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# Board of Supervisors Memorandum

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September 6, 2016

## Implementing Agreement for the Multi-Species Conservation Plan

### Introduction

On July 13, 2016, the US Fish and Wildlife Service (Service) issued the Endangered Species Act (ESA) Section 10 Permit (Attachment 1) to Pima County and the Regional Flood Control District (RFCD) as a consequence of the many years of effort by Pima County and the RFCD to develop the Multi-Species Conservation Plan (MSCP). Among the documents that support and validate the issuance of the Section 10 Permit is the Pima County MSCP Implementing Agreement (IA) that requires approval by the Board of Supervisors and the RFCD Board of Directors, as well as the Service. The IA acknowledges receipt of the Section 10 Permit and formalizes the responsibilities and relationship between the Service and Pima County and the RFCD as the two permit holders.

The Pima County MSCP Implementing Agreement does the following:

- Commits the Service to issue and uphold the Section 10(a)(1)(B) permit authorizing incidental take of species protected under the ESA from covered activities, both public and private;
- Provides for relief of liability for covered activities resulting from development of lands that may, currently or in the future, have an effect on any or all of the 44 covered species;
- Establishes that the Section 10 permit will rely on the locally-developed MSCP that was vetted with the public over a period of 12 years and 8 drafts;
- Commits the Service to consider the applicability of County and RFCD 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 RFCD floodprone lands as mitigation lands under the Section 10 permit, as described in the MSCP;
- Ensures mitigation lands will be managed and monitored for benefits of the species;
- Prevents the Service from imposing new or additional species mitigation should there be future federal listings of species covered in the IA; and

The Honorable Chair and Members, Pima County Board of Supervisors  
Re: **Implementing Agreement for the Multi-Species Conservation Plan**  
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- Describes how the permit may be amended and provides an informal dispute resolution process.

County and RFCD activities described in the MSCP are now eligible for coverage, and private sector development coverage will become available on or before January 1, 2017. This time will allow for completion of the Board's action on a fee ordinance proposed for coverage of certain private development activities. The proposed fee ordinance is currently posted at <http://webcms.pima.gov/cms/One.aspx?portalId=169&pageId=45769> as required by Arizona Revised Statute, Title 11, Chapter 1, Article 4, *Powers and Duties*, 11-251.03.

#### Recommendation

I recommend the Board of Supervisors and Regional Flood Control District adopt and approve Resolution No. 2016-\_\_\_/2016-FC-\_\_\_ (Attachment 2) and the Pima County MSCP Implementing Agreement (Attachment 3) that gives direction and guidance for implementation of the Multi-Species Conservation Plan by Pima County and the Regional Flood Control District and obligates the US Fish and Wildlife Service to allow incidental take of covered species resulting from covered activities on covered lands.

Respectfully submitted,



C.H. Huckelberry  
County Administrator

CHH/mjk – August 24, 2016

#### Attachments

c: John Bernal, Deputy County Administrator, Public Works  
Nanette Slusser, Assistant Deputy County Administrator, Public Works  
Suzanne Shields, Director, Regional Flood Control  
Chris Cawein, Director, Natural Resources Parks and Recreation  
Linda Mayro, Director, Sustainability and Conservation

# ATTACHMENT 1



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

### FEDERAL FISH AND WILDLIFE PERMIT

3-201  
(1/97)

2. AUTHORITY-STATUTES  
16 USC 1539(a)(1)(B)  
REGULATIONS  
50 CFR §§ 13 & 17

3. NUMBER  
TE84356A-0

4. RENEWABLE	5. MAY COPY
<input checked="" type="checkbox"/> YES	<input checked="" type="checkbox"/> YES
<input type="checkbox"/> NO	<input type="checkbox"/> NO

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

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

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:

*Joy E. Nikolopoulos*

TITLE  
Deputy Regional Director

DATE  
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:

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

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

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. 31<sup>st</sup> Avenue (3<sup>rd</sup> 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.1(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 SUPENSION, 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 \*\*\*\*\*

# ATTACHMENT 2

**RESOLUTION NO. 2016-FC\_\_\_\_\_**

**RESOLUTION NO. 2016-\_\_\_\_\_**

**JOINT RESOLUTION OF THE PIMA COUNTY BOARD OF SUPERVISORS AND THE BOARD OF DIRECTORS OF THE PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT DIRECTING IMPLEMENTATION OF THE PIMA COUNTY MULTI-SPECIES CONSERVATION PLAN.**

WHEREAS, in 1998, the Pima County Board of Supervisors (Board) approved Resolution No. 1998-250 to uphold the Endangered Species Act (ESA) through regional multi-species conservation planning and resolved to work with the Department of the Interior to develop the Sonoran Desert Conservation Plan (SDCP); and

WHEREAS, the Board directed development of a regional conservation plan in 1999 that considered the SDCP elements of critical habitat, riparian areas, mountain parks, cultural and historic sites, and ranch conservation; and

WHEREAS, the Board created the SDCP Steering Committee in 1999, comprised of 88 Board-appointed members representing diverse stakeholder interests, who had applied to serve on the Steering Committee; and

WHEREAS, the Pima County Regional Flood Control District (RFCD) provided staffing for the Science Technical Advisory Team that was charged with developing a biological reserve design and providing technical input to the biology of the SDCP; and

WHEREAS, the United States Fish and Wildlife Service (USFWS) released a notice of intent in 2000 to prepare an Environmental Impact Statement (EIS) and notice of the public scoping meetings related to the MSCP; and

WHEREAS, between 2000 and 2003, the Board entered into agreements with the Tohono O'odham Nation, U.S. Department of Interior, U. S. Forest Service, State of Arizona Game and Fish Department, U. S. Environmental Protection Agency (EPA), Metropolitan Domestic Water Improvement District, U. S. Fish and Wildlife Service, U. S. Bureau of Land Management, U. S. Bureau of Reclamation, National Park Service, Town of Oro Valley, Town of Marana, and City of Tucson to participate in cooperative planning for the SDCP; and

WHEREAS, the Board and the City of Tucson Mayor and Council entered an Intergovernmental Agreement in 2000 to establish a Conservation Effluent Pool that stipulated up to 10,000 acre-feet of Pima County wastewater effluent become available for riparian projects that are part of a habitat conservation plan or that are mutually agreed upon by the County and City; and

WHEREAS, the SDCP's native species conservation ethos and a growing concern over invasive species in the region brought various non-profit, federal and local agencies together in 2000, to create the Pima Invasive Species Council – forerunner to the Southern Arizona Buffelgrass Coordination Council; and

WHEREAS, with growing community concern over potential conflicts between preserving environmentally sensitive areas, transportation project design and construction practices, and the on-going need for infrastructure improvement, Pima County developed the Environmentally Sensitive Roadway Design Provisions in 2001; and

WHEREAS, in 2001, the Board accepted the Preliminary SDCP and directed the development of a Sonoran Desert Native Plant Nursery; and

WHEREAS, the Board adopted the 2001 Pima County Comprehensive Land Use Plan Update and a system for land conservation – now called the Maeveen Marie Behan Conservation Lands System (CLS) – which established one of only a few biology-based land use plans in the country, and which seeks to balance higher intensity urban development in the County with natural open space conservation lands that reflect the SDCP's biological reserve goals; and

WHEREAS, in 2003, the SDCP Steering Committee submitted their report to the Board related to reserve design viewpoints and formulating alternatives for Pima County to secure a Section 10(a)(1)(B) Incidental Take Permit; and

WHEREAS, in 2004, Pima County voters approved a \$164.3 million bond program to acquire open space in support of the SDCP; and

WHEREAS, Pima County acquired the 41,000-acre A-7 Ranch from the City of Tucson, to further the SDCP's goals of maintaining un-fragmented natural buffers to urban areas, preserving scenic views, cultural resources, and ranch lands that conserve our western heritage and culture; and

WHEREAS, in 2005, the Board adopted an update to the Maeveen Marie Behan CLS map and conservation guideline policies; and

WHEREAS, in 2005, in support of the SDCP, the Board of Directors of the Pima County Regional Flood Control District revised its Floodplain and Erosion Hazard Management Ordinance and the 1994 Riparian Classification Maps that protect riparian habitat associated with floodplains; and

WHEREAS, in 2006, Pima County voters approved a 20-year regional transportation plan through a half cent sales tax increase, which includes \$45 million for wildlife crossings to address impairments to wildlife movement related to transportation; and

WHEREAS, keeping with the goals of the SDCP, in 2009, Pima County acquired 277 acres of land on the western slope of Tumamoc Hill to preserve the area's natural open space, as well as significant archaeological and historic resources; and

WHEREAS, in 2010, Pima County and the Regional Flood Control District submitted the MSCP to the USFWS in conjunction with an application for a Section 10(a)(1)(B) Incidental Take Permit to fulfill the SDCP's endangered species compliance goals; and

WHEREAS, in 2012, the MSCP and its associated EIS were posted to the Federal Register by the USFWS; and

WHEREAS, the MSCP will cover impacts to 44 species including four plants, seven mammals, eight birds, six reptiles, two amphibians, five fish, and 12 invertebrates, in the Section 10(a)(1)(B) Incidental Take Permit; and

WHEREAS, in 2013, Pima County completed its open space bond acquisitions from the 1997 and 2004 voter-approved bond elections; and

WHEREAS, the Board has accepted donations of land from 16 different owners who support open space and wildlife conservation, totaling over 2,000 acres and valued at more than \$11 million; and

WHEREAS, the Board has entered into 15 ranch management agreements, where ranchers and Pima County provide stewardship over 195,000 acres of land; and

WHEREAS, Pima County proposes to use both open space land acquisitions and ranch stewardship lands including grazing leases as compensatory mitigation under the ESA for otherwise lawful activities of Pima County, and RFCDD and its regulated constituents within unincorporated Pima County; and

WHEREAS, on May 13<sup>th</sup>, 2016 USFWS issued a Record of Decision enabling Pima County and the Regional Flood Control District to receive mitigation credit under the Endangered Species Act for these already acquired lands; and

WHEREAS, the USFWS and U. S. Army Corps of Engineers (Corps) have completed a programmatic consultation under the Endangered Species Act which recognizes the MSCP as a means of providing endangered species compliance for certain permits issued by the Corps; and

WHEREAS, the USFWS Record of Decision indicates that Pima County and the Regional Flood Control District are eligible to enjoy the benefits of the Section 10(a)(1)(B) Incidental Take Permit for their activities; and

WHEREAS, the USFWS Record of Decision recognizes the MSCP's reliance on certain provisions of existing County and RFCDD ordinances, guidelines and policies as a means of avoiding and minimizing impacts to federally protected species and to species yet to be listed under the Endangered Species Act; and

WHEREAS, the USFWS Record of Decision supports the extension of the Section 10(a)(1)(B) Incidental Take Permit to certain activities authorized by Pima County on private property, where authorized by the land owner; and

WHEREAS, the USFWS issued the Section 10(a)(1)(B) Incidental Take Permit on July 13, 2016 to Pima County and Pima County Regional Flood Control District; and

NOW, THEREFORE, BE IT RESOLVED that the Pima County Board of Supervisors and the Board of Directors of the Pima County Regional Flood Control District affirm the commitment to implement the Multi-Species Conservation Plan in accordance with the terms of the Section 10(a)(1)(B) Incidental

Take Permit and direct the County Administrator and the General Manager of the Pima County Regional Flood Control District to take all measures necessary to effect its implementation.

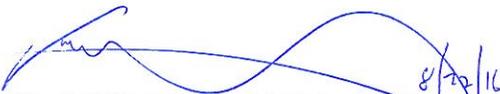
**PASSED AND ADOPTED** by the Board of Supervisors of Pima County, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Chair, Pima County Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM

  
\_\_\_\_\_  
Tobin Rosen, Deputy County Attorney

**PASSED AND ADOPTED** by the Board of Directors of the Pima County Regional Flood Control District, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Chair, Pima County Regional Flood Control District Board of Directors

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM

  
\_\_\_\_\_  
Tobin Rosen, Deputy County Attorney

# ATTACHMENT 3

# Pima County MSCP 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

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.

**13.10 Conflict of Interest.** This Agreement is subject to cancellation by County for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

**13.11 Termination for Convenience.** Either party may terminate this Agreement upon 30 days' written notice to the other party.

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 Date \_\_\_\_\_  
United States Fish and Wildlife Service

\_\_\_\_\_

BY Chair, Board of Directors Date \_\_\_\_\_  
Pima County Regional Flood Control District

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Directors

BY Chair, Pima County Board of Supervisors Date \_\_\_\_\_

\_\_\_\_\_

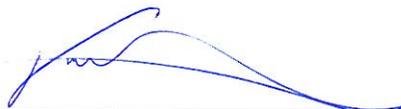
ATTEST:

\_\_\_\_\_  
Clerk of the Board

## Implementation Agreement Determination

The foregoing Implementation Agreement between Pima County, the Pima County Flood Control District and the U.S. Fish and Wildlife Service has been reviewed pursuant to A.R.S. § 11-952 by the undersigned, who has determined that it is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the party to the Implementation Agreement represented by each of the undersigned.

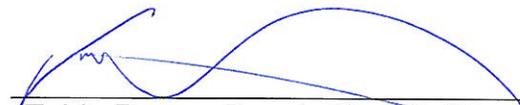
PIMA COUNTY



Tobin Rosen, Deputy County Attorney 8/19/16

PIMA COUNTY

FLOOD CONTROL DISTRICT:



Tobin Rosen, Deputy County Attorney 8/19/16