

CONSERVATION AGREEMENT

AMONG

THE BUREAU OF RECLAMATION, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY WATER DISTRICT, and SAN DIEGO COUNTY WATER AUTHORITY

This Conservation Agreement regarding implementation of a voluntary conservation plan for listed species in and around the Imperial Irrigation District, Coachella Valley Water District, and Salton Sea area is entered into this 10th day of October, 2003, among the United States Department of the Interior, Bureau of Reclamation (Reclamation), the Imperial Irrigation District (IID), the Coachella Valley Water District (CVWD), and the San Diego County Water Authority (SDCWA).

RECITALS

A. With the participation of IID, CVWD and SDCWA, Reclamation has initiated a voluntary program (the "Species Conservation Program") for the conservation of four species listed pursuant to the Endangered Species Act (ESA), Yuma clapper rail, desert pupfish, southwest willow flycatcher, and California brown pelican (the four species are referred to herein as the Listed Species), on lands comprising the approximately 500,000 acres of IID's service area in Imperial County, California, the Salton Sea (including adjacent areas in the Coachella and Imperial Valleys), lands owned by IID outside IID's service area that are currently submerged by the Salton Sea, the lower Colorado River Valley and the Coastal California range of wintering California brown pelicans (the "Conservation Area"). The Species Conservation Program is pursuant to Section 7(a)(1) of the ESA (16 U.S.C. §1536), which authorizes Reclamation to use its authorities to carry out programs for the conservation of endangered and threatened species.

B. Reclamation has authority in accordance with applicable federal law, including the ESA, to undertake a voluntary species conservation program for federally listed species in the Conservation Area.

C. IID, CVWD and the Metropolitan Water District ("MWD"), have negotiated a Quantification Settlement Agreement (QSA) that includes implementation of projects for the conservation of water that is presently used for agricultural purposes within IID and the transfer of the conserved water to CVWD, SDCWA, and MWD. IID, CVWD, SDCWA, and MWD have identified potential impacts that the QSA projects may have on endangered and threatened species in the Conservation Area. These potential impacts have been identified in the Biological Assessment prepared by Reclamation (July 2002) as revised through subsequent memoranda in October and December 2002 ("BA"), and submitted to the U.S. Fish and Wildlife Service

("Service"). After consultation between Reclamation and the Service, the Service issued a Biological Opinion dated December 18, 2002 ("BO").

D. IID has commenced the development of a habitat conservation plan ("HCP") in accordance with Section 10 of the ESA (16 U.S.C. §1539), the California Endangered Species Act ("CESA") and the California Natural Community Conservation Planning Act related to its activities, including the implementation of projects for the conservation of water identified in the QSA and activities related to and in furtherance of the QSA. The HCP is not expected to be completed for up to three years after the execution of the QSA, and IID, CVWD, and SDCWA desire to participate with Reclamation in the implementation of the Species Conservation Program for the purpose of obtaining incidental take authorizations pending completion of the HCP.

E. Reclamation has previously consulted with the Service regarding the effect on endangered and threatened species resulting from its federal actions (the changes in points of diversion from the Colorado River) related to the transfer of water through projects identified in the QSA, and the Service issued its Biological Opinion in January 2001. With the participation of IID, CVWD and SDCWA, Reclamation has developed this Species Conservation Program to meet the statutory and regulatory requirements for the issuance of incidental take authorization for the impacts to the Listed Species in the Conservation Area that may result from activities of IID, CVWD, and SDCWA relating to implementation of water conservation projects identified in the QSA, in accordance with the BA and the BO.

F. The QSA is subject to the implementation of a mechanism to resolve and allocate environmental mitigation responsibility between the Parties on the terms and conditions set forth in that certain Environmental Cost Sharing Agreement ("ECSA") among CVWD, IID, and SDCWA, attached hereto for informational purposes as Exhibit A. CVWD, IID, SDCWA and the State of California have also entered into that certain Quantification Settlement Agreement Joint Powers Agreement ("QSA JPA"), attached hereto for informational purposes as Exhibit B. Among other purposes, the QSA JPA (1) establishes a joint powers authority to fund the environmental mitigation requirements attributable to the QSA and related water transfers, (2) allocates among the State, CVWD, IID and SDCWA costs of environmental mitigation requirements; and (3) makes certain and limits the financial liability of CVWD, IID and SDCWA for environmental mitigation requirements.

G. CVWD, SDCWA and IID have agreed to substantial commitments of water, money and other valuable resources to implement the QSA, including but not limited to, this Agreement and other commitments of funds to mitigate environmental impacts of the QSA, the related water transfers and other related activities. CVWD, SDCWA and IID, individually and collectively, would not have made these commitments but for the commitments of the State in the QSA JPA.

H. This Conservation Agreement is entered into for the purpose of establishing the rights and obligations of the parties to implement the provisions of the Species Conservation Program.

WHEREFORE, in consideration of the recitals set forth above, the issuance and acceptance of incidental take authorizations pursuant to the Species Conservation Program, and the mutual promises set forth herein, the parties to this Conservation Agreement agree as follows:

AGREEMENT

Article 1 ESA Consultation

1.1 In accordance with the BA, Reclamation has consulted with the Service in accordance with Section 7(a)(2) of the ESA regarding the implementation of the Species Conservation Program. Reclamation prepared and submitted to the Service the BA described in Recital C, which identifies and analyzes the potential effects on endangered and threatened species in the Conservation Area resulting from projects for conservation of water identified in the QSA. The Service has issued the BO dated December 18, 2002 that includes a statement of the incidental take of threatened and endangered species that may result from the water conservation projects identified in the QSA within the Conservation Area. A copy of the BO is attached hereto as Exhibit C. The Service consulted with the California Department of Fish and Game ("CDFG") in connection with the measures required under the BO, in order to facilitate issuance of state permits pursuant to CESA.

1.2 Prior to any re-initiation of consultation regarding the Species Conservation Program or the projects for conservation of water identified in the QSA, Reclamation shall provide written notice to the other parties of the basis for re-initiation of consultation. The parties shall meet and confer to determine whether there are reasonable measures that may be taken to obviate the need to re-initiate consultation. In the event that there is a re-initiation of consultation with respect to the Species Conservation Program, Reclamation shall coordinate with the other parties in preparation of any biological assessment.

Article 2 Species Conservation Measures, Reasonable and Prudent Measures, and Terms and Conditions

2.1 The parties to this Conservation Agreement shall implement, or cause to be implemented: (1) the Species Conservation Program (which comprises the conservation measures set forth on pages 8 through 15 of the BO) (2) the reasonable and prudent measures (RPMs) set forth in the BO, and (3) the terms and conditions specified in the Incidental Take Statement ("ITS Terms and Conditions") portion of the BO.

Desert Pupfish

2.2 Each of the parties to this Conservation Agreement shall comply with the ITS RPMs and Terms and Conditions identified to minimize impacts to desert pupfish from the Species Conservation Program and the water conservation projects identified in the QSA.

2.3 Connectivity Impacts—Drains. IID and CVWD shall each be responsible for implementation of the provisions of Pupfish Conservation Measure 1 and the ITS Terms and Conditions Nos. 1.1, 3.1, 3.2, and 3.5 relating to maintenance of their respective drains connecting to the Salton Sea.

2.4 Connectivity Impacts-Refugium. The provisions of Pupfish Conservation Measure 1 and Terms and Conditions relating to creation of one pupfish refugium pond consistent with the Desert Pupfish Recovery Plan, as described in the BO, shall be implemented as follows:

Reclamation shall construct one refugium pond consistent with the Desert Pupfish Recovery Plan. Reclamation will coordinate with the other parties to this Conservation Agreement, the Service, and CDFG to determine the location, timing, and technique in implementing this measure. Reclamation shall bear the cost of siting and constructing the refugium pond and amounts expended by Reclamation shall be non-reimbursable for purposes of the Act of June 17, 1902 (43 U.S.C. §391 *et seq.*) and Acts amendatory thereof and supplemental thereto, and shall not be considered to be a supplemental or additional benefit for purposes of the Reclamation Reform Act of 1982 (43 U.S.C. §390aaa *et seq.*).

The party in whose service area the refugium pond is located (or IID if the refugium is located outside the service areas of the parties) shall manage and maintain the pond in accordance with Pupfish Conservation Measure 1 and shall be responsible for the implementation of the ITS Terms and Conditions Nos. 3.3 and 3.4 for the purpose of assisting in the recovery efforts for desert pupfish. It is not anticipated that these actions will entail construction of a new or replacement refugium pond or other actions that may interfere with normal agricultural operations.

2.5 Selenium Impacts. IID and CVWD shall be responsible for implementation of the provisions of Pupfish Conservation Measure 2 and the ITS Terms and Conditions Nos. 2.1 and 3.5 relating to impacts of selenium on desert pupfish.

2.6 Management and Monitoring. IID and CVWD shall be responsible for implementation of the provisions of Pupfish Conservation Measure 3 and the ITS Terms and Conditions Nos. 2.1, 4.1, 4.2, 4.3, and 4.8 relating to management and monitoring of desert pupfish.

Yuma Clapper Rail and California Black Rail

2.7 Each of the parties to this Conservation Agreement shall comply with the ITS RPMs and Terms and Conditions to minimize impacts to the Yuma clapper rail and California black rail from the Species Conservation Program and water conservation projects identified in the QSA.

2.8 Salinity Impacts. IID shall be responsible for implementation of the provisions of Rail Conservation Measure 1 and Terms and Conditions Nos. 2.2, 3.5, and 3.6 relating to the offset of potential salinity impacts to Yuma clapper rail and California black rail from the Species Conservation Program and water conservation projects identified in the QSA.

2.9 Selenium Impacts. IID shall be responsible for implementation of the provisions of Rail Conservation Measure 2 and the ITS Terms and Conditions 2.2, 3.5, and 3.6 relating to the offset of potential selenium impacts to Yuma clapper rail and California black rail.

2.10 Management and Monitoring. IID shall be responsible for implementation of the provisions of Rail Conservation Measure 3 and the ITS Terms and Conditions Nos. 4.4, 4.5, 4.6, 4.7, and 4.8 relating to management and monitoring of Yuma clapper rail and California black rail. IID, the other parties to the Conservation Agreement, the Service, and CDFG will annually review results of rail surveys and assess the effectiveness of the created marsh in providing habitat for clapper rails. In evaluating the effectiveness of the marsh in providing habitat for clapper rails, IID, the other parties to the Conservation Agreement, the Service, and CDFG will consider the use of the State and Federal refuges by clapper rails as compared to the created marsh. By considering and comparing use (occurrence, abundance, and life history functions) of the created marsh and at State and Federal refuges (if available), it will be possible to assess whether the created marsh is providing for the species, while at the same time taking into account stochastic factors not attributable to management. Management will be adjusted as necessary based on the results of the annual surveys.

Southwestern Willow Flycatcher

2.11 Evaluation of Habitat. Reclamation shall be responsible for implementation of Willow Flycatcher Conservation Measure 1 relating to the identification of suitable southwestern willow flycatcher breeding habitat, as follows:

Reclamation shall evaluate all cottonwood-willow and tamarisk stands that may potentially be affected by the QSA water conservation projects for southwestern willow flycatcher breeding habitat suitability. Using the Anderson and Ohmart classification system (1994), each Saltcedar III and IV and each Cottonwood-willow I, II, III, and IV stand will be evaluated for suitability based on density, structure, and presence of standing water or saturated soils during the breeding season. Suitable breeding habitat will be identified based on characterizations provided in the draft Southwestern Willow Flycatcher Recovery Plan.

Reclamation will perform these evaluations prior to any IID water conservation activities which could impact tamarisk habitat. Upon completion of this initial evaluation, a specific protocol for the habitat monitoring (identified below as voluntary Willow Flycatcher Conservation Measure 2) will be developed in consultation with the other parties to the Conservation Agreement, the Service, and CDFG. This protocol will address the timing and duration of monitoring activities and other details as required.

Reclamation shall bear the cost of performing these evaluations and amounts expended by Reclamation shall be non-reimbursable for purposes of the Act of June 17, 1902 (43 U.S.C. §391 *et seq.*) and Acts amendatory thereof and supplemental thereto, and shall not be considered to be a supplemental or additional benefit for purposes of the Reclamation Reform Act of 1982 (43 U.S.C. §390aaa *et seq.*). Each party shall bear its own cost for participating in the reviews and discussions with the Service and CDFG regarding development of the protocol for habitat monitoring.

2.12 Suitable Habitat Monitoring and Management. Each party whose service area includes suitable southwestern willow flycatcher breeding habitat, as identified by Reclamation pursuant to Willow Flycatcher Conservation Measure 1, shall be responsible for implementation of the provisions of Willow Flycatcher Conservation Measure 2 relating to monitoring the habitat and quantifying changes in quantity and quality of the habitat within their service area and Willow Flycatcher Conservation Measure 3 relating to the management and monitoring of replacement habitat for southwestern willow flycatcher within their service area.

2.13 Take Minimization During Construction. IID shall be responsible for implementation of the provisions of Willow Flycatcher Conservation Measure 4 relating to the avoidance of construction impacts to southwestern willow flycatcher along the East Highline Canal and lateral interceptors.

California Brown Pelican

2.14 Roost Site Creation. IID, in cooperation with SDCWA and CVWD, shall be responsible for implementation of Brown Pelican Conservation Measure 1 and ITS Terms and Conditions Nos. 3.5 and 3.7 relating to the creation of coastal roost sites for California brown pelicans. The California Department of Fish and Game has indicated that it may assume responsibility for implementation of Brown Pelican Conservation Measure 1 and ITS Terms and Conditions Nos. 3.5 and 3.7 relating to the creation of coastal roost sites for California brown pelicans. If the California Department of Fish and Game fails to assume that responsibility, IID, in cooperation with SDCWA and CVWD, shall remain responsible for those measures. IID, in cooperation with the other parties to the Conservation Agreement, shall be responsible for the implementation of Terms and Conditions Nos. 1.2, 3.5, and 3.7 relating to the creation of roost structures in and around the Salton Sea.

Article 3 General Provisions

3.1 IID, SDCWA, and CVWD acknowledge that they are each required to provide funds to pay certain mitigation costs pursuant to the ECSA and the QSA JPA, including their respective costs incurred pursuant to this Conservation Agreement. Notwithstanding any provision of this Agreement, the Species Conservation Program or the BO, IID, SDCWA, and CVWD, individually and collectively, shall not be required to pay, or contribute to the payment of, or incur any costs or expenses related to the implementation of this Agreement, except to the extent and as provided in the ECSA and the QSA JPA. Without limiting the generality of the foregoing, IID, SDCWA, and CVWD are not required to pay or incur any costs or expenses attributable to the implementation of this Agreement in an amount that would exceed the limitations attributable to such agencies, individually and collectively, in the ECSA and the QSA JPA. IID, as the CEQA Lead Agency for the IID Water Conservation and Transfer Project, shall have the right to rely upon the commitments of the parties set forth in the Conservation Agreement, the ECSA and the QSA JPA to perform and/or fund the Species Conservation Program.

3.2 The party with responsibility for implementation of each conservation measure adopted in the BO and each ITS Term and Condition shall perform its obligations in a timely manner and with the frequency required.

3.3 Notwithstanding the allocation of responsibility for implementation, each party may participate, at its own cost, in any discussions with the Service and CDFG regarding each conservation measure or ITS Term and Condition. To ensure the opportunity for such participation, each party shall give reasonable notice to the other parties of any planned or scheduled discussions with the Service and CDFG regarding each matter governed by this Conservation Agreement.

3.4 Each party that is required to prepare any report, plan or other document to implement any conservation measure or ITS Term and Condition shall provide a copy of each report, plan or other document to the other parties within a reasonable time after its preparation.

3.5 Reimbursement of all costs and expenses incurred by IID, CVWD, or SDCWA shall be made in accordance with the provisions of the ECSA and the QSA JPA.

3.6 Upon the completion of an HCP, if any, that provides incidental take authority for the same water conservation projects identified in the QSA that are covered by the BO, the parties shall meet and confer in good faith to identify duplicative conservation measures and ITS Terms and Conditions that are required by both the BA/BO and the HCP. By written agreement executed by all of the parties to this Conservation Agreement, the rights and obligations for implementation and funding of each identified duplicative conservation measure, or Term and Condition may be re-assigned to avoid duplication, consistent with the parties' obligations under the ECSA and the QSA JPA.

3.7 Any notice that is authorized or required to be given pursuant to this Conservation Agreement shall be delivered by first class mail, postage prepaid, as follows:

Reclamation	Area Manager, Boulder Canyon Operations Office Attn: Ms. Jayne Harkins U.S. Bureau of Reclamation P.O. Box 61470 Boulder City, Nevada 89006-14
IID	Imperial Irrigation District Attn: Tina Shields P. O. Box 937 Imperial, CA 92251
CVWD	Coachella Valley Water District Attn: Steve Robbins P. O. Box 1058 Coachella, CA 92236

SDCWA

San Diego County Water Authority
Attn: Larry Purcell
4677 Overland Avenue
San Diego, CA 92123

Any party may change the address to which notices are to be sent by giving written notice of such change to the other parties in accordance with this paragraph.

3.8 Nothing in this Conservation Agreement shall affect the rights and obligations of the parties under other agreements governing the implementation of conservation measures for impacts to endangered and threatened species on the Colorado River resulting from water transfer projects identified in the QSA.

Article 4

Commencement and Termination

4.1 This Conservation Agreement shall become effective only upon the execution by all parties of this Conservation Agreement, and execution by the United States District Court for the Southern District of California of the Stipulation and Order dismissing the case IID v. United States et al., Case No. 03-CV-0069W(JFS).

4.2 The obligations of each party under this Conservation Agreement to implement or finance the conservation measures and ITS RPMs and Terms and Conditions, shall be effective only to the extent that the BO issued by the Service remains in effect and includes a statement of the incidental take, if any, that will result from the action. The statement of the incidental take shall include any incidental take of Listed Species that is likely to result from the water conservation projects identified in the QSA.

4.3 In the event that any party fails to timely or properly implement the BO's conservation measures and ITS Terms and Conditions for which the party is responsible, any other party may, after giving reasonable notice and opportunity to perform, undertake to implement those measures. In the event that IID, CVWD, and SDCWA fail to perform an obligation of any of them after written notice to each from Reclamation and a reasonable time for them to perform, Reclamation shall have no further responsibility to perform its obligations under this Conservation Agreement.

4.4 This Conservation Agreement shall automatically terminate in the event of a termination of the Colorado River Water Delivery Agreement pursuant to paragraphs 6(b) and (c) therein.

4.5 In the event of a termination pursuant to this Article, each party shall remain liable to meet any obligations that were incurred pursuant to this Conservation Agreement prior to the effective date of the termination consistent with the parties' obligation under the ECSA and the QSA JPA.

IN WITNESS WHEREOF, the parties have executed this Conservation Agreement as of the date first written above.

Reclamation United States Department of the Interior, Bureau of Reclamation

By Robert E. Johnson
Name
Title

IID Imperial Irrigation District

By Mr. Carter
Name
Title Chief Counsel

CVWD Coachella Valley Water District

By [Signature]
Name
Title GENERAL MANAGER

SDCWA San Diego County Water Authority

By [Signature]
Name
Title General Manager