be included in the initial portion of the bank property, or phase, to be dedicated to the bank. This use of the label "phase" for different geographical areas of the bank is confusing and inconsistent with banking terminology, unless, the areas to be brought into the bank are done in sequential order, phase 1 being first and phase 5 being last. That is not what is currently being proposed. Therefore, to make the designations clearer, the five geographic areas on the bank property should be designated A through E, with a table or text description added that states that Areas A and D are going to compromise Phase 1 of the bank.
3. **Exhibit B-1**. Exhibit B-1.3 is labeled "CESA Service Area." Since this service area only applies to the Swainson's hawk, this figure should be re-labeled "Swainson's Hawk Foraging Area." The use of the term CESA Service Area is much too broad a term to use for a single species. In addition, if the Bank Sponsor wishes to establish and sell mitigation credits for the tricolored blackbird, recently emergency listed by CDFW as endangered, then a separate service area for this species needs to be proposed by the Bank Sponsor and reviewed by CDFW.

   Exhibit B-1.5 illustrates the proposed Section 1600 service area for the bank. CDFW, which has jurisdiction over 1600 agreements, does not concur with this proposed service area. After internal discussions with CDFW personnel in the region of the bank, the 1600 agreement service area should be modified as follows: 1) Within the Santa Clara River watershed the 1600 service area will include the following HUC 10s – Castaic Creek, Lower Piru Creek, Upper Santa Clara Creek, Bouquet Canyon, Headwaters Santa Clara River, and the portion of Upper Piru Creek below the coniferous forest boundary; 2) the following Antelope Valley HUC 10s will also be included in the bank's 1600 agreement service area – Amargosa Creek, Sacatara Cree-Kings Canyon, Lake Palmdale-Piute Ponds, Cottonwood Creek-Tylerhorse Canyon, Tropico Hill-Oak Creek, Rosamond Lake, Big Rock Creek-Big Rock Wash, and Little Rock Wash. Within the textual description of the 1600 agreement service area (Exhibit B-2) it should be stated that projects outside of this service area that wish to use the bank will be considered by CDFW on a case-by-case basis.

4. **Exhibit C-1**. Development Plan.
   a. Page i. second paragraph. If the Bank Sponsor is proposing to sell credits for tricolored blackbird, western pond turtle, and coast horned lizard, then these credits need to be quantified and justified in the development plan. Currently no

credits for these species are proposed in the credit tables (Exhibit F-1) and no service areas for these species are provided.

b. Page 1, item 5)b). Credits are currently only proposed to meet certain CESA requirements for the Swainson's hawk, not State-listed threatened or endangered species in general. Please modify to indicate that Swainson's hawk is the focused species for this bank. Tricolored blackbird, with the recent emergency protections provided under CESA, may also be included in this section if proper documentation is provided.

c. Page 16. Table 3. Summary of Potential Section 1600 Credits in the Bank Properties. Under "Wetlands – Freshwater Marsh" please explain why the marsh is considered "enhanced" at Elizabeth Lake. Even with the recent fire, this area not likely in need of weed management and should recover on its own. What is the justification for calling this area "enhancement" versus "preservation." Also, under "Open Water" this area is listed as "enhancement." Please explain why this area is "enhanced" and not just preservation.

d. Page 17. Table 4. Summary of Potential CESA and CEQA Credits in the Bank Properties. It should be noted in the table that all of the "CEQA Habitats" listed with the term "Restoration" in the title would only have credits released as performance standards are met for the restoration, unlike credits for preservation only. Also, tricolored blackbird should now be included under the CESA heading with Swainson's hawk, if credits for this species are desired. These credits should also be included in Exhibit F-1.

e. Page 20, section 4.6.1., paragraph 2. Non-wetland Riparian Establishment. This credit category cannot be assigned unless the Bank Sponsor is committing at this time to include an establishment program for this credit type. The Development Plan currently indicates that this decision will be made at some future time as market forces dictate. This approach is not compatible with the banking agreement. If this habitat establishment proposal is not committed to at present it should be removed from the development plan, and any credits assigned to this habitat category in Exhibit F-1 removed. If these types of credits are desired in the future the banking agreement can be amended to include them if they are appropriate.

f. Page 23, section 4.11.1. CEQA Establishment Credits. See previous comment. No credits should be assigned to native grassland establishment until such time as the Bank Sponsor commits to implementing establishment. Any native grassland establishment credits listed in Exhibit F-1 should be removed.

g. Page 24. Section 5.0. Development Plan. The Development Plan should have a section describing avoidance and minimization measures that will be taken by the Bank Sponsor to avoid/minimize impacts to sensitive biological and cultural resource on the Bank property in the course of carrying out the development plan. Things such as avoidance of the breeding season, BMPs, construction monitors, etc. should be included in the plan. The avoidance and minimizations measures that will

be required under CEQA, 404 and 401 permits, and Streambed Agreements should be summarized in the plan.

h. Page 27. Section 5.1.45. Restoration Site 4. Has the infrastructure describe in the last half of this paragraph been assigned mitigation credit value? Gutters, concrete lined channels, and riprap areas should not be assigned mitigation credit values. Please clarify if these infrastructure areas were excluded from credit assignment.

i. Page 27. Section 5.1.6. Fire-Related Activities in the Elizabeth Lake Property. Did the Powerhouse Fire expose any significant trash or structures that will need removal from the bank property?

j. Page 31. Last paragraph. Please include in the Development Plan baseline groundwater data indicating depth to ground water in different locations where wetland /riparian restoration is proposed, and any data on annual groundwater depth fluctuations that may influence restoration success.

k. Page 33. Section 5.2.4. Non-wetland Riparian Establishment Activities in the Peterson Ranch Bank Property. See comment 4.e. above. Without an up-front commitment from the Bank Sponsor to create these establishment credits, no credits of this type should be assigned and listed in Exhibit F-1.

l. Page 35. Section 5.2.5. Cattle Exclusion Activities. Further discussion is needed on what additional wetland preservation areas outside of the central valley may also require cattle exclusion. Significant preserved ponds should also exclude cattle to improve habitat viability and water quality. In addition, if certain sensitive species such as tricolored blackbirds are assigned credit values, cattle should be excluded from their breeding areas.

m. Page 36. Section 6.1.2. Hydrology Monitoring Methods. CDFW concurs with the establishment of groundwater monitoring wells with data loggers. Please include in the Development Plan data on existing groundwater conditions throughout the bank's proposed restoration areas. What existing groundwater data is being used to guide the proposed Development Plan?

n. Page 37. Vegetation Monitoring Methods, paragraph 3. While the use of transects to quantify an overall health and survivorship condition of the restoration is good, how will those areas outside of the transects be assessed for dead plants that need replacement?

o. Page 37. Section 6.1.3. Photo-documentation. Photo points should also be established at different overview points to document the condition of the upland preservation habitats on the bank over time. This may also be useful for tracking such things as shrub encroachment into the grassland habitats, which could trigger a management action.

p. Page 38, Section 6.2.1.2. Uniform Performance Standards. 4th paragraph. "Following post-fire revegetation, Transect 2 is expected..." Is the revegetation described passive or active revegetation?

q. Page 46. Section 6.3.1.2. Uniform Performance Standards. Paragraph one. Please explain the timing of recovery for Transect 2 and how that plays into its role as a

reference site, both for Restoration Site 6 as well as the Munz Canyon Restoration Site. Is Transect 2 expected to be fully recovered by the time that Transect 1 in Munz Canyon and Transect 2 at Peterson Ranch are ready to begin monitoring? Since the Uniform Performance Standards require that the restoration sites are to be compared to a fully developed reference site in terms of percent cover, species diversity, etc. how will his comparison be possible with a reference site that is still recovering from the fire?

r. Page 49, Section 7.0. Adaptive management Plan. Paragraph 1, sentence 3. CDFW as well as the Corps will be involved with credit release issues if Performance Standards are not met for any given year.
s. Figures 4g and 4h. Re-label these figures to indicate that these are credit maps for Swainson's hawk foraging habitat.
t. Figures 7a and 7b. Please explain what is meant by "Performance Based Wetlands."
u. Appendix B: Preliminary Engineering Hydrology Report. Figure 3. Munz Canyon Alluvial Fan Distributions Weir Plan. Is there any way to make the shape of the dam lowering a more undulating naturalistic form, instead of a straight line across the canyon mouth?
v. Figure 7. Elizabeth Lake Restoration Site 4. Just to reiterate an earlier comment that hard structures that are incorporated into the restoration design are not assigned mitigation habitat credits.
w. Appendix C. Peterson Ranch grading Plans, L-1. It appears that Pond D: Sheet L-3, Wetland: Sheet L-4, and Pond E: Sheet L-4 are all wetland-related restorations proposed to occur within the 320-acre Southern California Edison parcel. It is understood that at least a portion of this restoration is to be credited to SCE for Army Corps mitigation requirements for an SCE project. However, no additional restoration credits are available on the SCE parcel as a part of the Peterson Ranch Mitigation Bank. Please explain the wetland restoration work to be done in the SCE parcel and how that will affect the bank restoration.

5. **Exhibit C-2**. Construction Security Analysis and Schedule
   Construction security normally requires at least a 15 percent contingency amount within the estimate. Please clarify if a contingency amount is included in the estimated construction cost for each appropriate phase.
6. **Exhibit D-1**. Interim Management Security Analysis and Schedule.
   The costs for maintenance and monitoring of restoration areas to meet performance standards during the interim management period should not be included in the Interim Management Security calculation. Security to assure the successful completion of the Development Plan is the Performance Security. So, remove the "IMP" Management Plan Task from the top of Table 1, and re-calculate the Interim Management costs.

Also, please clarify funding for Conservation Easement monitoring during the Interim Management Period.

7. **Exhibit D-2**. Endowment Fund Analysis and Schedule
    a. Please provide documentation on the Southwest Resource Management Association's history and success in managing non-wasting endowments, and its history of investment returns.
    b. There needs to be a discussion in this section regarding how the Southern California Edison long-term management endowment will be integrated into the bank's long-term endowment fund. It is unclear whether the dollar amount for managing Phase 1 includes the SCE endowment or is in addition to it. Please clarify and elaborate.
    c. Tables 2 and 3. Please explain how funding for Conservation Easement monitoring and compliance will be accomplished during the Interim Management Period, since the Long-term Management Endowment will not be available for CE monitoring use for a number of years.
    d. Page 4. Table 4. Title of table should be "Credit Release and Endowment Funding Schedule for Each Bank Phase."
8. **Exhibit D-4**. Interim Management Plan

    Page 2. Section 4.1. Restoration Maintenance. The Restoration Maintenance section would be more appropriately placed in the Development Plan because that is where meeting performance standards is discussed, and the items under Restoration Maintenance are directed at meeting those standards. This relates to the comment above discussing the Restoration Maintenance activities being covered by the Performance Security. Sections 4.2 through 4.4 should be the focus of the Interim Management Period, with those items also being the focus of the Interim Management Security Analysis.
9. **Exhibit D-5**. Long-term Management Plan
    a. Page 1. first paragraph, third sentence. The Los Angeles Regional Board will not be a BEI signatory agency.
    b. Page 1, second paragraph, second sentence. Include tricolored blackbird as a "covered" species if you want to sell credits for this species.
    c. Page 2. Section 1.3, last sentence. The reference in this paragraph to possible IRT-approved alterations to the bank's hydrology, topography, or possible future grading is inconsistent with the restrictions in the Conservation Easement. Even if the IRT approved land alterations the CE wouldn't allow it. This wording should be changed or removed.
    d. Page 4. Section 2.1.6. first paragraph, last two sentences. What is the status of discussion with the U.S. Forest Service regarding realigning the road easement? Will the alluvial fan restoration in Munz Canyon be delayed if there is no agreement in the near future? Also, is the State of California also willing to move the trails easement to the new road alignment?
    e. Page 18. Section 4.0, Management and Monitoring

This LTMP section needs to include a discussion on cultural resources, with a commitment to avoid disturbing known cultural sites of significance, as described in the Cultural Resources Report (Exhibit J). Recommendations in the Cultural Resources Report should be summarized in the LTMP, with a commitment to implement them where appropriate.

f. Page 20. Task 4.2.2. Photo reference points should be established for monitoring terrestrial habitats. Appropriate overview sites should be selected to provide good views of expanses of upland habitats. This will provide another mechanism, at a broad scale, to monitor changes in upland habitats, including shrub encroachment into grasslands.

g. Page 20. Section 4.3, Covered Species Monitoring. Swainson's hawk monitoring for the bank property should be consistent with the Swainson's hawk monitoring protocols established for the Southern California Edison 320-acre mitigation parcel. Tasks 4.3.1 and 4.3.2 are consistent with the SCE protocols. The following paragraphs, taken from the SCE Management Plan, should be added to the LTMP in this section to further define survey protocols:

"Multiple angles will be utilized to help increase the observer's chance of detecting a nest or hawk (pair), especially after trees are fully leafed-out and when surveying multiple trees in close proximity to each other. When surveying from an access road, surveys will be conducted in both directions, usually maintaining a distance of 50 to 200 meters from subject trees. This is usually optimal for observing perched and flying hawks without reducing the chance of detecting a nest or young. Once a nest is found, closer inspection may be, and usually is, necessary.

Surveys will focus on both visual observations and vocalizations. Observations of nests, perched adults, displaying adults, and chicks during the nesting season are all indicators of nesting hawks. In addition, vocalizations of birds are extremely helpful in locating nesting territories. Vocal communication between hawks is frequent (1) during territorial displays, (2) during courtship and mating, (3) through the nesting period as mates notify each other that food is available or that a threat exists, and (4) as older chicks and fledglings beg for food.

Information collected will include all observed nest sites, including date and time of observation, location name, UTM coordinates, number of young, and any behavioral observations. The occurrence of nesting great horned owls, red-tailed hawks, red-shouldered hawks, and other potentially competitive species will also be documented. These species will infrequently nest within 100 meters of each other, so the presence of one species will not necessarily exclude another, but should be noted in the survey report."

h. Page 20. Task 4.3.3. The LTMP should include a provision to conduct an annual breeding pair count for the tricolored blackbird, especially if blackbird credits are established by the bank.
i. Page 21. Task 4.4.1. Is there sufficient road access throughout the bank property that road surveys alone will allow for detection of noxious weed infestations? Will certain areas need to be checked on foot to assure for an adequate survey?
j. Page 21. Section 4.5. Vegetation Management. Where will cattle water tanks be placed and how will water be delivered? Areas in uplands immediately surrounding water sources are likely to be heavily impacted by cattle, so any upland habitats areas impacted by water tank placement, including a surrounding buffer, should be removed from the bank credit table. Please clarify how tank placement and cattle use will impact upland areas. Tanks should be placed in already disturbed areas if possible.
k. Page 23. Section 6.0. Reporting and Administration. An additional task should be added to this section. There should be an every five year review of the management plan documentation to update any changes in the bank conditions, or any changes to the plan approved by the IRT. An allocation of money should be included in the Endowment Fund Analysis to cover the cost of this effort.
l. Page 23-24. Section 7.1. Permitted Uses, four bullet points. The descriptions of the permitted uses listed here should be modified to conform to the versions of these uses agreed upon for the Conservation Easement for the Sothern California Edison mitigation property. In that CE, under Covenants, Terms, Conditions and Restrictions – Section 6 (Reserved Rights) (a) – (d) the wording is as follows:

(a) "While the primary purpose of the Phase I-A Property is to provide habitat for Swainson's Hawk, hunting shall be allowed on the Phase I-A Property in accordance with the following restrictions: (i) hunting activities shall not adversely affect the Conservation Values; (ii) no hunting activities shall take place from March 1 through July 15 of any year, and this closure period may be extended in writing by either Grantee, in consultation with CDFW, or CDFW to accommodate early or late Swainson's Hawk presence in any given year; (iii) no hunting activities shall take place in the cattle exclusion zone along the rift valley; (iv) hunting activities are restricted to the Grantor, its employees, and their families and guests; (v) recreational or target shooting not directly associated with the lawful take of game is strictly prohibited; and (vi) commercial hunting shall be allowed on an annual basis with the prior, written approval of CDFW and subject to any terms and conditions set forth in that written approval.

(b) Grantor may continue to engage in non-motorized recreational activities on the Phase I-A Property in the same manner as Grantor currently utilizes the Phase I-A Property. These uses include, by way of example and not limitation, hiking, horseback riding, and hunting (subject to the restrictions described above). No motorized recreational activities (e.g., recreational off-highway vehicle activities) are permitted on the Phase I-A Property.

(c) Grantor may operate motorized vehicles on existing trails, paths, and

roadways, as expressly depicted and described in the CMP.

(d) The infrastructure currently existing on the Phase I-A Property includes storage tanks, ponds and a pipeline (largely located within existing roadways) for water extraction, storage and delivery; livestock structures; agricultural equipment; and safety equipment (fire and general). Infrastructure that currently exists on the Phase I-A Property may continue to be used, replaced and maintained by Grantor; provided, however, that the use, replacement, and maintenance of all existing infrastructure is undertaken in a manner that will not adversely impact or impair the Conservation Values. Grantor may collocate a second pipeline for water recharge with the existing pipeline but Grantor may not expand the use of such infrastructure (including existing ponds) or change the nature of such infrastructure if such expansion or change would adversely impact or impair the Conservation Values without prior written approval from CDFW, which approval shall not be unreasonably withheld.

Grantor may continue to use the Phase I-A Property for outdoor education events, educational tours, and school-related events."

These bullet points should be customized for the full bank, not just Phase I-A. These points should also be carried over and inserted into the Conservation Easement documents for each phase of the bank property.

m. Page 24. Section 7.1, last paragraph. Additional infrastructure in the future may be precluded by the Conservation Easement unless it is needed to implement the LTMP.
n. Page 24. Section 8.1. Transfer. There will be no need to amend the LTMP in the future if a new Land Manager is selected as long as a specific Land Manger is not named in the LTMP. Acknowledgement of a new Land Manager would still require concurrence by the IRT.
o. Appendix B: Grazing Plan. Will the Grazing Plan be implemented over the entire bank property upon establishment of Phase 1, or only implemented on each phase as it is dedicated to the bank? Since the configuration of pastures does not conform to bank phase configurations, how will the grazing plan be implemented if it is not done over the entire bank property from the beginning of Phase 1 establishment?

   Page 4. Wetland Exclusion Area. Any proposal to graze cattle within the wetland exclusion area for management purposes must first be reviewed and approved by the IRT.

10. **Exhibit D-6**. Bank Closure Plan.

a. Page 1. Under the section heading "The Bank shall be deemed closed upon the date that;", a fourth item should be added – "CDFW Implementation Fees have been paid in full."
b. page 2. Under the section heading "The responsibility of the Bank Sponsor

is to:" a fifth item should be added – "Pay all CDFW Implementation Fees."

11. **Exhibit E-2**. Property Assessment and Warranty, Attachment 3.

All monetary liens listed in Attachment 3 either need to be cleared before the banking agreement is finalized or subordination agreements must be provided showing that the lien holders subordinate their interests to the conservation easement(s) on the bank. Also, please give an update on discussions with the County of Los Angeles on the removal of a number of old County easements listed in Attachment 3.

12. **Exhibit E-4**. Conservation Easement Deed. Comments on this exhibit are in a separate file. These comments should be included and/or addressed in the CEs for all of the bank's phases, not just Phase 1. My comments are consistent with the wording in the CE document for the SCE mitigation parcel.

13. **Exhibit F-1.1**. Credit Evaluation.

a. Page 1. paragraph 1, sentence 1. The 320-acre SCE property was not a bank "presale," but a stand-alone sale of mitigation via a conservation easement over the 320 acres of Peterson Ranch. The Bank did not conduct a credit presale.
b. Page 2. Table 1. If credits for tricolored blackbird are desired, then this credit category should be included under the "CESA" category in the table.
c. Page 2. Table 1. Please confirm that credits under 1600-"Non-wetland Riparian" and CESA-"Valley and Foothill Grassland" do not include areas that are proposed in the Development Plan to only be established "if market forces warrant it." If these types of restorations are not committed to up-front, then no credits should be assigned at this time.
d. Page 10. Table 7. Potential 1600 Credits. Please confirm that the credits listed for Phase 1 do not include any credits within the 320-acre SCE mitigation parcel.
e. Page 11. Section 2.5. Correct section title. Should be "CDFW (CESA) Credit Types."
f. Page 12. Tables 9 and 10. Please clarify why the grand total of credits is greater for CESA (Swainson's hawk) than for CEQA (3650.26 vs. 3600.46). If Tricolored blackbird credits are desired, they should be quantified in Table 10.
g. Exhibits F-1.3.1 and F-1.3.3 both show credit restoration or buffer credits along the western boundary of the Elizabeth Lake property, but there is no description in the Development Plan of a restoration or enhance action in this area. Please clarify, and if there is no restoration action in this area confirm that this area has not been included in the credit calculations.
h. Exhibits F-1.3.7 and F-1.3.8. should be labeled "Swainson's Hawk Credit Map." Also, a separate credit map should be created for the tricolored blackbird if credit are desired.

14. **Exhibit G**. Phase 1 Environmental Assessment. The Bank Sponsor will need to update the Phase 1 Environmental Assessment for Peterson Ranch (dated November 14, 2012) before CDFW can judge the Bank Agreement Package "acceptable." CDFW will typically accept a Phase 1 report as good for one year.