



MEMORANDUM

Date: June 17, 2016

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

From: C.H. Huckelberry,
County Administrator

A handwritten signature in black ink, appearing to be "CH", is written over the printed name "C.H. Huckelberry".

Re: **Implementing Agreement for the Multi-species Conservation Plan and Accessibility to Permit Coverage**

The Implementing Agreement

The Implementing Agreement is a key document to be signed before the streamlining benefits of the Section 10(a)(1)(B) permit (Section 10 permit) can be made available to public infrastructure and new private-sector development. The Implementing Agreement, in general, formalizes the responsibilities of and relationships between the U.S. Fish and Wildlife Service (Service) and Pima County and Pima County Regional Flood Control District (District) as the two permit holders.

The attached Implementing Agreement has not substantively changed from the version that was included in the Multi-species Conservation Plan (MSCP) Public Draft released in December 2012.

Among all the documents that support and justify the Service's issuance of our Section 10 permit, the Implementing Agreement is one of several that requires signature by the Board of Supervisors and the Regional Flood Control Board of Directors. The MSCP Implementing Agreement does the following:

- Commits the Service to issuing Section 10(a)(1)(B) permit authorizing incidental take of species protected under the Endangered Species Act from covered activities, both public and private;
- Establishes that the Section 10 permits will rely on the locally-developed MSCP that was vetted with the public over a period of 12 years and eight drafts;
- Commits the Service to consider the Section 10 permits when performing Section 7 consultations under the Clean Water Act or other federal laws;
- Obligates the Service to recognize certain County open space lands and certain District floodprone land as mitigation lands under the Section 10 permits, as described in the MSCP;
- Ensures that mitigation lands will be managed and monitored for benefits of the species;

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- Specifies how the permit area may change over time;
- Describes how the permit may be amended; and
- Provides an informal dispute resolution process.

No National Environmental Policy Act (NEPA) Challenges

Not surprisingly, the U.S. Fish and Wildlife Service reports that they did not receive any appeals of their decision to issue the Section 10 permits to Pima County and Pima County Regional Flood Control District as outlined in the Record of Decision (the NEPA decision document for an EIS) that has just completed the required 30-day public notification process. The extensive scoping and multiple drafts of the MSCP and EIS that were vetted with the public have helped address the many concerns that attended early discussions of the permit.

Next, the permit will be signed by the Service. Upon receipt, I will sign the permit under the authority given to me in County Code 2.12.070 M.– Duties and responsibilities. M. “The county administrator is authorized to sign federal, state and public grant applications, agreements, assurances and other pertinent grant documents prepared or received by all county departments.”

Availability of Permit Coverage

The Implementing Agreement will be scheduled for signature by the County and District Boards on September 20, along with documents to legally dedicate and commit the mitigation lands. At that time, coverage for County and District activities described in the MSCP will become immediately available by virtue of the mitigation lands. Private sector coverage will soon follow, and will be the topic of a forthcoming memorandum.

CHH/dr

Attachment

c: John Bernal, Deputy County Administrator for Public Works
Nanette Slusser, Assistant County Administrator – Public Works Policy
Linda Mayro, Director, Sustainability and Conservation Office
Julia Fonseca, Environmental Planning Manager, Sustainability and Conservation Office

Appendix D. Draft Pima County MSCP Implementing Agreement.

PUBLIC DRAFT

IMPLEMENTING AGREEMENT

BETWEEN

U. S. FISH AND WILDLIFE SERVICE AND

PIMA COUNTY AND PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT

FOR THE

PIMA COUNTY MULTIPLE-SPECIES CONSERVATION PLAN

LOCATED IN

PIMA COUNTY, ARIZONA

DECEMBER 2015

TO ESTABLISH A PROGRAM OF AVOIDANCE, MINIMIZATION, AND MITIGATION FOR SPECIES IN PIMA COUNTY, ARIZONA AND SELECT LANDS IN ADJACENT COUNTIES

1.0 PARTIES

The parties to this implementing Agreement (“Agreement”) are Pima County, Arizona, a political subdivision of the State of Arizona and the Pima County Regional Flood Control District, a political taxing subdivision of the State of Arizona (collectively the “County”) and the United States Fish and Wildlife Service (the “Service”).

2.0 RECITALS AND PURPOSES

2.1 Recitals. The parties entered into this agreement in consideration of the following facts:

2.1.1 Pima County's Multiple-Species Conservation Plan (MSCP) Permit Area has been determined to provide, or potentially provide, habitat for the following listed species: Pima pineapple cactus (*Coryphantha scheeri* var. *robustispina*), Huachuca water umbel (*Lilaeopsis schaffneriana* ssp. *recurva*), yellow-billed cuckoo (*Coccyzus americanus*), Lesser long-nosed bat (*Leptonycteris curasoae yerbabuena*), Gila topminnow (*Poeciliopsis occidentalis occidentalis*), Gila chub (*Gila intermedia*), Chiricahua leopard frog (*Lithobates chiricahuensis*), Northern Mexican gartersnake (*Thamnophis eques megalops*), and Southwestern willow flycatcher (*Empidonax traillii extimus*).

2.1.2 Pima County's MSCP Permit Area has been determined to provide, or potentially provide, habitat for the following unlisted species: Birds: Abert's Towhee (*Melospiza aberti*), Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*), Rufous-winged sparrow (*Aimophila carpalis*), Arizona Bell's vireo (*Vireo bellii arizonae*), Swainson's hawk (*Buteo swainsoni*), and Western burrowing owl (*Athene cunicularia hypugaea*); Plants: Needle-spined pineapple cactus (*Echinomastus erectocentrus* var. *erectocentrus*), and Tumamoc globeberry (*Tumamoca macdougalii*); Mammals: Mexican long-tongued bat (*Choeronycteris mexicana*), Western red bat (*Lasiurus blossevillii*), Western yellow bat (*Lasiurus xanthinus*), California leaf-nosed bat (*Macrotus californicus*); Pale Townsend's big-eared bat (*Corynorhinus townsendii pallescens*), and Merriam's mouse (*Peromyscus merriami*); Amphibians: lowland leopard frog (*Lithobates yavapaiensis*); Reptiles: Tucson shovel-nosed snake (*Chionactis occipitalis klauberi*), Groundsnake (valley form) (*Sonora semiannulata*), Giant spotted whiptail lizard (*Aspidoscelis stictogramma*), Desert box turtle (*Terrapene ornata luteola*) and Sonoran desert tortoise (*Gopherus morafkai*); Fishes: Desert sucker (*Catostomus clarki*), Sonoran sucker (*Catostomus insignis*), and Longfin dace (*Agosia chrysogaster*); Invertebrates: talussnail species (*Sonorella eremita*, *S. ambigua*; *S. imperatrix*, *S. imperialis*, *S. magdalensis* syn. *tumamocensis*; *S. odorata*; *S. rinconensis*; *S. sabinoensis buehmanensis*; *S. sabinoensis tucsonica*, *Sonorella walkeri*, *S. sitiens*, and *S. tortillita*).

2.1.3 The County has developed a Habitat Conservation Plan for the proposed incidental take permit under Section 10 of the Endangered Species Act. That Habitat Conservation Plan is titled the "Pima County Multi-Species Conservation Plan" ("MSCP").

2.1.4 The Service has developed an environmental impact statement to address the effects of issuing an incidental take permit to the County, and has completed its National Environmental Policy Act obligations in compliance with agency guidelines.

2.1.5 The County has worked cooperatively with the Service to develop a series of measures described in the MSCP, to avoid, minimize, and mitigate to the maximum extent practicable the effects of take on covered species incidental to the County's covered activities.

2.2 Purpose. The purpose of this agreement is to guide implementation of the terms of the MSCP.

3.0 DEFINITIONS

Terms defined and used in the MSCP and the Endangered Species Act (ESA) have the same meaning when used in this Agreement, except the following terms used in this Agreement have the following meanings:

3.1 "Conservation Plan" means the habitat conservation plan prepared by the County and submitted under the title of Multi-Species Conservation Plan.

3.2 "Covered activities" means those activities described in Chapter 3 of the MSCP, including activities undertaken by the County on Mitigation Land Interests (mitigation/conservation activities), pre-construction, construction and maintenance activities undertaken by County (capital improvement projects), and certain private development activities permitted by the County as described in Chapter 3.

3.3 "Covered Species" means species adequately covered in the MSCP per section 10 of the ESA, and identified in Sections 2.1.1 and 2.1.2 of this Agreement.

3.4 "Listed species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.5 "Maeveen Marie Behan Conservation Lands System (MMB-CLS)" or "CLS" means the biological reserve system design adopted as the Regional Environmental Element of the County's 2001 Comprehensive Plan Update and any subsequent revisions. The MMB-CLS guides the County's discretionary land-use decisions as they relate to Covered Activities and establishes a higher standard for avoidance, minimization and mitigation for projects located therein. The MMB-CLS also provides the underpinnings to the County's selection of lands secured for mitigation under the permit.

3.6 "Mitigation Land" means those lands, leases, or rights held by the County and committed to the Service as compensation for impacts of covered activities under the Section 10 permit. They consist of either (a) the acres of County land and any appurtenant rights described in a recorded, perpetual conservation easement, and for which the County manages and monitors for the purposes of compensating for the covered activities under the terms of the MSCP, or (b) the State Trust land for which County holds a grazing lease and manages and monitors for the purposes of compensating for the covered activities under the terms of the MSCP, or (c) the acres of private land that are retained as natural open space through development approvals and which have been set aside for the conservation of Covered Species and are managed and monitored pursuant to Chapters 5 and 6 of the MSCP, respectively, or (d) acres of former Federal land conveyed to the County in fee through the Recreation and Public Purposes Act or through exchange which the County manages and monitors for

the purposes of compensating for covered activities under the permit, or (e) other rights owned by the County which are used for the purposes of compensating for covered activities, and recorded for that purpose in the County Recorder's Office.

3.7 "Participant" means those property owners who voluntarily solicit protections afforded by the Pima County MSCP and who fulfill certain requirements.

3.8 "Permit" means the incidental take permit issued by the Service to the County pursuant to Section 10(a)(1)(B) of the ESA.

3.9 ."Permit Area" means the Pima County Section 10 Permit Area consisting of approximately 1,400,000 acres in Pima County, Cochise County, and Pinal County, Arizona as described in Chapter 3 of the MSCP.

3.10 "Unlisted species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA. The term "unlisted species" includes both candidate species and other species of concern.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of the County. The County will fully and faithfully perform all obligations assigned to it under this agreement, the permit, and the MSCP.

4.1.2. Interim obligations upon a finding of unforeseen circumstances. If the Service makes a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, the County will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

4.2 Obligations of the Service. Upon approval of a final MSCP and final EIS, the Service will issue the County a permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take by the County of each listed covered species resulting from covered activities on covered lands.

4.2.1 Permit coverage. The permit will identify all covered species. The permit will take effect for listed covered species at the time the permit is issued. The permit will take effect for an unlisted covered species upon the listing of the species.

4.2.2. Section 7 Considerations. When performing Section 7 consultations under the Clean Water Act or other Federal laws, the Service will consider the permit and actions related to the implementation of the MSCP.

4.2.3 Revisions of ordinances and guidelines relating to the MSCP. USFWS will review any modifications of environmental ordinances or guidelines identified as avoidance and minimization measures in Chapter 4 of the MSCP within 45 days and

confer with County to determine if Pima County remains in compliance with the terms of the permit identified under Chapter 7, Changed Circumstances.

5.0 HABITAT CONSERVATION PLAN INCORPORATION

Pursuant to the provisions of Section 10(a)(1)(B) of the ESA, the County has prepared a Habitat Conservation Plan entitled the "Pima County Multi-Species Conservation Plan" ("MSCP") and submitted it to the Service with a request that the Service issue a Permit to allow Covered Species to be incidentally taken within the Permit Area as depicted and described in Chapter 3 of the MSCP. The MSCP proposes a mitigation program for the subject Covered Species and their habitats.

In the event of any direct contradiction between the terms of this Agreement and the MSCP, the terms of the Permit control.

6.0 TERM

6.1 Initial Term. This Agreement and the MSCP will become effective on the date that the Service issues the Permit. This agreement, the MSCP and the Permit will remain in effect for a period of 30 years from issuance of the Permit.

6.2 Notwithstanding paragraph 6.1, the Parties agree and recognize that once the Covered Species have been incidentally taken and their habitat modified pursuant to the MSCP, the take and habitat modification will be permanent. It is therefore the intention of the Parties that the provisions of the MSCP and of this Agreement regarding the establishment and maintenance of mitigation lands as habitat for the Covered Species will be permanent and extend beyond the term of this Agreement, to the extent permitted by law and recorded in conservation easements or other legally enforceable instruments.

7.0 FUNDING

7.1 The County will expend funds as may be necessary to carry out its obligations under the MSCP. The County must notify the Service if the County's funding resources have materially changed, including a discussion of the nature of the change, from the information provided in Chapter 8 of the MSCP.

8.0 MONITORING AND REPORTING

8.1 Planned periodic reports. The County will submit an annual report describing its activities and an analysis of whether the terms of the MSCP were met for the reporting period, as specified in Section 9.1.1 of the MSCP. The County will also submit a comprehensive report every 10 years, as specified in Section 9.1.2 of the MSCP.

8.2 Other reports. The County will provide, within 30 days of being requested by the Service, any additional information in its possession or control related to implementation

of the MSCP that is requested by the Service for the purpose of assessing whether the terms and conditions of the permit and the MSCP, including the MSCP's adaptive management plan, are being fully implemented.

8.3 Certification of reports. All reports will include the following certification from a responsible official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.4 Monitoring by Service. The Service may conduct inspections and monitoring in connection with the permit in accordance with their regulations. (See 50 C.F.R. §§ 13.47, 220.47.)

9.0 ADAPTIVE MANAGEMENT

9.1 County-initiated adaptive management. The County will implement the adaptive management provisions in Chapter 6 of the MSCP when changes in management practices are necessary to achieve the MSCP's biological objectives, or to respond to monitoring results or new scientific information. The County will make the changes without awaiting notice from the Service, and will report to the Service on any actions taken pursuant to this section.

9.2 Service-initiated adaptive management. If the Service determines that one or more of the adaptive management provisions in the MSCP have been triggered and that the County has not changed its management practices in accordance with Chapter 6 of the MSCP, the Service will so notify the Parties and will direct the County to make the required changes. Within 30 days after receiving the notice, the responsible Party will make the required changes and report to the Service on its actions. The changes are provided for in the MSCP, and hence do not constitute unforeseen circumstances or require amendment of the permit or MSCP, except as provided in this section.

9.3 Reductions in mitigation. The County will not implement adaptive management changes that may result in less mitigation than provided for covered species under the original terms of the MSCP, unless the Service first provides written approval. The County may propose adaptive management changes by notice to the Service, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on covered species, and other environmental impacts. Within 120 days of receiving the notice, the Service will approve the proposed adaptive management changes, approve them as modified by the Service, or notify the County that the proposed changes constitute permit amendments that must be reviewed under Section 11.2 of this agreement.

9.4 No increase in take. This section does not authorize any modifications that would result in an increase in the amount and nature of take, or increase the impacts of take, of covered species beyond that analyzed under the original MSCP and any

amendments. Any modification must be reviewed as a permit amendment under Section 11.2 of this agreement.

10.0 LAND TRANSACTIONS

10.1 Acquisition of land by the County. Nothing in this agreement, the MSCP, or the permit limits the County's right to acquire additional lands, including additional mitigation land interests. Any activities on acquired land will be covered by the permit if it meets the requirements of covered activities in the MSCP and is located in the Permit Area.

10.2 Disposal of mitigation land by the County. The County's transfer of ownership or control of mitigation land will require prior approval by the Service except that transfers of mitigation land may be processed as minor modifications in accordance with subsection 11.2 if the Service concurs that:

(a) The land will be transferred to an agency of the Federal government and, prior to transfer, the Service has determined that transfer will not compromise the effectiveness of the MSCP based on adequate commitments by that agency regarding management of such land; or

(b) The land will be transferred to a non-Federal entity that has entered into an agreement acceptable to the Service (e.g., an easement held by the state fish and wildlife agency with the Service as third-party beneficiary) to ensure that the lands will be managed in such a manner and for such duration so as not to compromise the effectiveness of the MSCP; or

(c) The land will be transferred to a non-Federal entity that, prior to completion of the land transaction, has agreed to be bound by the MSCP as it applies to the transferred land and has obtained an incidental take permit following normal permit procedures covering all species then covered by the County's permit.

11.0 MODIFICATIONS AND AMENDMENTS

11.1 No Amendment Needed. The Parties acknowledge that the Permit Area within the jurisdiction of Pima County will change over the term of the permit. None of the following changes shall require amendment of the permit as long as the changes are reported in the annual report to the Service with the County's description of how the changes will be addressed with regard to compliance with the MSCP:

(a) Removal of Permit Area by annexation, or

(b) Addition to Permit Area by acquisition by the County if described in Chapter 3 of the MSCP, or

(c) Reduction of Permit Area by disposal by the County of land, water, or land or water interests not associated with mitigation lands as described in Section 10.2 of this agreement.

11.2 Minor modifications

(a) Any party may propose minor modifications to the MSCP or this agreement by providing notice to all other parties. That notice will include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the MSCP and on covered species. The parties will use best efforts to respond to proposed modifications within 60 calendar days of receipt of such notice. Proposed modifications will become effective upon all other parties' written approval. If, for any reason, a receiving party objects to a proposed modification, it must be processed as an amendment of the permit in accordance with subsection 11.3. The Service will not propose or approve minor modifications to the MSCP or this agreement if the Service determines that such modifications would result in operations under the MSCP that are significantly different from those analyzed in connection with the original MSCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original MSCP, or additional take not analyzed in connection with the original MSCP.

(b) Minor modifications to the MSCP and this Agreement processed pursuant to this subsection may include but are not limited to the following:

- (1) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
- (2) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the permit or MSCP;
- (3) minor changes to survey, monitoring, or reporting of parameters or protocols if not already covered in Changed Circumstances; and
- (4) Other types of modifications, such as described in Section 10.2, that are minor in relation to the MSCP, that the Service has analyzed and agreed to, and on which the public has had an opportunity to comment.

(c) Any other modifications to the MSCP or this Agreement will be processed as amendments of the permit in accordance with subsection 11.2 of this section.

11.2 Amendment of the Permit. The permit may be amended in accordance with all applicable legal requirements, including, but not limited to, the ESA, the National Environmental Policy Act, and the Service's permit regulations. The party proposing the amendment will provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the MSCP and on Covered Species.

12.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

12.1 In general. Except as set forth below, each party has all remedies otherwise available to enforce the terms of this agreement, the permit, and the MSCP.

12.2 No monetary damages. No party is liable for damages to any other party or other person for any breach of this agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this agreement or any other cause of action arising from this agreement.

12.3 Injunctive and temporary relief. The parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment, and that, therefore, injunctive and temporary relief may be appropriate to ensure compliance with the terms of this agreement.

12.4 Enforcement authority of the United States. Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

12.5 Dispute resolution. The parties recognize that disputes concerning implementation of, compliance with, or termination of this agreement, the MSCP, and the permit may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

12.5.1 Informal dispute resolution process. Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in Federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

(a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

(b) The party alleged to be in violation will have 30 calendar days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available to it that may be responsive to the inquiries.

(c) Within 30 calendar days after the response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek a solution.

(d) If any issues cannot be resolved through negotiations, the parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

13.0 MISCELLANEOUS PROVISIONS

13.1 No partnership. Neither this agreement nor the MSCP makes or may be deemed to make any party to this agreement the agent for or the partner of any other party.

13.2 No Federal or State Contract. Notwithstanding any language to the contrary in this Agreement, this Agreement is not intended to create, and shall not be construed to create an enforceable contract between the Service and the County under Federal or state law with regard to the Permit. The sole purposes of this agreement as between the Service and Pima County are to clarify the Parties' mutual obligations and responsibilities under the MSCP and describe the processes the parties intend to follow to ensure the successful implementation of the MSCP in accordance with the Permit. This Agreement is not, nor shall it be construed as, a Federal rule, regulation, or final Federal action.

13.3 Notices. Any notice permitted or required by this agreement must be in writing, delivered personally to the persons listed below, or will be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices must be transmitted so that they are received within the specified deadlines.

Assistant Regional Director
United States Fish and Wildlife Service
[Street Address]
[City, State, Zip Code]

County Administrator, Pima County
130 West Congress
Tucson, AZ 85701

Chief Engineer, Pima County Regional Flood Control District
97 E. Congress St.
Tucson, AZ 85701

13.4 Availability of funds. Implementation of this Agreement and the MSCP by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to

require the obligation, appropriation, or expenditure of any money from the U.S. treasury. The parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing. The parties acknowledge that County's obligations under this agreement are limited by A.R.S. §42-17106.

13.5 Duplicate of Originals. This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement will be maintained in the official records of each of the Parties.

13.6 Third Party Beneficiaries. Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. § 1540(g), this Agreement does not create any right or interest in the public, or any member thereof, as a third party beneficiary, nor does it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties remain as imposed under existing Federal or State law.

13.7 Relationship to the ESA and Other Authorities. The terms of this Agreement are governed by and construed in accordance with the ESA and other applicable laws. In particular, nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the Federal government.

13.8 References to Regulations. Any reference in this Agreement, the MSCP, or the Permit to any regulation or rule of the Service is deemed to be a reference to the regulation or rule in existence at the time an action is taken. Any reference in this Agreement, the MSCP, or the Permit to any regulation or rule of the County is deemed to be a reference to the regulation or rule in existence at the time an action is taken.

13.9 Applicable Laws. All activities undertaken pursuant to this Agreement, the MSCP, or the Permit must be in compliance with all applicable State and Federal laws and regulations.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

BY Regional Director
United States Fish and Wildlife Service
[City, State]

Date_____

BY Chairperson

Date_____

Pima County Board of Directors
Pima County Regional Flood Control District
Tucson, AZ

BY Chairperson
Pima County Board of Supervisors
Tucson, AZ

Date _____