NATIVE ENDANGERED SP. HABITAT CONSERVATION PLAN
ENDANGERED WILDLIFE
Permit Number: TE086834-1
Effective: 2/22/2018 Expires: 4/30/2055

Issuing Office:

Department of the Interior
U.S. Fish & Wildlife Service
Endangered Species Permit Office
500 Gold Avenue S.W.
P.O. Box 1306, Room 6034
Albuquerque, NM 87103-1306

ARD Signature:

ARD – ECOLOGICAL SERVICES *Date* MAR 5 2018

Permittee:

Perri Benemelis, Chair
Lower Colorado River Multi-Species Conservation Program
Non-Federal Partners – dba LCR MSCP
23636 North Seventh Street
Phoenix, Arizona 85024
623/869-2182
pbenemelis@cap-az.com

Authority: Statutes and Regulations: 16 USC 1539(a); 50 CFR 17.22, 50 CFR 13.

Location where authorized activity may be conducted:
The Lower Colorado River up to and including the full-pool elevations of Lakes Mead, Mohave, and Havasu and the historical floodplain of the Colorado River from Lake Mead to the Southerly International Border.

Reporting requirements:
Annual REPORT DUE: June 30 – See Permit terms and conditions for specific reporting requirements.

Conditions and Authorizations:

A. General conditions set out in subpart D of 50 CFR 13, and specific conditions contained in Federal regulations cited above in Authority, are hereby made a part of this Permit. All activities authorized herein must be carried out in accordance with and for the purposes described in the application submitted. Continued validity, or renewal, of this Permit is subject to complete and timely compliance with all applicable conditions, including filing all required information and reports.

B. Valid for use by Permittees listed herein. The validity of this Permit is also conditioned upon strict observance of all applicable foreign, state, local, or other federal law.

C. Acceptance of the Permit serves as evidence that the Permittee understands and agrees to abide by the terms and conditions of this Permit and all applicable sections of 50 CFR Parts 13, 17, and 21 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.

D. The person listed above 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 S.

Permittee Signature: Perri Benemelis **Date:** 3-13-18

E. Definitions

The capitalized terms used in this Permit shall have the meaning ascribed to them in this section. To the extent that the definitions incorporate covenants and agreements, such covenants and agreements shall bind the Permittees. Terms used in this Permit and specifically defined in the ESA or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this Permit expressly provides otherwise.

1. **"Adaptive Management"** means an iterative program designed to review and use the results of information gathered through monitoring and research to adjust Conservation Measures, management strategies, and practices where appropriate in implementing the HCP.

2. **"Adaptive Management Program" or "AMP"** means the program of Adaptive Management that will be undertaken by the Permittees as part of the HCP as described in section 11 of the IA and section 5.12 of the HCP.

3. **"BA"** means that biological assessment, as amended, for the specified Covered Actions prepared for the LCR MSCP by the Federal Parties and transmitted to the Service on November 29, 2004, in accordance with section 7 of the ESA.

4. **"Biological Opinion" or "BO"** means the section 7 biological opinion, as amended, issued by the Service for the LCR MSCP.

5. **"Certificate of Inclusion"** means a certificate issued by a Permittee to a non-federal person, firm, or entity that has agreed to be bound by the terms of the HCP and the Permit pursuant to section 16.1 of the IA.

6. **"Conservation Measure"** means measures identified in Chapter 5 of the HCP for the benefit of the Covered Species or developed pursuant to the Adaptive Management Program, including specific activities implemented on an annual basis by the Program Manager or, in appropriate circumstances, other Parties to the IA.

7. **"Covered Actions"** means those actions described in Chapter 2 of the BA, for which Incidental Take Authorization for Covered Species is sought pursuant to the LCR MSCP.

8. **"Covered Activities"** means those activities described in Chapter 2 of the HCP, for which Incidental Take Authorization for Covered Species is sought pursuant to the LCR MSCP.

9. **"Covered Species"** means those species listed in Section J for which Incidental Take Authorization is provided under this Permit.

10. **"Critical Habitat"** means those areas within the Planning Area that have been designated by the Secretary of the Interior to be essential for the continued existence of certain of the Covered Species in accordance with the ESA.

11. **"Effective Date"** means the date on which this Permit takes effect.

12. **"EIS/EIR"** means the joint environmental impact statement and environmental impact report issued pursuant to National Environmental Policy Act (NEPA) and the California Environmental Quality Act for the LCR MSCP, and any Supplements to the EIS/EIR or Environmental Assessment's tiered to or incorporated by reference to the EIS/EIR for amendment to the Program Documents.

13. **"ESA"** means the Federal Endangered Species Act of 1973, as amended.

14. **"Federal Parties"** means the Bureau of Reclamation, Fish and Wildlife Service, National Park Service, Bureau of Indian Affairs, Bureau of Land Management and the Western Area Power Administration.

15. **"Funding and Management Agreement"** or **"FMA"** means that agreement, as amended, which provides for the administration, financing, and implementation of the LCR MSCP.

16. **"Habitat Conservation Plan" or "HCP"** means the habitat conservation plan, as amended, prepared pursuant to section 10(a)(1)(B) of the ESA for purposes of the LCR MSCP.

17. **"Harass"** means that definition provided in 50 CFR 17.3.

18. **"Harm"** means that definition provided in 50 CFR 17.3.

19. **"IA"** means the Implementing Agreement, as amended.

20. **"Incidental Take Authorization" or "ITA"** means, collectively, (i) the LCR MSCP section 10(a)(1)(B) incidental take permit and (ii) any incidental take statement issued by the Service as part of a Biological Opinion which authorizes take by Federal agencies pursuant to the LCR MSCP.

21. **"LCR MSCP"** means the Lower Colorado River Multi-Species Conservation Program.

22. **"Listed Species"** means those Covered Species that are listed by the Service as endangered or threatened on the Effective Date

23. **"Lower Colorado River"** means the Colorado River within the Planning Area as provided in section 2(B) of the IA.

24. **"Participant Group"** means a group of organizations participating in the LCR MSCP as described in section 7.3.1 of the FMA.

25. **"Permit"** means this amended section 10(a)(1)(B) incidental take permit issued by the Service pursuant to the HCP for the LCR MSCP.

26. **"Permittee"** means a non-federal person, firm, or entity that has been authorized to take Covered Species pursuant to this Permit.

27. **"Planning Area"** means the areas up to and including the full-pool elevations of Lakes Mead, Mohave, and Havasu and the historical floodplain of the Colorado River from Lake Mead downstream to the Southerly International Boundary with Mexico, as more fully depicted in Figures 1-1 of the HCP and BA and described in sections 1.4.1 of the HCP and BA and section 2(B) of the IA.

28. **"Program Cost"** means the total cost of implementing the LCR MSCP over its 50-year term, which is Six Hundred Twenty-Six Million, One Hundred Eighty Thousand Dollars ($626,180,000) in 2003 dollars, as set forth in Table 7-1 of the HCP, which will be adjusted for inflation as provided in section 8.1.1 of the FMA.

29. **"Program Documents"** means the HCP, BA, EIS/EIR, FMA, IA, BO, the original Permit dated 4/4/2005 and this Permit.

30. **"Program Manager"** means an employee of Reclamation whose responsibility it is to plan for and take such actions as may be required to implement the LCR MSCP pursuant to the provisions of the IA and the FMA.

31. **"Reclamation"** means the United States Bureau of Reclamation.

32. **"Service"** means the United States Fish and Wildlife Service.

33. **"Take"** means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" as defined in 16 U.S.C. § 1532(19).

34. **"Third Party Authorized to Take"** means any person, firm, or entity that receives an Incidental Take Authorization pursuant to section L-5 of this Permit.

35. **"Unforeseen Circumstances"** means any change in circumstances not identified as a changed circumstance in section 5.12.3 and Table 5.13 of the HCP.

F. Findings

F-1 After opportunity for public review and comment, based on the best available current scientific and commercial data, the Service finds that: (i) the HCP is consistent with and will complement other applicable conservation planning and regulatory programs and efforts addressing wildlife within the region; (ii) the taking of Covered Species authorized by this Permit will be incidental to the carrying out of otherwise lawful activities; (iii) implementation of the HCP will, to the maximum extent practicable, minimize and mitigate the impacts of such incidental takings; and (iv) the taking authorized by this Permit will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild.

F-2 The Permittees and Reclamation have entered into a FMA that provides for the sharing of the costs of the HCP. Each Permittee's share of the annual HCP costs shall be determined and paid in accordance with sections 8 and 9 of the FMA. The Service finds that the Permittees' compliance with the FMA will ensure that adequate funding for the HCP will be provided.

F-3 After public comment on the HCP Amendment Addition of New Covered Species - Northern Mexican Gartersnake, we find that the amendment meets all issuance criteria.

G. Permit Compliance

The LCR MSCP will be deemed properly implemented if the obligations of the Permittees found in the Program Documents, including the terms and conditions of this Permit and Chapter 5 of the HCP, are being or have been implemented. Permittees shall timely and completely comply with and perform their obligations under the Program Documents. The LCR MSCP, when fully implemented according to its terms will satisfy and fulfill all measures agreed upon by Permittees for the purposes of the LCR MSCP, including procedures determined by the Service to be necessary to address Unforeseen Circumstances.

H. Reporting Dead, Injured, or Sick Endangered or Threatened Species:

Upon locating a dead, injured, or sick covered, listed species, or any other endangered or threatened species, Permittees are required to contact the Service's Law Enforcement Office in Mesa, Arizona, (480) 967-7900, in Torrance, California (310) 328-1516, or in Boise, Idaho, (208) 378-5333, for care and disposition instructions. Extreme care should be taken in handling sick or injured individuals to ensure effective and proper treatment. Care should also be taken in handling dead specimens to preserve biological materials in the best possible state for analysis of cause of death. In conjunction with the care of sick or injured endangered/threatened species, or preservation of biological materials from a dead specimen, Permittees and their designees have the responsibility to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

I. Covered Permittees

The Permittees covered by this Permit include the following:

Arizona: The Arizona Department of Water Resources, the Arizona Electrical Power Cooperative Inc., the Arizona Game and Fish Department, the Arizona Power Authority, the Central Arizona Water Conservation District, the Cibola Valley Irrigation and Drainage District, the City of Bullhead City, the City of Lake Havasu City, the City of Mesa, the City of Somerton, the City of Yuma, the Electrical District No. 3, Pinal County, Arizona, the Golden Shores Water Conservation District, the Mohave County Water Authority, the Mohave Valley Irrigation and Drainage District, the Mohave Water Conservation District, the North Gila Valley Irrigation and Drainage District, The Town of Fredonia, the Town of Thatcher, the Town of Wickenburg, the Salt River Project Agricultural Improvement and Power District, the Unit B Irrigation and Drainage District, the Wellton-Mohawk Irrigation and Drainage District, the Yuma County Water Users' Association, the Yuma Irrigation District, and the Yuma Mesa Irrigation and Drainage District;

California: The Bard Water District, the City of Needles, the Coachella Valley Water District, the Colorado River Board of California, the Imperial Irrigation District, Los Angeles Department of Water and Power, the Palo Verde Irrigation District, the San Diego County Water Authority, the Southern California Edison Company, the Southern California Public Power Authority, and The Metropolitan Water District of Southern California;

Nevada: The Basic Water Company, the Colorado River Commission of Nevada, the Nevada Department of Wildlife, and the Southern Nevada Water Authority.

Federal Parties participating in the LCR MSCP, but not permitted under section 10 include: Reclamation, the Service, the National Park Service, the Bureau of Indian Affairs, the Bureau of Land Management, and the Western Area Power Administration.

J. Covered Species

The Covered Actions and Covered Activities addressed in the LCR MSCP may affect the following federally listed, candidate, and nonlisted species and designated or proposed critical habitat within the Planning Area, and these species constitute Covered Species under this Permit:

Common Name	Scientific Name	ESA Status
Yuma clapper rail	(*Rallus longirostris yumanensis*)	E
Southwestern willow flycatcher	(*Empidonax traillii extimus*)	E
Desert tortoise	(*Gopherus agassizii*)	T
Bonytail	(*Gila elegans*)	E
Humpback chub	(*Gila cypha*)	E
Razorback sucker	(*Xyrauchen texanus*)	E
Yellow-billed cuckoo	(*Coccyzus americanus occidentalis*)	T
Northern Mexican gartersnake	(*Thamnophis eques megalops*)	T
Relict leopard frog	(*Rana onca*)	None
Western red bat	(*Lasiurus blossevillii*)	None
Western yellow bat	(*Lasiurus xanthinus*)	None
Colorado River cotton rat	(*Sigmodon arizonae plenus*)	None
Yuma hispid cotton rat	(*Sigmodon hispidus eremicus*)	None
Western least bittern	(*Ixobrychus exilis hesperis*)	None
California black rail	(*Laterallus jamaicensis corturniculus*)	None
Elf owl	(*Micrathene whitneyi*)	None
Gilded flicker	(*Colaptes chrysoides*)	None
Gila woodpecker	(*Melanerpes uropygialis*)	None
Vermilion flycatcher	(*Pyrocephalus rubinus*)	None
Arizona Bell's vireo	(*Vireo bellii arizonae*)	None
Sonoran yellow warbler	(*Setophaga [Dendroica] petechia sonorana*)	None
Summer tanager	(*Piranga rubra*)	None
Flat-tailed horned lizard	(*Phrynosoma mcallii*)	None
Flannelmouth sucker	(*Catostomus latipinnis*)	None
MacNeill's sootywing skipper	(*Hesperopsis gracielae*)	None
Sticky buckwheat	(*Eriogonum viscidulum*)	None
Threecorner milkvetch	(*Astragalus geyeri* var. *triquetrus*)	None

K. Incorporation of HCP, IA, and FMA

The obligations of the Permittees found in the HCP, the IA, and the FMA are incorporated herein. The terms of the IA, FMA, the HCP, and this Permit shall be interpreted to be complementary to each other. In the event of any direct contradiction among the terms of the IA, the FMA, the HCP, and this Permit, the terms of this Permit shall control.

L. Take Authorization

L-1 Permittees are authorized to Take Covered Species to the extent described and specified within Chapter 4 of the HCP, as amended, incidental to the carrying out of otherwise lawful activities.

L-2 This Permit will take effect for Covered Species federally listed as threatened or endangered at the time this Permit is issued (Effective Date). Subject to compliance with all other terms of this Permit, this Permit will

take effect for Covered Species that are currently not listed immediately upon the listing of such species as threatened or endangered.

L-3 If it is determined by a final order of a court, which order is not subject to further appeal, that the Service is not authorized to cause this Permit to become effective automatically as to Covered Species not listed as of the Effective Date, the Service shall accept the minimization and mitigation measures in the HCP as the basis for an application for an amendment to this Permit or for a separate permit or permits, Migratory Bird Treaty Act (MBTA) permits, and/or other Incidental Take Authorizations. The Service shall use reasonable efforts to review and process the application expeditiously so as to ensure, provided the Permit amendment or application meets the requirements of ESA and other applicable Federal laws, that the Incidental Take Authorization is effective concurrently with the listing of the Covered Species. In issuing such Permits, amendments, and/or Incidental Take Authorizations, and to the extent that such judicial determination creating the circumstances requiring such additional review and processing allows, the Service shall not request, impose, recommend, or require further mitigation, conservation, compensation, enhancement, or other protection for such Covered Species except as expressly provided in this Permit.

L-4 Species may be added to the list of Covered Species only by an amendment to this Permit. However, the Service shall give due consideration to and full credit for Conservation Measures previously implemented as part of the HCP which benefit any species proposed to be added as a Covered Species.

L-5 Landowners, water rights owners, developers, farmers, and other private and public entities undertaking Covered Activities who are: (i) under the direct control of a Permittee, in conformance with any approval granted by that Permittee, and in compliance with this Permit and any applicable independent funding agreement entered into to provide funds to implement the HCP; or (ii) subject to a Certificate of Inclusion authorized by the Participant Group for the State within which the activity is to occur, shall be authorized to incidentally take Covered Species pursuant to this Permit. A Certificate of Inclusion, the form of which has been approved by the Service, shall authorize the person, firm, or entity to take Covered Species as an incidental result of Covered Activities within the Planning Area pursuant to the terms of this Permit. A Certificate of Inclusion for California Covered Activities may not be issued without the written consent of the Metropolitan Water District of Southern California. A Certificate of Inclusion for Arizona Covered Activities may not be issued without the written consent of the Central Arizona Water Conservation District. A Certificate of Inclusion for Nevada Covered Activities may not be issued without the written consent of the Colorado River Commission of Nevada and the Southern Nevada Water Authority. Any such landowner, water rights owner, developer, farmer, or other private or public entity shall be a Third Party Authorized to Take. Permittees shall include as a part of any Certificate of Inclusion, among other provisions: (1) a condition requiring compliance with the Permit, the HCP, the IA, the FMA, and any applicable independent funding agreement entered into to ensure funding for the HCP; and (2) a description of the Covered Activity for which the Incidental Take Authorization was granted. The Participant Group issuing the Certificate of Inclusion shall report the identity of the entity to whom such Certificate was issued to the Service, in writing. Incidental Take by any Third Party Authorized to Take shall be authorized only if it is in full compliance with all requirements of this Permit, any issued entitlements, and all other applicable legal requirements. Any Third Party Authorized to Take shall have the same rights and obligations under this Permit as a Permittee and shall thereafter be a Permittee.

M. Statutes, Rules and Regulations

With the exception of the cost share provisions set forth in section N-3 hereof, if any statute is enacted, or any rule or regulation is issued after the Effective Date that conflicts with any provision of this Permit, such statute, rule or regulation shall govern the rights and obligations of the Permittees and the Service, provided, the Service shall give due consideration to the measures required under the LCR MSCP in applying the new statute, rule or regulation.

N. "No Surprises" and Cost Assurances

N-1 Consistent with 50 CFR 424.12, the HCP incorporates special management considerations necessary to the conservation of Covered Species. If, therefore, Critical Habitat is designated or revised within the LCR MSCP Plan Area, no mitigation, compensation, conservation enhancement, or other protective measures other than those set forth in the Program Documents will be required of any Permittee in connection with Covered Activities.

N-2 No Surprises Assurances

N-2-1 The Covered Species listed above are considered adequately addressed under the LCR MSCP and are, therefore, covered by "No Surprises" rule assurances. In the event that it is demonstrated by the Service that Unforeseen Circumstances exist during the life of the Permit, and additional conservation and mitigation measures are deemed necessary to respond to Unforeseen Circumstances, the Service may require additional measures of Permittees where the HCP is being properly implemented, but only if such measures are limited to modifications within areas conserved pursuant to the HCP or to the HCP's operating conservation program for Covered Species, and maintain the original terms of the HCP to the maximum extent possible. Notwithstanding the foregoing, the Service shall not:

a) require the commitment of additional land, water, or financial compensation by the Permittees without the consent of the Permittees; or,

b) 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 HCP, including additional restrictions on Covered Activities.

N-2-2 Effect of Unforeseen Circumstances on Permit: Except as noted above, notwithstanding the occurrence of Unforeseen Circumstances, as long as the Permittees continue to properly implement the provisions of the HCP, and any additional measures required by the Service in accordance with this Permit, this Permit will remain in full force and effect.

N-2-3 Notice of Unforeseen Circumstances: The Service shall notify the Permittees in writing of any Unforeseen Circumstances of which the Service becomes aware that may affect obligations of Permittees under this Permit.

N-3 Cost Assurances

N-3-1 The LCR MSCP is a collaborative program between the Federal Parties and the Permittees. Reclamation is required to implement the HCP in cooperation with the other Federal Parties and Permittees as provided in the BA and BO, and is required to provide funding in accordance with the FMA.

N-3-2 The total cost of the LCR MSCP over its 50-year term is Six Hundred Twenty-Six Million, One Hundred Eighty Thousand Dollars ($626,180,000) in 2003 dollars as defined in section E-28 ("Program Cost").

N-3-3 The Permittees' share of the Program Cost of the LCR MSCP shall not exceed Three Hundred Thirteen Million, Ninety Thousand Dollars ($313,090,000) in 2003 dollars, and, on an annual basis, shall not exceed one-half of the amounts provided for in Table 7-1 of the HCP, adjusted annually for inflation as provided in section N-3-4.

N-3-4 The Permittees' share of the Program Cost of the LCR MSCP shall be adjusted in accordance with the Inflation Index, which is the arithmetic average of the PPI Index and the GDPIP Inflation Index, as those terms are defined in section 8.1.1 of the FMA.

N-3-5 Except as provided in this section N-3-5 with respect to an amendment of the LCR MSCP, to the extent that the cost of implementing the LCR MSCP exceeds the Program Cost, or, on an annual basis, exceeds the amounts set forth in Table 7-1 of the HCP, adjusted annually for inflation as provided in section N-3-4, such additional cost shall be the responsibility of the Federal Parties and shall not be borne by the Permittees. If additional costs are incurred as a result of an agreement of the Federal Parties and the Permittees to amend the LCR MSCP to add additional species to the list of Covered Species or to add additional Covered Actions or Covered Activities, such additional costs shall be shared as provided in such amendment. Nothing in this Permit shall prohibit any Permittee from agreeing to contribute amounts in excess of Table 7-1 of the HCP on an annual basis subject to the concurrence of the Program Manager.

N-3-6 Failure to comply with the applicable requirements of the Program Documents on the part of a Federal Party shall not result in the suspension or revocation of this Permit as to any Permittee that is complying with the requirements of this Permit.

O. Migratory Bird Treaty Act and Bald Eagle Protection Act Provisions

This Permit and the IA authorizes incidental take of any listed Covered Species and shall, when it affects migratory birds also listed as endangered or threatened under the ESA constitute a special purpose permit pursuant to 50 CFR § 21.27. Any such take shall 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 through the life of this Permit, provided this Permit remains in effect for that period and the Permittees remain in full compliance with the terms of this Permit and the IA.

P. Access to Properties and Sites

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

Q. Permit Amendment

Q-1 This Permit may be amended in accordance with the provisions of 50 CFR 13.23, and only with the consent of the Permittees. The proponent of the amendment 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 LCR MSCP and on Covered Species. In considering a proposed amendment to this Permit, the Service shall give due consideration to, and full credit for, Conservation Measures previously implemented as part of the HCP that benefit such species.

Q-2 The activities proposed or in progress under this Permit may not be interrupted provided the required conditions of this Permit are being followed.

Q-3 If during the tenure of this Permit, the Covered Activities and/or the extent of the habitat impact described in the LCR MSCP are altered, such that there may be an increase in the anticipated Take of Covered Species, Permittees are required to contact the Service and obtain authorization and/or amendment of this Permit before commencing any activities that might result in Take beyond that described in Chapter 4 of the HCP.

R. Permit – Suspension, Revocation and Surrender

R-1 The Service may suspend this Permit if the Permittees are not in compliance with the conditions of this Permit, the IA, the FMA, or any applicable Federal laws and regulations. For the purposes of the LCR MSCP, the procedures applicable to any suspension shall be in accordance with the Federal regulations in effect at the time of the suspension; provided however, that, at a minimum, the Permittee shall be afforded the procedural rights set forth in 50 CFR 13.27 in existence on the Effective Date. The suspension shall remain in effect until the Service determines that the Permittees have corrected the deficiencies. This Permit may be partially suspended with respect to specified Covered Species, or to a portion of the Planning Area or Covered Activities, or in relation to a specific Permittee or specific Permittees. In the event of a partial suspension, the portion of this Permit not subject to suspension shall remain in full force and effect. Permit suspension as a result of Changed Circumstances shall be in accordance with the applicable terms of this section and section 13 of the IA.

R-2 The Service 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 the Service, the Permittees, and other interested parties have not been successful in remedying any such inconsistency through other means. This Permit may be partially revoked with respect to specified Covered Species, or to a portion of the Planning Area or Covered Activities, or in relation to a specific Permittee or specific Permittees. In the event of a partial revocation, the portion of this Permit not subject to the revocation shall remain in full force and effect. All Conservation Measures in the HCP that are continued in effect after any Permit revocation shall be taken into account by the Service and credited toward any future efforts by the Permittees and other parties to ensure that any Covered Actions or Covered Activities are in compliance with requirements of the ESA. This provision shall survive any revocation of the Permit and shall remain in full force and effect. Procedures applicable to any revocation shall be in accordance with the Federal regulations in

effect at the time of the revocation; provided however, that, at a minimum, the Permittee shall be afforded the procedural rights set forth in 50 CFR 13.28 in existence on the Effective Date.

R-3 In the event that any Permittee, or any successor in interest, shall permanently discontinue its Covered Activities, the Permittee or such successor in interest shall return this Permit to the Service with a written statement surrendering this Permit for cancellation. This Permit will be deemed cancelled only upon a determination by the Service, in collaboration with the Permittee, that sufficient measures have been implemented by the Permittee 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 Permittee shall be authorized.

R-4 In the event any Permittee fails or refuses to undertake or complete any obligation required by this Permit, the entity alleging such default shall notify the Service and each Permittee. The Permittee alleged to be in default shall be given reasonable opportunity to cure the alleged default.

R-5 Any Permittee who believes that any other Permittee has failed or refused to undertake or complete any obligation required by this Permit, or by any funding agreement entered into by such Permittee to provide funding for the HCP, may request that the Service suspend or revoke that defaulting Permittee's Incidental Take Authorization coverage unless and until the alleged default is cured or until it has been determined by the Service that the Permittee is not in default.

R-6 No provision of this Permit shall limit the authority of the Service 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 Service shall not seek civil or criminal penalties or otherwise enforce the take prohibitions of the ESA and other applicable laws for incidental take of Covered Species that is in accordance with the terms of this Permit.

R-7 If Permittees are wholly or partially prevented from performing obligations under this Permit 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 Force Majeure to the extent so affected, and such failure to perform shall not be considered a material violation or breach. However, the occurrence of any Force Majeure shall not be deemed to authorize any Permittee to violate the ESA and provided further that: (i) the suspension of performance is of no greater scope and no longer duration than is required by the Force Majeure; (ii) within fifteen (15) Days after the occurrence of the Force Majeure, affected Permittees shall give the Service written notice describing the particulars of the occurrence; and (iii) 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 interest).

S. Annual Report

Permittees shall submit, or cause to be submitted, the annual report detailing implementation of the LCR MSCP and describing activities anticipated for the following year. This report shall be submitted annually to the following:

Field Supervisor
U.S. Fish and Wildlife Service
2321 W. Royal Palm Road, Suite 103
Phoenix, Arizona 85021

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

T. Permit Renewal

The Service may extend or renew the Permit upon application of the Permittees prior to its expiration date in accordance with provisions of 50 CFR13.22.

U. Successors and Assigns

The terms and conditions of this Permit shall be binding on and shall inure to the benefit of the Permittees, including Third Parties Authorized to Take, and their respective successors and assigns, as provided in 50 CFR 13.24 and 13.25. If this Permit requires an amendment because of change of ownership, the Service will process that amendment without the requirement of the Permittees preparing any new documentation or proving any mitigation over and above that required in the original Permit.

V. Severability

If any part or provision of this Permit shall be held invalid or unenforceable by a court having jurisdiction under applicable law after exhaustion of all available appeals, said part or provision shall be ineffective only to the extent of such invalidity without in any way affecting the remaining parts of said part or provision or the remaining provisions of this Permit. Notwithstanding the foregoing, in the event such invalidity or any rescission of the IA or FMA by any Permittee alters the relative balance of benefits of the Service or any Permittee to the significant disadvantage of the Service or any Permittee, the Service and the Permittees shall attempt to negotiate a modification of the terms of the Permit in order to reestablish the original balance of benefits, and if such agreement is not reached, the disadvantaged party may terminate or surrender the Permit, as the case may be. Surrender under this section by a Permittee shall occur only upon written notice to the Service specifically surrendering its Permit rights.

W. Adaptive Management for Changed Circumstances and Remedial Measures

W-1 The regulations governing section 10 incidental take permits provide for inclusion of remedial measures to address changed circumstances in an HCP. Remedial measures will be implemented, as necessary, to respond to changed circumstances. Changed circumstances should they occur and remedial measures that will be implemented by the Program Manager include:

a. The creation of land cover as habitat for one or more Covered Species in accordance with the LCR MSCP Conservation Plan is unsuccessful, i.e., fails to provide the essential habitat elements for one or more of the Covered Species whose habitat is expected to be provided by the land cover type. The cause of failure will be identified through the monitoring and research that is part of the adaptive management process included in the LCR MSCP. The adaptive management process will be used to identify and develop measures to correct or replace the failed conservation measure or to implement an alternative conservation measure.
b. Insufficient water is available, regardless of cause (e.g., drought conditions, reduction in water allocations), to maintain established created land cover types as habitat for one or more Covered Species. The Program Manager will coordinate with the Service to prioritize the distribution of available water among created habitats to ensure that the greatest benefits for Covered Species will be provided by the amount of water available for maintenance of created habitats.
c. Created backwater and marsh land cover that provide habitat for Covered Species in conservation areas are lost because of sedimentation resulting from floods. Dredging will be implemented to restore patches of backwater and marsh land cover created as Covered Species habitat.
d. Created cottonwood-willow and honey mesquite land cover that provide habitat for Covered Species in conservation areas are lost as a result of floods. Created habitats will be reestablished following loss to flooding. In the event of such loss, land management and created habitat restoration measures will be implemented in conservation areas to ensure the reestablishment of native vegetation through active management or natural processes.
e. Fish in rearing facilities or in the stocking process are lost, causing disruption of fish augmentation conservation measures. Stocking will be increased in subsequent years and/or the time period will be extended within the Permit term for fish augmentation to meet the total augmentation goals.
f. Rearing facilities or aquaculture techniques fail to provide sufficient numbers or sizes of fish to meet fish augmentation goals. Other management activities will be identified, through monitoring and research, to provide benefits to the fish species.
g. A toxic or hazardous substance spill occurs, affecting LCR MSCP conservation areas. In the event of such loss, land management and created-habitat restoration measures will be implemented in conservation areas to ensure the restoration of the conservation area through active management or natural processes.
h. Future listing of a non-listed Covered Species. The Service will automatically authorize take of such newly listed Covered Species as prescribed by regulation (63 FR 35, February 23, 1998).

W-2 To address the potential for changed circumstances, the Permittees have allocated contingency funding within the Program Costs. This contingency funding provides the financial means to implement remedial measures in the event that changed circumstances occur. In the event that changed circumstances occur, the Program Manager will implement the remedial measures identified above, but no additional

conservation or mitigation measures can be required without the Permittees' consent (50 CFR 17.22(b)(5)). Remedial measures will be implemented within the available LCR MSCP budget, including contingency funding committed by the LCR MSCP participants for changed circumstances.

W-3 The Program Manager is required to notify the Service within seven days after learning of the occurrence of a changed circumstance. As soon as practicable, but no later than 30 days after learning of the changed circumstance, the Program Manager is required to develop an approach to implement the applicable remedial measures described in Table 5-13 of the HCP to the extent necessary to correct the effects of the changed circumstance on Covered Species, and notify the Service of their implementation.

W-4 If the Service determines that changed circumstances have occurred and that the Program Manager and Permittees have not responded in accordance with the appropriate existing LCR MSCP agreements, the Service will so notify the Program Manager and Permittees and will direct them to make the required changes. Within 30 days after receiving such notice, the Program Manager and Permittees will make the required changes and report to the Service on their activities. Such changed circumstances are provided for in the LCR MSCP, and hence do not constitute unforeseen circumstances or require amendment of this Permit or the LCR MSCP.

X. NORTHERN MEXICAN GARTERSNAKE-SPECIFIC TERMS AND CONDITIONS

The Permit amendment authorizes incidental Take of the threatened northern Mexican gartersnake as identified in Chapter 4 of the amended HCP.

***** End of Permit Terms and Conditions for Permit # TE086834-1 *****