Peterson Ranch Mitigation Bank
CDFW Comments on Revised BEI Documents
David Lawhead, September 17, 2015

BEI – Comments are in Track Changes in a separate file. Comments/changes are minor, except for some additional legal language added in Sections XII. E, P, Q, and R. This language is now required by CDFW Office of General Counsel, and has been vetted by the State-wide Banking Project Delivery Team. Section Q is actually the latest wording from the Army Corps, which I copied from another bank that just completed Corps legal review.

Conservation Easement (Exhibit E-4). A Track Changes version of the Phase I Area A CE is being sent as a separate file with my comments and changes. The changes in that CE document should also be applied to the separate CE for Area E. The primary concern is that a number of large and small changes to the CE template were proposed which are not acceptable to CDFW. The template should be adhered to whenever possible. Also, the wording in the CE with regard to grantor rights and hunting should be the same as was used in the CE for the Southern California Edison mitigation site. This has already gone through CDFW legal review and been approved. Please use the same wording in the new CEs.

Development Plan (Exhibit C-1). This document is being sent as a separate Track Changes document with all of my comments/changes.

Comments on some of the other BEI exhibits:

1. Exhibit C-2, Construction Security. Include "Waters of the State" in the first paragraph, sentence #2.
2. Exhibit D-1, Interim Management Security. There is a difference in interpretation between myself and Army Corps counsel regarding what management tasks should be covered by the Interim Management Security. The Army Corps will require that all management and monitoring tasks associated with the bank restorations also be included in the Interim Management Security calculation. This is in contradiction to my earlier request to remove these items from the security calculations as they are covered by the Performance Security. So, you will need to re-instate the original calculations and include restoration management costs in your estimate of overall costs.
3. Exhibit D-5, Long-term Management Plan.
    a. Page 13. Section 3.1.7. paragraph 1, last sentence. LADWP may only be able to use wetlands created on their property if they are willing to meet other conditions of mitigation, such as placing a conservation easement on the site, long-term management, and funding for management.
    b. Page 23, Task 4.4.1. Still waiting for clarification as to whether all areas of the bank property can be adequately surveyed for noxious weeds solely from roads, or whether certain areas may require foot surveys. Please address.

c. Page 24, Section 4.5/Vegetation Management. A fifth task should be added to this section that evaluates the impact of cattle on habitats immediately surrounding cattle water sources, salt licks, or other cattle attractants where the intense use by cattle could degrade habitat lands given mitigation credit. Credits may need to be reduced if cattle impacts degrade credited habitat areas.
d. Page 30, Section 9.2/Replacement. It should be remembered that the Property Owner is the party responsible for land management. If that duty is delegated to another contracted party (Land Manager) that is fine, but the Property Owner bears the ultimate responsibility for any management failures

4. Exhibit D-4, Endowment Agreement, page 4, Section 4/Funding.
   a. In the first paragraph it indicates that $2,636,075 is the principal amount that the Bank Sponsor is providing to fund the long-term management endowment. However, I believe that this number is in error, at least according to the calculations in Exhibit D-2. The amount of endowment funding provided by SCE for the mitigation parcel will be folded into the management dollars for all of Parcel A. However, the amount that the Bank Sponsor is providing is the dollars to manage the remainder of Parcel A, plus Parcel E ($1,630,317 + $510,799), for a total of $2,141,906.
   b. I believe that the Army Corps will require that two endowment agreements be created, one for long-term management endowment, and the second for conservation easement monitoring.

5. Exhibit F-1.1, Credit Evaluation
   a. Page 7, Table 3/1600 Credits. There needs to be a clear justification for categorizing "Open Water" credits as "enhanced" versus "preserved" on Areas E and F on the Elizabeth Lake property where no cattle are present. Without a better justification, CDFW would consider Open Water habitat on these two areas to be "preservation." The same issue also applies to the freshwater marsh habitat around the fringe of Elizabeth Lake categorized as "Freshwater Marsh Enhanced." What additional functional lift is being provided that wouldn't also be provided to preserved habitat. These areas should be considered "preserved" and not "enhanced" for 1600 credits. Figure F-1.3.3 needs to be adjusted to reflect the change in credit categories.
   b. Page 9, Table 6/CEQA Credits. CDFW does not consider "Bare Ground" or "Non-native Woodland" to be CEQA credits, and these two credit types should be removed from the table. If these areas are restored to native habitats than credits can be assigned at a later time. Figures F-1.3.5 and F-1.3.6 both need to be adjusted to show that Bare Ground and Non-native Woodlands are not CEQA credits.
6. Exhibit F-4, Credit Transfer Ledger. The ledger needs to have rows or columns showing total number of credits in the bank, number of credits of each type currently released for sale, and

how many released credits of each type remain available. I need to be able to discern easily if sufficient credits are available at the bank for a particular project at a particular time.

7. Appendix B, Grazing Plan
    a. Page 3, 2nd paragraph. Grazing is not currently proposed to be excluded form alluvial floodway restoration sites on the Elizabeth Lake property. I think it would make sense to avoid putting cattle on the Elizabeth Lake property, or at lease excluding them from the alluvial fan areas, until final restoration performance standards are met. Is the Bank Sponsor willing to commit to this? If so, please include in the Grazing Plan and Development Plan. I think this temporary exclusion will enable the Performance Standards to potentially be met more quickly.
    b. Page 9, Maintaining Habitat for Tricolored Blackbird. The California Fish and Game Commission voted not to permanently list the TCB as State-threatened, so it currently has no listing status.
    c. Figure 1 shows several "blue dots" indicating water sources inside of the cattle exclusion areas on Peterson Ranch. Please clarify if this is an error, or not. Cattle water sources should obviously not be within cattle exclusion zones. As mentioned in an earlier comment, areas around cattle water sources need to be monitored for habitat degradation annually, and management actions take to address any significant degradation.
8. Appendix C, Hunting Information
    a. Page 1, definition of non-game species is incorrect. The information below is from the California Code of Regulations, Title 14:

"Except as otherwise provided in Sections 478 and 485 and subsections (a) through (d) below, nongame birds and mammals may not be taken.

- (a) The following nongame birds and mammals may be taken at any time of the year and in any number except as prohibited in Chapter 6: English sparrow, starling, coyote, weasels, skunks, opossum, moles and rodents (excluding tree and flying squirrels, and those listed as furbearers, endangered or threatened species).
- (b) Fallow, sambar, sika, and axis deer may be taken only concurrently with the general deer season.
- (c) Aoudad, mouflon, tahr, and feral goats may be taken all year.
- (d) American crows (Corvus brachyrhynchos)
    - (1) May be taken only under the provisions of Section 485 and by landowners or tenants, or by persons authorized in writing by such landowners or tenants, when American crows are committing or about to commit depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance. Persons authorized by landowners or tenants to take American crows shall keep such written authorization in their possession when taking, transporting or possessing American crows. American crows may be taken only on the lands where depredations are occurring or where they constitute a health hazard or nuisance. If required by Federal regulations, landowners or tenants shall obtain a Federal migratory bird depredation permit before taking any American crows or authorizing any other person to take them.
    - (2) American crows may be taken under the provisions of this subsection only by firearm, bow and arrow, falconry or by toxicants by the Department of

Food and Agriculture for the specific purpose of taking depredating crows. Toxicants can be used for taking crows only under the supervision of employees or officers of the Department of Food and Agriculture or federal or county pest control officers or employees acting in their official capacities and possessing a qualified applicator certificate issued pursuant to sections 14151-14155 of the Food and Agriculture Code. Such toxicants must be applied according to their label requirements developed pursuant to sections 6151-6301, Title 3, California Code of Regulations.

(e) Pursuant to Fish and Game Code Section 2003, it is unlawful to offer any prize or other inducement as a reward for the taking of nongame mammals in an individual contest, tournament, or derby.

Amendment filed 1/30/15; effective 4/1/15. _

These regulations were set by the CA Fish and Game Commission.

b. Page 2. Game Hunting Within the Bank. Restore the original wording used in this section, as this wording was agreed to by CDFW for the SCE mitigation parcel. This same correction should be included in the Phase I Conservation Easements.
c. Page 3. The deer species present is actually "mule deer" not "black-tailed deer."