MEMORANDUM

Date: July 14, 2016

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator

Re: **Section 10 Incidental Take Permit from the US Fish and Wildlife Service**

Attached is a copy of the permit that has been executed by the US Fish and Wildlife Service, the County and the Regional Flood Control District. The permit is effective July 5, 2016 and expires July 30, 2046.

This permit is a culmination of years of study and effort by Pima County and our participating partners to develop a more efficient mechanism for compliance with the Federal Endangered Species Act (ESA). The permit is also a component of the Sonoran Desert Conservation Plan and primarily relates to our efforts to conserve a number of native plant and animal species that are endangered or have the possibility to become endangered under the ESA. It provides assurances and predictability regarding future ESA compliance and provides future economic certainty for development activities within the unincorporated area of the County and for any County operations, including those actions inside municipalities or incorporated places. Many, if not most, of our obligations have been prepaid through the County's Open Space Bond Program and other conservation activities centered in our Sustainability and Conservation Office. This program has emphasized the conservation or preservation of intact ecosystems.

The issued permit provides the framework for our activities and permitted uses. The Board of Supervisors will be acting on an implementing agreement, as well as appropriate conservation easements, to make the necessary deposit to a conservation bank on lands already acquired through Open Space voter-approved bonds. The Board will also be asked to approve a fee program that provides compliance coverage, at their option, for private property owners individually at no cost and for developers of subdivisions, commercial or industrial properties at a very modest cost. This action is scheduled for the September 20, 2016 Board of Supervisors meeting.

CHH/anc

Attachment

c: John Bernal, Deputy County Administrator for Public Works
Nanette Slusser, Assistant County Administrator for Public Works Policy
Suzanne Shields, Director, Regional Flood Control District
Linda Mayro, Director, Office of Sustainability and Conservation

3-201
(1/97)

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES
16 USC 1539(a)(1)(B)

REGULATIONS
50 CFR §§ 13 & 17

3. NUMBER
TE84356A-0

1. PERMITTEE

Pima County
Pima County Regional Flood Control District
130 W. Congress, 10th Floor
Tucson, AZ 85701
Phone: 520/740-8661
CHH@pima.gov

4. RENEWABLE	5. MAY COPY
[X] YES	[X] YES
[ ] NO	[ ] NO

6. EFFECTIVE	7. EXPIRES
7/5/2016	7/30/2046

8. NAME AND TITLE OF PRINCIPAL OFFICER (if #1 is a business)
Charles H. Huckelberry, Pima County Administrator and General Manager

9. TYPE OF PERMIT
Endangered Species – Incidental Take

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
Within Pima County and adjacent counties (Santa Cruz, Cochise, and Pinal) as described in section 3.1 of the MSCP.

11. CONDITIONS AND AUTHORIZATIONS:

A. Valid for use by Permittees named above.

B. Acceptance of the permit serves as evidence that the Permittee(s) agree to abide by the terms and conditions of this permit and all applicable sections of Title 50 CFR Parts 13 and 17 pertinent to issued permits. Terms and conditions of the permit are inclusive. Any activity not specifically permitted is prohibited. Violations of permit terms and conditions could result in the permit being suspended or revoked. Violations of the permit terms and conditions that contribute to a violation of the Endangered Species Act (ESA) could also subject you to criminal or civil penalties.

C. The persons listed in box 8 must sign for the permit to acknowledge receipt and signify agreement to fully abide by and implement this permit. An original signature copy must be returned to the Regional Office listed below in condition K.

Permittee Signature: C. Huckelberry Date: 7/13/16
Charles H. Huckelberry, Pima County Administrator

Permittee Signature: C. Huckelberry Date: 7/13/16
Charles H. Huckelberry, General Manager,
Pima County Regional Flood Control District

12. REPORTING REQUIREMENTS
Annual reports are due March 1.

ISSUED BY:	TITLE	DATE
Jay E Nicholopoulos	Deputy Regional Director	7/5/2016

D. DEFINITIONS

The following terms as used in the Permit shall have the meanings as set forth below:

Biological and Conference Opinion (BCO). The section 7 biological and conference opinion issued by the USFWS for the MSCP, including certain actions by the U.S. Army Corps of Engineers included as Covered Activities (Consultation # 22410-2006-F-0459).

Biological Certificate of Inclusion(). A County-issued certificate that affords protection under Pima County's Section 10 Incidental Take Permit to a third party for implementation of biological enhancements.

Certificate of Coverage. County-issued documentation certifying that all necessary requirements have been met and that Pima County is extending the benefits of its Section 10 Incidental Take Permit to private property where certain grading and ground disturbances are authorized by the Pima County Development Services Department.

Changed Circumstances. "Changes in circumstances affecting a species or geographic area covered by an Habitat Conservation Plan (HCP) that can reasonably be anticipated by Plan developers and the USFWS and that can be planned for (e.g., the listing of a new species, or a fire or other natural catastrophic event in areas prone to such events)" (50 CFR §17.3). If additional conservation and mitigation measures are deemed necessary to respond to changes in circumstances that were provided for in the HCP. The USFWS can request additional conservation, but cannot require that the Permittee(s) comply. Permittee(s) will be expected to implement the measures specified in the HCP, but only those measures and no others.

Covered Activities. Refers to those actions and activities outlined in Section 3.4 of the MSCP for which Pima County or Pima County Regional Flood Control District is seeking incidental take coverage. Covered Activities also include conservation and mitigation activities undertaken on mitigation lands. These actions, as outlined in the MSCP, occur under the authority and jurisdiction of Pima County and the Pima County Regional Flood Control District.

Covered Species. Those 44 species described in Section 3.3 of the MSCP that are proposed for coverage under Pima County and Pima County Regional Flood Control District's Section 10 Incidental Take Permit.

Effective Date. The date upon which documents related to the Pima County MSCP are signed and become effective. Signatures required may be USFWS, Pima County, Pima County Regional Flood Control District, Participants, Enrollees, or any combination of the foregoing. These documents include the Permit, Implementing Agreement, Certificates of Coverage, and Biological Certificates of Inclusion. Effective date also applies to dates notifications are given to parties with regard to amendment, suspension, or revocation of the Permit.

Enrollee. These are private landowners or developers that enroll in activities covered by the Biological Certificate of Inclusion issued by the Permittees under the MSCP.

Endangered Species Act (ESA). This is the Endangered Species Act, 16 U.S.C. § 1531 et seq., as amended. Terms defined and utilized in the ESA and implementing regulations shall have the same meaning when utilized in this Permit, except as specifically noted herein.

Implementing Agreement (IA). Specifies all terms and conditions of activities under the MSCP. By signing the Implementing Agreement, USFWS explicitly acknowledges approval of the plan and declares that it meets the requirements of an HCP to allow issuance of appropriate permits for the incidental take of Covered Species

listed at the time the IA is signed or take of other Covered Species should those become listed within the term of the Incidental Take Permit.

Incidental Take Permit (ITP; also called Section 10 Incidental Take Permit; see also Permit). A permit issued under Section 10(a)(1)(B) of the ESA to a non-Federal party undertaking an otherwise lawful project that might result in the incidental take of an endangered or threatened species. Application for an incidental take permit is subject to certain requirements, including preparation by the permit applicant of a conservation plan, generally known as an HCP. In the case of Pima County and Pima County Regional Flood Control District, the HCP is known as the Multi-species Conservation Plan.

Mitigation (programs/measures). Activities contributing to the conservation of resources and offsetting resource loss. The primary mitigation mechanisms for Pima County and Pima County Regional Flood Control District's Section 10 Incidental Take Permit is acquisition of land and property rights and subsequent management and monitoring activities, but other methods may be approved by USFWS.

Participant. Those property owners who voluntarily solicit protections afforded by the Pima County MSCP and who fulfill certain requirements.

Permit. See Incidental Take Permit (ITP).

Permittee-Controlled Mitigation Land. Mitigation lands for which either Permittee has a property interest (e.g., fee simple ownership, conservation easement, or grazing lease). Excludes mitigation lands derived from Permittee-issued Certificates of Coverage.

Permittees. The Permittees covered by this Permit are Pima County and the Pima County Regional Flood Control District.

Permit Area. This is the geographic area within which the MSCP and the associated Permit apply. A detailed description of the Permit Area is found in Section 3.1 of the MSCP.

Unforeseen Circumstance: "changes in circumstances affecting a species or geographic area covered by an HCP that could not reasonably have been anticipated by plan developers and the USFWS at the time of the HCP's negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species" (50 CFR §17.3). The USFWS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources, even upon a finding of Unforeseen Circumstances, unless the Permittee(s) consent(s). Upon a finding of unforeseen circumstances, the USFWS will be limited to modifications within conserved habitat areas and the MSCP's operating conservation program, unless the USFWS provides additional resources to address the Unforeseen Circumstance.

F. COVERED PERMITTEES AND COVERED PARTICIPANTS

The Permittees covered by this Permit are Pima County and the Pima County Regional Flood Control District. Coverage under this Permit may be granted by the Permittees to certain private landowners or private development entities through the issuance of a Certificate of Coverage (Participants) or the Biological Certificate of Inclusion (Enrollees) provided these private entities are compliant with all of the requirements and commitments of the Pima County MSCP and associated documents.

F. COVERED SPECIES

The following is a list of the species covered under this Permit:

Common Name	Scientific Name	Federal Listing Status
Plants (4 species)		
Pima pineapple cactus	Coryphantha scheeri var. robustispina	Endangered
Needle-spined pineapple cactus	Echinomastus erectocentrus var. erectocentrus	Not listed
Huachuca water umbel	Lilaeopsis schaffneriana ssp. recurva	Endangered
Tumamoc globeberry	Tumamoca macdougalii	Not listed
Mammals (7 species)		
Mexican long-tongued bat	Choeronycteris mexicana	Not listed
Western red bat	Lasiurus blossevillii	Not listed
Western yellow bat	Lasiurus xanthinus	Not listed
Lesser long-nosed bat	Leptonycteris curasoae yerbabuenae	Endangered
California leaf-nosed bat	Macrotus californicus	Not listed
Pale Townsend's big-eared bat	Corynorhinus townsendii pallescens	Not listed
Merriam's mouse	Peromyscus merriami	Not listed
Birds (8 species)		
Western burrowing owl	Athene cunicularia hypugaea	Not listed
Cactus ferruginous pygmy-owl	Glaucidium brasilianum cactorum	Not listed
Rufous-winged sparrow	Aimophila carpalis	Not listed
Swainson's hawk	Buteo swainsoni	Not listed
Yellow-billed cuckoo (western distinct population segment)	Coccyzus americanus	Threatened
Southwestern willow flycatcher	Empidonax traillii extimus	Endangered
Abert's towhee	Melozone aberti	Not listed
Arizona Bell's vireo	Vireo bellii arizonae	Not listed
Reptiles (6 species)		
Desert box turtle	Terrapene ornata luteola	Not listed
Tucson shovel-nosed snake	Chionactis occipitalis klauberi	Not listed
Sonoran desert tortoise	Gopherus morafkai	Not listed
Groundsnake (valley form)	Sonora semiannulata	Not listed
Northern Mexican gartersnake	Thamnophis eques megalops	Threatened
Giant spotted whiptail	Aspidoscelis stictogramma	Not listed
Amphibians (2 species)		
Chiricahua leopard frog	Lithobates chiricahuensis	Threatened
Lowland leopard frog	Lithobates yavapaiensis	Not listed
Fish (5 species)		
Longfin dace	Agosia chrysogaster	Not listed
Desert sucker	Catostomus clarki	Not listed
Sonora sucker	Catostomus insignis	Not listed
Gila chub	Gila intermedia	Endangered
Gila topminnow	Poeciliopsis occidentalis occidentalis	Endangered

Common Name	Scientific Name	Federal Listing Status
Invertebrates (12 species)		
Black Mountain/Papago talussnail	Sonorella ambigua	Not listed
San Xavier talussnail	Sonorella eremita	Cons. Agree.
Total Wreck talussnail	Sonorella imperatrix	Not listed
Empire Mountain talussnail	Sonorella imperialis	Not listed
Sonoran talussnail	Sonorella magdalenensis syn. tumamocensis	Not listed
Pungent talussnail	Sonorella odorata	Not listed
Posta Quemada talussnail	Sonorella rinconensis	Not listed
Santa Catalina talussnail subspecies	Sonorella sabinoensis buehmanensis	Not listed
Santa Catalina talussnail subspecies	Sonorella sabinoensis tucsonica	Not listed
Las Guijas talussnail	Sonorella sitiens	Not listed
Tortolita talussnail	Sonorella tortillita	Not listed
Santa Rita talussnail	Sonorella walkeri	Not listed

G. COVERED AREA

A full description of the covered area (Permit Area) is found in Chapter 3.1 of the MSCP, and includes: (1) private lands in unincorporated Pima County; (2) lands where construction and maintenance of Pima County infrastructure occur, including lands within the cities and towns of Tucson, Marana, Oro Valley, and Sahuarita; and adjacent counties (Santa Cruz, Cochise, and Pinal); (3) lands Pima County owns in fee simple and lands on which the County possesses a property right, including those located in other jurisdictions; (4) State Trust lands that are or would be leased by Pima County or used as road easements; (5) State Trust and U.S. Bureau of Land Management (BLM) lands that could be released to the private sector and thus become subject to regulatory control of Pima County, except those within Federal reserves; (6) State Trust lands where Pima County holds a lease or acquires the land in fee simple; and (7) BLM lands that Pima County might patent for open-space purposes either through the Recreation and Public Purposes Act (RPPA) or through land exchanges.

H. COVERED ACTIVITES

A full description of the following activities is found in Chapter 3.4 of the Pima County MSCP and is incorporated herein by reference.

H.1 Covered activities include:

(a) Ground disturbances on individual, single-dwelling lots that occur subsequent to the County's issuance of a building permit that authorizes grading of 14,000 square feet or more provided that the property owner elects to participate in the County's Section 10 permit;
(b) Ground disturbances that occur as part of—and subsequent to—the development of a residential subdivision where such actions are subject to the County's issuance of a site construction permit provided the property owner elects to participate in the County's Section 10 permit after the submittal of the site construction permit application but prior to the County's issuance of the site construction permit ;
(c) Ground disturbances that occur as part of—and subsequent to—the development of a non-residential facility where such actions are subject to the County's issuance of a site construction permit provided the property owner elects to participate in the County's Section 10 permit after submittal of the site construction permit application but prior to the County's issuance of the site construction permit ;
(d) Activities of the County including construction, repair, maintenance, and operation of County facilities and infrastructure;

(e) Construction, operation, and maintenance of renewable energy generation projects located on County-owned lands leased to others specifically for that purpose;
(f) Relocation of utilities within County rights-of-way, where required by Pima County;
(g) Monitoring and land management activities including surveys, scientific studies, and other such activities carried out by Pima County and its cooperators for the purposes of the MSCP;
(h) Restoration activities such as vegetation treatments (including fire management activities) that are intended to improve the biological and ecological values;
(i) Recreation activities authorized by Pima County; and
(j) County ranch-management activities—exclusive of livestock herbivory and trampling—on land owned by the County and lands managed by the County through grazing leases issued by the State of Arizona.

Implementation of avoidance, minimization, and mitigation measures are also Covered Activities. The MSCP formalizes avoidance and minimization measures currently being implemented (see Table 4.1 of the Final MSCP), and provides additional species conservation measures in Appendix A of the MSCP that will avoid, minimize, and mitigate impacts associated with take of Covered Species and their habitat. Monitoring and implementation of management and conservation measures are also Covered Activities.

H.2 The mitigation program for the MSCP (Chapter 4.3 of the MSCP) is based on a commitment from the Permittees to acquire, protect, manage, and monitor mitigation lands in proportion to actual impacts from Covered Activities that occur over the life of the Permit.

I. INCORPORATION OF THE MSCP AND IA; GOVERNING LAW

I.1 The MSCP, the IA, and each of their provisions are intended to be, and by this reference are, incorporated herein. The terms of this Permit, the MSCP, and the IA shall be interpreted to be complementary. In the event of any direct contradiction among the terms of this Permit, the MSCP, and the IA, the terms and conditions of this Permit shall control.

I.2 This Permit, the MSCP, and the IA, and the Parties' compliance therewith, shall be governed by the ESA and associated implementing regulations.

J. TAKE AUTHORIZATION

J.1 Permittees are authorized to take Covered Species (described and specified within Chapter 3 of the MSCP and the final Biological and Conference Opinion on the issuance of this Permit – Consultation # 22410-2006-F-0459), through impacts to and loss of up to 36,000 acres of habitat resulting from new ground-disturbing activities, which can come from any combination of Covered Activities. The following is a list of habitat loss for each species covered under this Permit:

Species	Acres	Species	Acres
Pima pineapple cactus	18,963	Southwestern willow flycatcher	50
Needle-spined pineapple cactus	852	Abert's towhee	554
Huachuca water umbel	364	Arizona Bell's vireo	72
Tumamoc globeberry	15,706	Longfin dace	5
Mexican long-tongued bat	5,735	Desert sucker	5
Western red bat	178	Sonora sucker	5

Species	Acres	Species	Acres
Western yellow bat	48	Gila chub	0.1
Lesser long-nosed bat	15,978	Gila topminnow	0.5
California leaf-nosed bat	111	Chiricahua leopard frog	2
Pale Townsend's big-eared bat	1,525	Lowland leopard frog	7,145
Merriam's mouse	330	Desert box turtle	748
Western burrowing owl	1,392	Sonoran desert tortoise	9,473
Cactus ferruginous pygmy-owl	7,394	Tucson shovel-nosed snake	63
Rufous-winged sparrow	19,108	Northern Mexican gartersnake	3,210
Swainson's hawk	10,981	Giant spotted whiptail	4,355
Yellow-billed cuckoo	28	Groundsnake (valley form)	11

Up to 0.1 acres of habitat for each of the talussnails named above in condition E may be impacted.

Take of a small, but undeterminable number of individuals of some Covered Species may occur as a result of monitoring, management, and conservation measures (as described in the BCO).

J.2 This Permit will take effect for the Covered Species that are currently federally-listed as threatened or endangered at the time this Permit is issued. Subject to compliance with all other terms of this Permit, IA, and MSCP, the Permit shall take effect for Covered Species that are not listed at the time this Permit is issued immediately upon listing of such species as threatened or endangered by USFWS. Conservation and mitigation measures for all species, including species not listed as threatened or endangered, as outlined in the MSCP, shall be implemented upon issuance of this Permit.

J.3 Species may be added to the list of Covered Species only by amendment to this Permit and as outlined in the MSCP. The USFWS shall give due consideration to and full credit for conservation and mitigation measures previously implemented as part of the MSCP which benefit any species proposed to be added as a Covered Species.

J.4 Incidental take of Covered Species by landowners, developers, and other private entities is authorized pursuant to this Permit, provided a Certificate of Coverage or a Biological Certificate of Inclusion has been issued by the Permittees.

J.5 With regard to the Permittees or holders of Biological Certificates of Inclusion exercising the provisions of the MSCP for species reintroduction or population augmentation as outlined in the MSCP, these entities shall provide notification to the USFWS at least one month prior to any actions that would return Covered Species populations to the baseline condition and allow access to their properties for the capture, salvage, and relocation of the appropriate Covered Species occupying those properties.

K. PROPER IMPLEMENTATION OF THE MSCP

K.1 The MSCP shall be deemed properly implemented if the commitments and provisions of this Permit, the MSCP, and IA have been and are being implemented and met in accordance with their terms. The Permittees shall timely and completely comply with and perform their obligations under the MSCP and IA.

K.2 If the Permittees are wholly or partially prevented from performing obligations under this Permit, the IA, or the MSCP because of causes beyond the reasonable control of and without the fault or negligence of the Permittees (Force Majeure), including, but not limited to, acts of God, labor disputes, sudden actions of the elements, or actions of non-participating persons or entities, the Permittees shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, and the failure to perform such shall not be considered a material violation or breach. However, the occurrence of any Force Majeure shall not be deemed to authorize the Permittees to violate the ESA. Further, it is required that: 1) the suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure; 2) within fifteen (15) working days after the occurrence of the Force Majeure, the Permittees shall give the USFWS written notice describing the particulars of the occurrence; and 3) the Permittees use their best efforts to remedy their inability to perform (however, this section shall not require the settlement of any strike, walk-out, lock-out, or other labor dispute on terms which, in the sole judgment of the Permittees, are contrary to their interests).

K.3 Upon reasonable notification to the Permittees (50 CFR 13.47), the USFWS will be allowed access to Permittee-controlled mitigation properties to inspect the condition of the properties and to ensure that the MSCP is being implemented according to its terms for the benefit of the Covered Species.

K.4 The Permittees shall submit an annual report detailing the implementation of the MSCP, as described in Section 9.1, Appendix P of the MSCP, and Section 8.0 of the IA. Annual reports shall be submitted by March 1 of each year (detailing accomplishments in the previous calendar year) to:

Field Supervisor
U.S. Fish and Wildlife Service
BLM Training Center
9828 N. 31st Avenue (3rd floor)
Phoenix, Arizona 85051

U.S. Fish and Wildlife Service
Ecological Services
P.O. Box 1306, Room 6034
Albuquerque, New Mexico 87103
FW2_HCP_Permits@fws.gov

L. TERM

This Permit shall have a duration beginning on the Effective Date in Box 6, above, and continuing in full force and effect for a period of up to 30 years thereafter, or until Covered Activity impacts total 36,000 acres and full mitigation has been provided, or until revocation or surrender and cancellation of this Permit as provided for in subparagraph O hereof, whichever comes earlier.

M. LIMITATION ON IMPOSITION OF ADDITIONAL CONSERVATION MEASURES

M.1. Changed Circumstances, Notice of Changed Circumstances, and Implementation of Response

(a) Changed Circumstances. Table 7.1 of the MSCP describes Changed Circumstances, and corresponding conservation and mitigation measures, if any, that the Permittees shall implement in response to such Changed Circumstances, should they occur during the life of this Permit. These Changed Circumstances are incorporated herein by reference.

As long as the terms of the MSCP are being properly implemented, USFWS shall not require the implementation of any conservation and mitigation measures by the Permittees in response to Changed Circumstances, other than those measures specified in this subparagraph, M.1(a).

(b) Notice of Changed Circumstances & Implementation of Response

(1) Permittee-initiated Response to Changed Circumstances.
The Permittees shall give written notice to USFWS within 30 working days after learning that any of the Changed Circumstances listed in the MSCP and included in subparagraph M.l(a) hereof has occurred. As soon as practicable thereafter, but no later than 90 working days after learning of the Changed Circumstances, the Permittees shall modify their activities in the manner and to the extent required by the MSCP and subparagraph M.1(a) hereof and report to the USFWS on its actions. The Permittees shall make any such required modifications without awaiting notice from USFWS.

(2) FWS-initiated Response to Changed Circumstances.
If USFWS determines that Changed Circumstances have occurred and that the Permittees have not responded in accordance with the MSCP and subparagraph M.1(a) hereof, USFWS shall so notify the Permittees in writing and direct the Permittees to make the required changes. Within 90 working days after receiving such notice, the Permittees shall make the required changes and report to USFWS on their actions.

(c) Effect of Changed Circumstances on Permit and MSCP

(1) In General
Changed Circumstances are provided for in the MSCP and, hence, do not constitute Unforeseen Circumstances or require amendment of this Permit, the MSCP, or the IA.

(2) Critical Habitat
USFWS shall consider the MSCP in its preparation of any proposed designation of critical habitat concerning any Covered Species. Consistent with 50 CFR § 424.12, the MSCP incorporates special management considerations necessary to the conservation of habitat that is necessary for the conservation of the Covered Species.

M.2. Unforeseen Circumstances

(a) No Surprises Assurances

The "Covered Species" listed in subparagraph G above, are considered adequately addressed under the MSCP and are, therefore, covered by no surprises rule assurances. In the event that it is demonstrated by USFWS that Unforeseen Circumstances exist during the life of this Permit, and additional conservation and mitigation measures are deemed necessary to respond to Unforeseen Circumstances, USFWS may require additional measures of the Permittees where the MSCP is being properly implemented, but only through coordination with the Permittees and only if such measures are limited to modifications to the MSCP's operating conservation program for the Covered Species, and maintain the original terms of the MSCP to the maximum extent practicable.

Notwithstanding the foregoing, USFWS shall not:

1) Require the commitment of additional land, water, or financial resources by the Permittees without the consent of the Permittees; or

2) Impose additional restrictions on the use of land, water, or natural resources otherwise available for use by the Permittees under the original terms of the MSCP.

(b) Effect of Unforeseen Circumstances on Permit

Except as provided in subparagraph M.2 hereof, notwithstanding the occurrence of Unforeseen Circumstances, as long as the Permittees continue to properly implement the provisions of the MSCP and any additional measures required by USFWS in accordance with subparagraph M.2(a) hereof, this Permit will remain in full force and effect.

(c) Notice of Unforeseen Circumstances

USFWS shall notify the Permittees in writing of any Unforeseen Circumstances of which USFWS becomes aware that may affect the obligations of the Permittees under this Permit, the MSCP, or the IA.

N. PERMIT AMENDMENT

N.1 This Permit may be amended in accordance with the provisions of 50 CFR §13.23, and with the consent of the Permittees as outlined in the MSCP and the IA. The Permittees or USFWS shall provide a written statement of the reasons for the proposed amendment and an analysis of its environmental effects, including its effects on operations under the MSCP and on Covered Species.

N.2 If, during the life of this Permit, the Covered Activities and/or the extent of the impact of the covered activities described in the MSCP are altered, such that there may be an increase in the anticipated incidental take beyond that described in the MSCP, the associated appendices, and the final BCO, the Permittees are required to contact the USFWS and obtain authorization and/or amend this Permit before commencing any covered activities that might result in exceeding said limits for covered species.

O. PERMIT SUPSENSION, REVOCATION, AND SURRENDER

O.1 Permit Suspension

(a) USFWS may suspend this Permit if the Permittees are not in compliance with the terms and conditions of this Permit, or with any applicable Federal laws or regulations governing the conduct of the Covered Activities. The suspension shall remain in effect until USFWS determines that the Permittees have corrected the deficiencies. Notwithstanding the foregoing, USFWS shall not suspend this Permit without first: (1) notifying the Permittees in writing that this Permit may be subject to suspension pursuant to this subparagraph P.1(a), including a statement of the deficiencies that must be corrected by the Permittees; and (2) providing the Permittees with a period of sixty 60 working days after the date of notice of deficiencies in which to correct the deficiencies. If the correction has been initiated but cannot be completed within the 60-day period, suspension may be averted provided the USFWS has, at its discretion, approved a schedule of completion for the correction.

(b) A partial suspension of this Permit, meaning it may apply only to specified Covered Species or to only a portion of the Permit Area or Covered Activities, may occur. In the event of a partial suspension, the portion of this Permit not subject to the suspension shall remain in full force and effect.

(c) All avoidance, minimization, and mitigation measures in the MSCP that are continued in effect during any Permit suspension shall be taken into account by USFWS and credited towards meeting the requirements of the MSCP upon removal of any Permit suspension to ensure that any Covered Activities remain in compliance with the requirements of the ESA.

O.2 Permit Revocation

(a) USFWS shall not revoke this Permit for any reason except those listed in 50 CFR § 13.28(a)(1)-(4), or unless the Covered Activities would be inconsistent with the criteria set forth in 16 U.S.C. § 1539(a)(2)(B)(iv) and this inconsistency has not been remedied. Notwithstanding the foregoing, this Permit will only be revoked if USFWS and the Permittees have not been successful in remedying any such inconsistency through other means.

(b) A partial revocation of this Permit, meaning it may apply only to specified Covered Species, or to only a portion of the Permit Area or Covered Activities, may occur. In the event of a partial revocation, the portion of this Permit not subject to the revocation shall remain in full force and effect.

O.3. Surrender and Cancellation of Permit.

Should the Permittees or successor-in-interest, at their discretion, desire to surrender this Permit, they shall return this Permit to the USFWS with a written statement surrendering this Permit for cancellation. Only joint surrender by the Permittees or their successors-in-interest is permitted. This Permit will be deemed cancelled only upon a determination by USFWS, in collaboration with the Permittees, that sufficient measures have been implemented by the Permittees to mitigate for take of Covered Species that occurred pursuant to the terms of this Permit, before its surrender. Upon surrender of this Permit, no further take of the Covered Species by the Permittees shall be authorized.

P. BIOLOGICAL CERTIFICATE OF INCLUSION SUSPENSION, REVOCATION, AND SURRENDER

P.1. Biological Certificate of Inclusion Suspension and Revocation

A Biological Certificate of Inclusion may be suspended or revoked for cause by either the Permittees or the USFWS, acting jointly or separately, if: the Enrollee has failed to satisfy any specific responsibility or condition required by the MSCP, Permit, or Certificate; the Permittees and/or the USFWS have made reasonable, good faith efforts to cooperatively work with the Enrollee to correct the deficiency; the deficiency remains uncorrected, even after the Permittee's and/or the USFWS's good faith efforts; and written notice has been provided to the affected Enrollee alerting the Enrollee of the pending suspension or revocation a minimum of 30 days prior to the Effective Date of the suspension or revocation.

P.2. Certificate of Inclusion Severability

A Biological Certificate of Inclusion issued by the Permittees to an Enrollee is severable with respect to the Permittee's Permit, and with respect to Certificates of Inclusion issued by the Permittees to other Enrollees. Thus, failure by one Enrollee to comply with the requirements of a Certificate of Inclusion, potentially invalidating that Enrollee's Permit coverage, does not affect the rights and obligations of other Enrollees under their respective Certificate of Inclusion, or the Permittee's rights or obligations under its Permit, provided that the Permittees or other such Enrollees are, themselves, in compliance with the requirements of the MSCP, the Permit, or their Certificates of Inclusion, as applicable.

P.3. Biological Certificate of Inclusion Amendments

If a change of ownership occurs, a Certificate of Inclusion is not transferrable, but the new owner is eligible for a new Certificate of Coverage provided that new owner agrees and meets obligations specified in the Certificate.

P.4. Biological Certificate of Inclusion Early Termination

Voluntary or early termination of a Certificate of Inclusion by an Enrollee is allowable only if all obligations and measures required by the MSCP and the Permit have been fully implemented or satisfied. Any Enrollee requesting early termination of a Certificate of Inclusion also understands that the benefits provided by the MSCP and its associated Permit, regulatory or otherwise, also cease as of the Effective Date of termination of the Certificate of Inclusion. An Enrollee who wishes to terminate a Certificate of Inclusion prior to its specified expiration date may do so by giving the Permittees written notice of such termination, together with a written explanation of the reason for termination, and a minimum of 60 working days prior to the Effective Date of the termination. Upon such notification, the Certificate of Inclusion with respect to that Enrollee will be considered terminated as of the end of the 60-day period. Early termination of a Certificate of Inclusion will not require USFWS approval. However, the Permittees will inform USFWS of all such early terminations occurring in a given year in its annual report, as required in Section 9.1 of the MSCP and Subparagraph K.3 of this Permit.

GENERAL TERMS AND CONDITIONS

Q. DISPOSITION OF DEAD, INJURED, OR SICK INDIVIDUALS OF LISTED SPECIES

Upon locating a dead, injured, or sick individual of a vertebrate listed species listed in subparagraph G above, within the Permit Area or mitigation lands, the Permittees are required to contact the USFWS Office of Law Enforcement, Resident Agent in Charge, 4901 Paseo del Norte NE, Suite D, Albuquerque, NM 87113, telephone: 505/248-7889, within three working days of its finding. Written notification must be made within five working days and include the date, time, and location of the animal, a photograph if possible, and any other pertinent information. The notification shall be sent to the Law Enforcement Office with a copy to the Phoenix USFWS Ecological Services Office (see address above in subparagraph K.4). Care must be taken in handling sick or injured animals to ensure effective treatment and care and in handling dead specimens to preserve the biological material in the best possible state.

R. MIGRATORY BIRD TREATY ACT PROVISIONS

This Permit also constitutes a Special Purpose Permit under 50 CFR §21.27 for the take of ESA-listed covered migratory bird species (see subparagraph G above) to the extent outlined in the MSCP and BCO and subject to

the terms and conditions specified herein. Any such take will not be in violation of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§703 –12). The Special Purpose Permit shall be valid for the life of this Permit, provided the Permit remains in effect for that period and the Permittees remain in full compliance with the terms of this Permit, the IA, and the MSCP.

S. RENEWAL OF PERMIT

The Permittees may apply for the renewal of the Permit prior to its expiration date in accordance with the provisions of 50 CFR § 13.22.

T. SUCCESSORS AND ASSIGNS

The terms and conditions of this Permit shall be binding on and shall inure to the benefit of the Permittees and their respective successors and assigns, as provided in 50 CFR §§ 13.24 and 13.25.

U. SEVERABILITY

The terms and conditions of this Permit shall be deemed severable, and if any term or condition of this Permit shall be held invalid, illegal, or unenforceable by a Federal court, after exhaustion of all available appeals, the remainder shall continue to be effective and binding upon USFWS and the Permittees. Notwithstanding the foregoing, in the event that any portion of this Permit shall be held invalid, USFWS and the Permittees shall use their best efforts to agree upon amendments to this Permit, consistent with condition P above.

V. USFWS ENFORCEMENT RESPONSIBILITIES

No provision of this Permit shall limit the authority of the USFWS to seek civil or criminal penalties, or otherwise fulfill its enforcement responsibilities under the ESA and other applicable laws. However, as long as the Permittees are in compliance with the terms of this Permit, the USFWS shall not seek civil or criminal penalties or otherwise enforce the take prohibitions of the ESA and other applicable laws for incidental take of the Covered Species in accordance with the terms of this Permit.

***** End of Permit # TE84356A-0 *****