



**San Bernardino Valley
Water Conservation District**
Helping Nature Store Our Water

SPECIAL BOARD OF DIRECTORS MEETING AGENDA (REVISED)

Thursday, April 2, 2020 – 10:00 a.m.

In accordance with [Governor Newsom's Executive Order N-25-20 and N-29-20](#), this meeting is being conducted via teleconference/Zoom. Anyone wishing to join the meeting can join via

Zoom: Call in (669) 900-6833, Meeting ID: 288 003 329

To join the Zoom Meeting online <https://zoom.us/j/288003329>

Note: Copies of staff reports and other documents relating to the items on this agenda are on file at the District office and are available for public review during normal District business hours. New information relating to agenda topics listed, received, or generated by the District after the posting of this agenda, but before the meeting, will be made available upon request at the District office and in the Agenda Package on the District's website. It is the intention of the San Bernardino Valley Water Conservation District to comply with the Americans with Disabilities Act (ADA) in all respects. If you need special assistance with respect to the agenda or other written materials forwarded to the members of the Board for consideration at the public meeting, or if as an attendee or a participant at this meeting you will need special assistance, the District will attempt to accommodate you in every reasonable manner. Please contact Athena Monge at (909) 793-2503 at least 48 hours prior to the meeting to inform her of your particular needs and to determine if accommodation is feasible. Please advise us at that time if you will need accommodations to attend or participate in meetings on a regular basis.

**CALL TO ORDER
PLEDGE OF ALLEGIANCE
ROLL CALL**

1. PUBLIC PARTICIPATION

Members of the public may address the Board of Directors on any item that is within the jurisdiction of the Board; however, no action may be taken on any item not appearing on the agenda unless the action is otherwise authorized by Subdivision (b) Section 54954.2 of the Government Code.

2. ACTION ITEMS

Action Items

A. CONSERVATION EASEMENT AND ENDOWMENT AGREEMENTS WITH SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY - 15 minutes (M#1710).....3

Presenter: Daniel Cozad, Betsy Miller and David Cosgrove

Recommendation: Review and authorize the General Manager to execute the Conservation Easement Deed and the Endowment Agreement for the Deposit, Disbursement, and Use of Funds for Wasting and Non-Wasting Endowments related to the San Bernardino County Transportation Authority's (SBCTA) State Route 210 Mixed Flow Lane Addition Project.

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BOARD OF DIRECTORS

Division 1:
Richard Corneille

Division 2:
David E. Raley

Division 3:
Robert Stewart

Division 4:
John Longville

Division 5:
Melody McDonald

GENERAL MANAGER

Daniel B. Cozad

3. **ADJOURN MEETING.** The next regularly scheduled Public Hearing will be on April 8, 2020 at 1:30 p.m., via teleconference/Zoom. Access information will be emailed out on that agenda.



**San Bernardino Valley
Water Conservation District**

Helping Nature Store Our Water

Memorandum No. 1710

To: Board of Directors

From: General Manager, Daniel Cozad; Land Resources Manager/Assistant
General Manager, Betsy Miller; Legal Counsel, David Cosgrove

Date: April 2, 2020

Subject: Conservation Easement and Endowment Agreement for SBCTA's State
Route 210 Mixed Flow Lane Addition Project

RECOMMENDATION

Review and authorize the General Manager to execute the Conservation Easement Deed and the Endowment Agreement for the Deposit, Disbursement, and Use of Funds for Wasting and Non-Wasting Endowments related to the San Bernardino County Transportation Authority's (SBCTA) State Route 210 Mixed Flow Lane Addition Project.

BACKGROUND

To comply with CESA permits for the State Route 210 Mixed Flow Lane Addition Project, SBCTA has requested the ability to purchase 4.2 acres of conservation easements from the District, fund an endowment for in-perpetuity easement for such, and additional support in a consulting capacity from the San Bernardino Valley Conservation Trust.

DISCUSSION

District and Trust coordination with SBCTA on their State Route 210 Mixed Flow Lane Addition Project includes the following components:

- 1) The Conservation Easement Deed will record a conservation easement, acceptable to the California Department of Fish and Wildlife, over 4.2 acres of land in the District's Community Mitigation Program area (within the Wash Plan's Neutral Lands designation). SBCTA will pay the District \$567,000 for the conservation easement. The conservation easement will be held by the Trust. Conservation of 4.2 acres of appropriate lands will satisfy a condition of California Endangered Species Act Incidental Take Permit No. 2081-2017-062-06.

- 2) The Endowment Agreement for the Deposit, Disbursement, and Use of Funds for Wasting and Non-Wasting Endowments will govern use of endowments for the short and long-term management of the 4.2 acres of lands under a recorded conservation easement, including:
 - a. The amount of \$58,250 to fund the wasting endowment for start-up actions to ensure the newly conserved lands are at Wash Plan Preserve standards for habitat and management.
 - b. The amount of \$87,060 to fund the wasting endowment for survey and management requirements during the first three years of conservation.
 - c. The amount \$97,591 to fund the permanent non-wasting endowment for managing the conserved lands at Wash Plan Preserve standards.

SBCTA will pay the Trust a total of \$184,651 to be held and disbursed in accordance with the Endowment Agreement. Deposit of these funds will satisfy conditions of California Endangered Species Act Incidental Take Permit No. 2081-2017-062-06.

- 3) An prepaid letter agreement for the Trust to provide support and consulting services for the tasks necessary to satisfy conditions of California Endangered Species Act Incidental Take Permit No. 2081-2017-062-06, including items related to CDFW review/approval of the conservation easement language, endowment, and resource management planning. In addition, this prepaid letter agreement includes research tasks related to translocation of San Bernardino kangaroo rat. Results of these studies are expected to be of use to the District and other government agencies in mitigating future projects. SBCTA will pay the Trust \$324,491.69 for these services, and the Trust will subcontract for tasks that require specialized permits for work with San Bernardino kangaroo rat.

FISCAL IMPACT

Execution of the Conservation Easement Deed and the Endowment Agreement for the Deposit, Disbursement, and Use of Funds for Wasting and Non-Wasting Endowments would result in a payment of \$567,000 to the District for 4.2 acres of land in the District's Community Mitigation Program. In addition, support of SBCTA's State Route 210 Mixed Flow Lane Addition Project would result in an additional payment of \$509,142.96 to the Trust. Results of the research on SBKR translocation would be used to inform and support future District projects and have the potential for future savings and schedule improvement for Wash Plan participants.

POTENTIAL MOTIONS

1. Authorize the General Manager to execute the Conservation Easement Deed and the Endowment Agreement for the Deposit, Disbursement, and use of Funds for Wasting and Non-Wasting Endowments related to the San Bernardino County Transportation Authority's (SBCTA) State Route 210 Mixed Flow Lane Addition Project.

2. Authorize the General Manager to execute the Conservation Easement Deeds and Endowment Agreements for the current project and future projects using standard terms and conditions or with modifications approved by District Counsel.
3. Do not authorize the General Manager to execute the Conservation Easement Deed and the Endowment Agreement related to the San Bernardino County Transportation Authority's (SBCTA) State Route 210 Mixed Flow Lane Addition Project.

ATTACHMENTS OR MATERIALS

- 1) Conservation Easement Deed for SBCTA's State Route 210 Mixed Flow Lane Addition Project
- 2) Endowment Agreement for the Deposit, Disbursement, and use of Funds for Wasting and Non-Wasting Endowments related to the SBCTA's State Route 210 Mixed Flow Lane Addition Project

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

San Bernardino Valley Conservation Trust
1630 West Redlands Boulevard, Suite A
Redlands, CA 92373-8032
Attn: General Manager

Space Above Line for Recorder's Use Only
Exempt From Recording Fees under Government Code section 6103

**CONSERVATION EASEMENT DEED
(Including Third-Party Beneficiary)**

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of the _____ day of _____, 202_, by and between the San Bernardino Valley Water Conservation District ("SBVWCD"), in favor of the San Bernardino Valley Conservation Trust "Trust", in cooperation with San Bernardino County Transportation Authority ("Authority") with reference to the following facts:

RECITALS

A. SBVWCD is the owner of certain real property containing approximately 4.2 acres, located in San Bernardino County, State of California ("Property"), more specifically described and depicted in **Exhibits A and B** attached to this Conservation Easement and incorporated in it by this reference. District is the sponsor and lead agency for the Upper Santa Ana River Wash Habitat Conservation Plan ("Wash Plan HCP"). The Wash Plan HCP has been formulated, processed, and sponsored by the District, to set habitat management, enhancement, operation, and maintenance responsibilities in connection with a larger "Wash Plan Preserve" defined therein, of which the Property is a part.

B. Trust is a 501(c)(3) corporation, whose duties and purposes include holding and managing lands, moneys, and conservation easements over property with habitat values for threatened or endangered species under the Federal Endangered Species Act 16 U.S.C. sections 1531 et seq., and the California Endangered Species Act, California Fish and Game Code sections 2050 et seq., in, and to further, compliance with various permitting and regulatory habitat maintenance, enhancement, and protection requirements imposed upon public and private projects that may or do result in impacts to protected biological resources.

C. Authority is a transportation authority created under the San Bernardino County Transportation Authority Consolidation Act of 2017, Public Utilities Code section 130800 et

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seq., which proposes the State Route 210 Mixed Flow Lane Addition Project to widen the existing segment of SR-210 from Sterling Avenue to San Bernardino Avenue from four mixed flow lanes to six mixed flow lanes with the addition of one mixed flow land in each direction within the median (“Project”). Through the course of securing Project permits and entitlements, various habitat enhancement, preservation, management, and mitigation requirements were offered by or imposed upon Authority by Benefitting Agencies, as a condition to allowing the Project to go forward. Authority, SBVWCD and Trust have identified SBVWCD land resources that are or may be suitable for meeting these requirements, which may be performed and funded by Trust to implement and effectuate thereon species and habitat management measures which have been required to offset biological impacts of the Project.

D. The Property is located within the Wash Plan Preserve” as designated and directed under the Wash Plan HCP. Authority, has consulted with the applicable Benefitting Agency (defined below), and determined that the Property, which is owned by District and to be managed by Trust within the Wash Plan Preserve, is appropriate for offsetting the biological and habitat impacts from the Project, and for attempting to meet the biological and habitat requirements for the Project, under Agency’s applicable permitting regarding same. The Property possesses wildlife and habitat values of great importance to Trust, the people of the State of California and the people of the United States. The Property will provide or contribute to high quality natural, enhanced and/or restored habitat for one or more the following species: Slender-horned spineflower, Santa Ana River woolly-star, cactus wren, coastal California gnatcatcher, and San Bernardino kangaroo rat (collectively “Covered Species”). Preserving habitat for the Covered Species comprises the “Conservation Values” of the Property.

E. The United States Fish and Wildlife Service (“USFWS”), an agency within the United States Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of some or all of these species within the United States pursuant to the federal Endangered Species Act, 16 U.S.C. Section 1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. Section 742(f), *et seq.*, and other provisions of federal law. USFWS has jurisdiction to issue incidental take permits pursuant to Section 10 of the ESA. USFWS is a third party beneficiary of this Conservation Easement, with regulatory oversight over the resources that will be protected hereunder.

F. California Department of Fish and Wildlife (“CDFW”) has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of some or all of the Covered Species pursuant to California Fish and Game Code Section 1802. CDFW issues incidental take permits pursuant to California Fish and Game Code section 2081(b), and consistency determinations under California Fish and Game code section 2080.1, relating to projects that may impact protected biological resources. CDFW is a third party beneficiary of this Conservation Easement, with regulatory oversight over the resources that will be protected hereunder.

G. The applicable regulatory resource agencies (CDFW, USFWS, or others) with enforcement oversight for the Project, and for compliance with all mitigation and habitat preservation, enhancement, and management requirements imposed thereon the Project through permitting, are California Department of Fish and Wildlife and U.S. Fish and Wildlife Service. Such agency or agencies are referred to collectively hereafter as the “Benefitting Agency.”

H. SBVWCD prepared and submitted an Incidental Take Permit (“ITP”) application to USFWS and prepared the Wash Plan HCP, of which the Property is a part. The Wash Plan HCP was prepared in accordance with USFWS guidance provided in the 1996 Habitat Conservation Planning Handbook (“HCP Handbook”), the 2000 Addendum to the HCP Handbook and the revised 2016 HCP Handbook. The Wash Plan HCP includes avoidance, minimization, and mitigation measures for each of the Covered Species and accomplishes the following:

Provides for the conservation of the Covered Species and their habitat within the Plan Area as mitigation for the effects of “Covered Activities” listed in the Wash Plan HCP.

Fulfills the requirements for an ITP as specified in Section 10(a)(1)(B) of the Federal Endangered Species Act (“FESA”) and FESA implementing regulations (Code of Federal Regulations, Title 50, Sections 17.22(b)(2)(i) and 17.32(b)(2)(i).

Supports SBVWCD’s request to California Department of Fish and Wildlife (“CDFW”) for an ITP pursuant to Section 2081(b) of the California Endangered Species Act (“CESA”).

Informs a FESA Section 7 consultation between USFWS and the U.S. Bureau of Land Management regarding effects on listed species on federal lands in connection with activities covered by the Wash Plan HCP.

Fulfills the requirements of the 2008 Upper Santa Ana River HCP Wash Land Management and Habitat Conservation Plan and its certified Environmental Impact Report regarding compliance with FESA and CESA and the identification of measures to avoid, minimize, mitigate, and monitor effects on the Covered Species.

I. The Benefitting Agency has reviewed the Project and its biological impacts, and has determined that a conservation easement over the Property, to be held by the Trust, and administered in a manner that complies with the District’s Wash Plan HCP and applicable related permits and implementing agreements for the Wash Plan, will satisfy the species and habitat maintenance, enhancement, and protection requirements imposed upon the Project.

J. Benefitting Agency has reviewed the Project and its biological impacts, and have determined that a conservation easement over the Property, to be held by the Trust, and administered in a manner that complies with the Wash Plan HCP and applicable related permits and implementing agreements for the Wash Plan, will satisfy the species and habitat maintenance, enhancement, and protection requirements imposed upon the Project.

K. Trust is authorized to hold this conservation easement pursuant to California Civil Code Section 815.3 and Government Code Section 65965. Specifically, Trust is (i) a tax-exempt nonprofit organization qualified under section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California; (ii) a “qualified organization” as defined in section 170(h) (3) of the Internal Revenue Code; and (iii) an organization which has as its primary and principal purpose and activity the protection and preservation of natural lands or resources in its natural, scenic, agricultural, forested, or open space condition or use.

L. SBVWCD, Trust, and Authority have, concurrently with this Conservation Easement, entered into an Endowment Agreement, whereby Authority shall pay, directly to Trust, the amount necessary to implement the approved Habitat Management and Monitoring Plan (HMMP) and create a non-wasting endowment to fund, in perpetuity, the costs of the species and habitat management, preservation, and administration, consistent with the standards and requirements of the Wash Plan HCP and related agreements. Trust has, as part of such agreement, committed to hold, invest, preserve, and manage such funds in such a manner as its proceeds shall be available for, and restricted to accomplishing such purposes.

NOW, THEREFORE, for good and valuable consideration paid by Authority to SBVWCD, the receipt and sufficiency of which is hereby acknowledged, and pursuant to the laws of the United States and the State of California, including California Civil Code Sections 815, *et seq.*, SBVWCD hereby voluntarily grants and conveys to Trust a Conservation Easement in perpetuity over the Property, as follows (“Conservation Easement”).

1. Purposes.

The purposes of this Conservation Easement are to ensure that the Property will be retained forever in a natural condition as contemplated in the Wash Plan HCP, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property.

SBVWCD and Trust intend that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of Covered Species and their habitats in accordance with the Wash Plan HCP.

2. Trust’s Rights.

To accomplish the purposes of this Conservation Easement, SBVWCD hereby grants and conveys the following rights to Trust, and to the Benefitting Agency as a third party beneficiary:

(a) To preserve and protect the Conservation Values of the Property in perpetuity.

(b) To access and enter the Property at all reasonable times, in order to (1) monitor compliance with and otherwise implement and enforce the terms of this Conservation Easement and the Wash Plan HCP, (2) inspect the Property, and conduct surveys, trapping,

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ground verifications, or non-invasive scientific research (3) exercise and enforce the rights which are granted to Trust herein; it being understood that such access and entry will be made in a manner that will not interfere unreasonably with the operations and permitted use(s) or quiet enjoyment of the Property by SBVWCD, its successors in interest, or any legally recognized user(s) of the Property.

(c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to restore or require the restoration such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement.

(d) To implement the Wash Plan HCP, including habitat modifications, maintenance, monitoring, and reporting, except that this shall impose no affirmative obligation on the part of the Benefitting Agency not otherwise imposed by law.

(e) To require that all mineral, air and water rights as Trust deems necessary to preserve and protect the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement.

(f) Provided Trust gives SBVWCD prior written notice, the right to conduct habitat studies, research, and monitoring on the Property; it being understood and agreed that (1) such studies, research, and monitoring will be made in a manner that will not interfere unreasonably with the permitted use(s) or enjoyment of the Property and (2) Trust shall carry out such studies, research, and monitoring in a manner which minimizes as much as reasonably possible harm to the Conservation Values of the Property.

(g) The right to enjoin any activity on the Property or other use of the Property that is inconsistent with the Conservation Values of the Property and/or the Wash Plan HCP.

(h) All present and future development rights appurtenant to, allocated, implied, reserved or inherent in the Property are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property.

3. Prohibited Uses.

Any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and/or the Wash Plan HCP is prohibited. Without limiting the generality of the foregoing, the following uses and activities by SBVWCD, Trust, and third parties are expressly prohibited:

(a) Any and all activities and uses which may impair or interfere with the purposes of this Conservation Easement, including unseasonable watering; use of fertilizers, pesticides, biocides, herbicides or other agricultural chemicals; weed abatement activities; and incompatible fire protection activities except as needed to manage the land for its Conservation

Easement purposes.

(b) Any activity conducted by a third party that interferes with the Conservation Values, unless specifically permitted as part of a Covered Activity in the Wash Plan HCP.

(c) Collection and handling of the Wash Plan HCP Covered Species unless specifically required as a component of the biological monitoring, adaptive management and/or scientific research. Separate authorization from USFWS or CDFW as appropriate is required for unrelated collection and handling of any Covered Species.

(d) Take of Wash Plan HCP Covered Species, species proposed for federal listing, state-listed species, or state candidate species as a result of the use of herbicides or other pesticides, or other chemical agents except as needed to manage the land for its Conservation Easement purposes.

(e) Use of off-road vehicles and use of any other motorized vehicles except on existing maintenance or other roadways, and except as necessary to implement the Conservation Values or other covered activities.

(f) Unseasonable watering; use of chemical fertilizers, pesticides, biocides, herbicides, rodenticides, fungicides or other agents; weed abatement activities; incompatible fire protection activities; agricultural activity of any kind, and any and all other activities and uses which may adversely affect the Conservation Values of the Property or otherwise interfere with the purposes of this Conservation Easement except as specifically provided in the Wash Plan HCP.

(g) Recreational activities, including, but not limited to, horseback riding, biking, hunting or fishing, unless such activities are consistent with the purposes of this Conservation Easement and specifically permitted in the Wash Plan HCP, such as for trails, and then only on such areas as the Wash Plan HCP and related agreements permit such uses.

(h) Commercial, industrial, residential, or institutional structures or uses.

(i) Any legal or de facto division, subdivision or partitioning of the Property.

(j) Construction, reconstruction, erecting or placement of any building, billboard or sign, or any other structure or improvement of any kind, except such signage and barriers as may be consistent with the Wash Plan HCP for the designation or protection of habitat preservation and mitigation areas, or trails or other uses permitted under the Wash Plan HCP.

(k) Depositing, stockpiling, or accumulating any soil, sand, gravel, trash, ashes, refuse, waste, bio-solids or any other materials except as specifically permitted in the Wash Plan HCP.

(l) Planting, introduction or dispersal of non-native or exotic plant or animal species, except as specifically permitted in the Wash Plan HCP.

(m) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sand, gravel, rock or other material on or below the surface of the Property, or granting or authorizing surface entry for any of these purposes, except as expressly permitted in the Wash Plan HCP.

(n) Altering the surface or general topography of the Property, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Property with concrete, asphalt or any other impervious material, except for those habitat management and/or recreation activities specified in the Wash Plan HCP.

(o) Removing, destroying, or cutting of trees, shrubs or other native vegetation, except as required by law for (i) fire breaks, (ii) maintenance of existing foot trails or roads, or (iii) prevention or treatment of disease; and except for activities as specifically provided in the Wash Plan HCP.

(p) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and any activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters, except as expressly permitted in the Wash Plan HCP.

(q) Except as may be consistent with the Wash Plan HCP, and without the prior written consent of Trust and the Benefitting Agency, which Trust and the Benefitting Agency, and each of them, may withhold in the exercise of reasonable discretion, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any public or private water purveyor or water district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property.

(r) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to SBVWCD, the Property, or the use or activity in question.

4. Trust's Duties.

(a) To ensure that the purposes of this Conservation Easement as described in Section 1 are being accomplished, Trust and its successors and assigns shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may

degrade or harm the Conservation Values of the Property and shall perform compliance monitoring and reporting to the Benefitting Agency, as described in and to the extent and format required in the Wash Plan HCP, including the following:

(1) Periodic accounting of the acreage, type, and location of vegetation communities and species habitat conserved and impacted by permitted land uses and other Covered Activities of the Wash Plan HCP within their respective portions of the Plan Area.

(2) At the end of each periodic reporting period, tabulate and summarize all impacts that have occurred by vegetation community and species habitat type.

(3) Develop and maintain a conservation tracking and reporting system to ensure that conservation activities are implemented in advance of planned impacts identified in the Wash Plan HCP.

(4) Ensure that Wash Plan conservation stays ahead of ground-disturbing impacts by a minimum of five (5) percent, pursuant to the Wash Plan HCP.

(5) Fence Installation and Maintenance: [Intentionally omitted as these area are within access limited lands].

5. SBVWCD's Duties.

SBVWCD shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property or that are otherwise inconsistent with this Conservation Easement. In addition, SBVWCD shall undertake all necessary actions to perfect and defend Trust's rights under Section 2 of this Conservation Easement, and to observe and carry out the obligations of SBVWCD under the Wash Plan HCP.

6. Authority's Duties. Authority shall be responsible for paying to SBVWCD the agreed amount of compensation, prior to the recordation of this Conservation Easement, as may be required by SBVWCD as consideration for the dedication and transfer of this Conservation Easement to the Trust. Authority shall, prior to the recordation of this Conservation Easement, likewise pay all sums required in the Endowment Agreement to fund the approved HMMP and a non-wasting endowment to cover, in perpetuity, the costs of habitat management and administration of the Property consistent with the requirements of the Wash Plan HCP and related agreements. Authority shall also pay all costs to SBVWCD, and Trust, incurred in the preparation, negotiation, review, and processing of the Conservation Easement, the Endowment Agreement, and related documents. All amounts to be paid by Authority hereunder shall be paid prior to the recordation of this Conservation Easement, and recordation of this Conservation Easement is specifically conditioned upon, full, complete, and final payment of all such amounts by Authority. Upon payment of such amounts, and recordation of this Conservation Easement, Authority shall have no continuing obligation under this Conservation Easement, except for such obligations as are specifically identified as surviving, continuing obligations of Authority.

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7. No Representations, Warranties, or Guarantees by District or Trust. Neither District nor Trust makes any representation, warranty, guaranty, or indemnity to Authority that the Wash Plan HCP, or management of the Property pursuant to the requirements thereof, complies with Authority's obligations upon the Project imposed by the Benefitting Agency. Any such responsibilities, obligations, or requirements that are not met by the imposition of the Conservation Easement over the Property, its inclusion into the Wash Plan Preserve, or its management pursuant to the Wash Plan HCP are, and shall remain, the sole responsibility of Authority.

8. Reserved Rights.

SBVWCD reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from SBVWCD's ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or limited by, and are consistent with the purposes of, this Conservation Easement. SBVWCD specifically reserves the right to obtain and/or modify any and all permits on the Property so long as SBVWCD's permitting activities are consistent with this Conservation Easement and so long as SBVWCD gives Trust and the Benefitting Agency reasonable notice of any new or modified permits.

9. SBVWCD's Remedies.

If SBVWCD determines that a violation of this Conservation Easement has occurred or is threatened, or if SBVWCD determines that a violation of the Wash Plan HCP has occurred or is threatened, SBVWCD shall give written notice to Trust of such violation and demand in writing the cure of such violation ("Notice of Violation"). At the time of giving any such notice, SBVWCD shall give a copy of the notice to the Benefitting Agency. Notice shall be provided in the manner specified in the "Notices" section hereunder. If Trust fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Trust fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, SBVWCD reserves the right to carry out such activity on the Property itself subject to the following conditions: (1) SBVWCD shall first give Trust notice of the proposed activity in writing; (2) SBVWCD shall carry out such activity in a manner which is consistent with the Conservation Values of this Conservation Easement.

If Trust fails to cure the violation within thirty (30) days after receipt of a Notice of Violation, or if the cure reasonably requires more than thirty (30) days to complete and Trust fails to begin the cure within the thirty (30)-day period or fails to continue diligently to complete the cure, SBVWCD also reserves the right to bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which SBVWCD may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable

relief, including but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Trust, SBVWCD may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If SBVWCD, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, SBVWCD may pursue its remedies under this Conservation Easement without prior notice to Trust or without waiting for the period provided for cure to expire. SBVWCD shall provide the Benefitting Agency with reasonable notice of any such action. SBVWCD's rights under this section apply equally to actual or threatened violations of this Conservation Easement.

Trust agrees that SBVWCD's remedies at law for any violation of this Conservation Easement are inadequate and that SBVWCD shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which SBVWCD may be entitled, including specific performance of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. SBVWCD's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to the remedies set forth in California Civil Code Section 815, *et seq.* The failure of SBVWCD to discover a violation or to take immediate legal action shall not bar SBVWCD from taking such action at a later time.

The Benefitting Agency, as a third party beneficiary of this Conservation Easement, shall have the same rights and remedies as SBVWCD under this Section 8. All enforcement rights and remedies conveyed to SBVWCD under this Conservation Easement shall extend to and are enforceable by the Benefitting Agency. These enforcement rights are in addition to, and do not limit, the rights of the Benefitting Agency to enforcement under the applicable permitting for the Project. To the extent the Benefitting Agency is the CDFW, and if at any time in the future SBVWCD or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, despite the provisions of Civil Code section 815.7, the California Attorney General has standing as an interested party in any proceeding affecting this Conservation Easement.

(a) Costs of Enforcement.

All costs incurred by SBVWCD, where SBVWCD is the prevailing party, in enforcing the terms of this Conservation Easement against Trust, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by Trust.

(b) SBVWCD's Discretion.

Enforcement of the terms of this Conservation Easement by SBVWCD shall be at the discretion of SBVWCD, and any forbearance by SBVWCD to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation

Easement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any rights of SBVWCD under this Conservation Easement. No delay or omission by SBVWCD in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(c) Acts Beyond Trust's Control.

Nothing contained in this Conservation Easement shall be construed to entitle SBVWCD to bring any action against Trust for any injury to or change in the Property resulting from (i) any natural cause beyond Trust's control, including, without limitation, fire not caused by Trust, flood, storm, and earth movement, or any prudent action taken by Trust under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (ii) acts by SBVWCD or its employees.

(d) Mediation. Except in cases where injunctive relief is being sought, or where emergency action is necessary and authorized under the terms of this Conservation Easement, SBVWCD and Trust hereby agree to try first in good faith to settle any dispute by non-binding mediation if a dispute arises from or relates to the terms and provisions of this Conservation Easement or any other matter referred to herein.

(e) Notice of Conflict.

If SBVWCD receives a Notice of Violation from the Benefitting Agency with which it is impossible for SBVWCD to comply consistent with any prior uncured Notice(s) of Violation, SBVWCD shall give written notice of the conflict (hereinafter "Notice of Conflict") to the Benefitting Agency. In order to be a valid, a Notice of Conflict shall be given within fifteen (15) days of the date SBVWCD receives a conflicting Notice of Violation, shall include copies of the conflicting Notices of Violation, and shall describe the conflict with specificity, including how the conflict makes compliance with the uncured Notice(s) of Violation impossible. Upon issuing a valid Notice of Conflict, SBVWCD shall not be required to comply with the conflicting Notices of Violation until such time as the entity or entities issuing said conflicting Notices of Violation issue(s) revise Notice(s) of Violation that resolve the conflict. Upon receipt of a revised Notice of Violation, SBVWCD shall comply with such notice within the time period(s) described in the first grammatical paragraph of this Section. The failure of SBVWCD to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall constitute a waiver of SBVWCD's ability to claim a conflict.

10. Access.

This Conservation Easement does not convey a general right of access to the public.

11. Trust Costs and Liabilities.

Trust retains all responsibilities and shall bear all costs and liabilities of any kind related to the preparation, enhancement, ownership, operation, upkeep, and maintenance of the Property and its management consistent with the Wash Plan HCP. Trust agrees that neither

SBVWCD, Authority, nor the Benefitting Agency shall have any duty or responsibility for the operation, upkeep or maintenance of the Property, the monitoring of hazardous conditions on it, or the protection of Trust, the public or any third parties from risks relating to conditions on the Property, except as specifically identified in this Conservation Easement.

12. SBVWCD Costs and Liabilities.

SBVWCD remains solely responsible for obtaining and complying with any applicable governmental permits and approvals required for any activity or use reserved to SBVWCD as permitted by this Conservation Easement, and any such activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency laws, statutes, ordinances, rules, regulations, orders and requirements.

(a) Taxes; No Liens.

Trust shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority, including possessory interest taxes, (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish SBVWCD with satisfactory evidence of payment upon request. Trust shall keep the Property free from any liens, including those arising out of any obligations incurred by Trust for any labor or materials furnished or alleged to have been furnished to or for Trust at or for use on the Property.

(b) Hold Harmless.

(1) SBVWCD and Authority shall hold harmless, protect and indemnify Trust and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Trust Indemnified Party" and collectively, "Trust Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Trust or any of its employees; (ii) the obligations specified in Sections 5; and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Trust's Indemnified Parties by reason of any such Claim, SBVWCD shall, at the election of and upon written notice from Trust, defend such action or proceeding by counsel reasonably acceptable to the Trust's Indemnified Party. As to Authority, the provisions of this paragraph shall survive recordation of this Conservation Easement.

(2) SBVWCD and Trust shall hold harmless, protect and indemnify the Benefitting Agency, and their respective directors, officers, employees, agents, contractors (each a "Third-Party Beneficiary Indemnified Party" and collectively, "Third-Party Beneficiary Indemnified Parties") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from

any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause and (ii) the existence or administration of this Conservation Easement. *Provided, however,* that the indemnification in this Section 10(b)(2) shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Claim due solely to the negligence or willful misconduct of that Third-Party Beneficiary Indemnified Party or any of its employees. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any Claim to which the indemnification in this Section 19(b)(2) applies, then at the election of and upon written notice from the Third-Party Beneficiary Indemnified Party, SBVWCD shall defend such action or proceeding by counsel reasonably acceptable to the applicable Third-Party Beneficiary Indemnified Party or reimburse the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding.

(c) Extinguishment.

If circumstances arise in the future that render the preservation of Conservation Values, including habitat functions and values, or other purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(d) Condemnation.

Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is “property appropriated to public use,” as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, *only* as provided in Code of Civil Procedure section 1240.055. The Benefitting Agency is a public entity that imposed conditions on approval of a project that were satisfied, in whole or in part, by the creation of this Conservation Easement. If any person seeks to acquire the Property for public use, Trust and SBVWCD shall provide notice to the Benefitting Agency, and comply with all obligations of the holder of a conservation easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with Government Code section 65966(j). The purposes of this Conservation Easement are presumed to be the best and most necessary public use as defined at California Code of Civil Procedure Section 1240.680, notwithstanding Code of Civil Procedure Sections 1240.690 and 1240.700.

13. Transfer of Conservation Easement or Property.

(a) Conservation Easement.

This Conservation Easement may be assigned or transferred by Trust only upon prior written approval of SBVWCD and the Benefitting Agency, which approval shall not be unreasonably withheld or delayed, but Trust shall give SBVWCD and the Benefitting Agency at least sixty (60) days prior written notice of the proposed assignment or transfer. Benefitting

Authority approval shall be required of any transfer of the Property, including such transfers as may occur by operation of law, such as changes of boundaries of reorganizations ordered under the Cortese-Knox-Hertzberg Local Government Reorganization Act. Trust may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to California Civil Code Section 815.3 and Government Code Section 65965 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Benefitting Agency. Trust shall require the assignee to record the assignment in the official records of San Bernardino County. The failure of Trust to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

(b) Property.

SBVWCD agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which SBVWCD divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. SBVWCD agrees that the deed or other legal instrument shall also incorporate by reference the Wash Plan HCP, and any amendment(s) to the Wash Plan HCP. SBVWCD further agrees to give written notice to Trust, and and/or Benefitting Agency, of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Trust and and/or Benefitting Agency shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it) and the Wash Plan HCP. The failure of SBVWCD to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

14. Merger.

The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless SBVWCD, Trust, and the Benefitting Agency otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Property.

15. Notices.

Any notice, demand, request, consent, approval, or other communication that SBVWCD or Trust desires or is required to give to the other shall be in writing, with a copy to USFWS, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To SBVWCD: San Bernardino Valley Water Conservation District
1630 West Redlands Boulevard, Suite A
Redlands, California 92373

Attn: Daniel Cozad

With Copy To: David B. Cosgrove
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626

To Trust : San Bernardino Valley Conservation Trust
1630 West Redlands Boulevard, Suite A
Redlands, CA 92373-8032
Attn: Corporate Secretary

To Authority: : San Bernardino County Transportation Authority
1170 West 3rd Street, 2nd floor
San Bernardino, CA 92410
Attn: Paula Beauchamp

To the Benefitting Agency

To USFWS: United States Fish and Wildlife Service
Palm Springs Field Office
777 E. Tahquitz Canyon Way, Suite 208
Palm Springs, CA 92262
Attn: Field Supervisor

To CDFW: California Department of Fish and Wildlife
3602 Inland Empire Blvd, Suite C-220
Ontario, CA 91764
Attn: Kimberly Freeburn

or to such other address a party or the Benefitting Agency may designate by written notice to SBVWCD, Trust and the Benefitting Agency. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

16. Amendment.

This Conservation Easement may be amended only by mutual written agreement of SBVWCD and Trust and written approval of the Benefitting Agency, which approval shall not

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be unreasonably withheld or delayed. SBVWCD and Trust shall provide the Benefitting Agency with 60-days advance notification before any action is taken to amend this Conservation Easement. Any such amendment shall be consistent with the purposes of this Conservation Easement and applicable Federal or California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of San Bernardino County, and Trust shall promptly provide a conformed copy of the recorded amendment to the SBVWCD and the Benefitting Agency.

17. Additional Provisions.

(a) Controlling Law.

The interpretation and performance of this Conservation Easement shall be governed by the laws of the United States and the State of California, disregarding the conflicts of law principles of such state.

(b) Liberal Construction.

Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to effect the purposes of this Conservation Easement and the policy and purpose of California Civil Code Section 815, *et seq.* and Government Code Section 65965. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability.

If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to any other persons or circumstances.

(d) Entire Agreement.

This document, including the Wash Plan HCP which is hereby incorporated by reference in this document, including as it may be hereinafter amended, sets forth the entire agreement of the parties and USFWS with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in writing signed by all parties hereto.

(e) No Forfeiture.

Nothing contained in this Conservation Easement will result in a forfeiture or reversion of SBVWCD's title in any respect.

(f) Successors.

The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties and their respective personal representatives, heirs, successors, and assigns, and shall constitute a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations.

A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

(h) Captions.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(i) No Hazardous Materials Liability.

(1) SBVWCD represents and warrants that it has no knowledge or notice of any Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

(2) Without limiting the obligations of SBVWCD under this Conservation Easement, SBVWCD hereby releases and agrees to indemnify, protect and hold harmless the Authority, Trust, and Trust Indemnified Parties (defined in Section 10(b)) from and against any and all Claims (defined in Section 10(b)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Trust or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against Authority or any of the Trust Indemnified Parties by reason of any such Claim, SBVWCD shall, at the election of and upon written notice from the Authority or applicable Trust Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Authority, or Trust Indemnified Party, as applicable.

(3) Without limiting the obligations of SBVWCD under this Conservation Easement, SBVWCD hereby releases and agrees to indemnify, protect and hold harmless the Benefitting Agency from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to a Third-Party Beneficiary Indemnified Party with respect to any Hazardous Materials placed, disposed or released by that Third-Party

Beneficiary Indemnified Party or any of its employees. This release and indemnification includes, without limitation, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation of alleged violation of, or other failure to comply with, any Environmental Laws. If any action or proceeding is brought against any of the Third-Party Beneficiary Indemnified Parties by reason of any such Claim, SBVWCD shall, at the election and upon written notice from the applicable Third-Party Beneficiary Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Third-Party Beneficiary Indemnified Party for all charges incurred for services of the California Attorney General or the U.S. Department of Justice in defending the action or proceeding, as may be applicable.

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives to Authority, Trust, or Benefitting Agency any of the following:

(A) The obligations or liability of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, *et seq.*; hereinafter, "CERCLA"); or

(B) The obligations or liabilities of a person described in 42 U.S.C. § 9607(a)(3) or (4); or

(C) The obligations of a responsible person under any applicable Environmental Laws; or

(D) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(E) Any control over SBVWCD's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(5) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*; hereinafter, "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. §5101, *et seq.*; hereinafter, "HTA"); the Hazardous Waste Control Law (California Health & Safety Code § 25100, *et seq.*; hereinafter, "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code § 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(6) The term "Environmental Laws" includes, without limitation,

CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. SBVWCD represents, warrants and covenants to Trust and the Benefitting Agency that activities upon and use of the Property by SBVWCD, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(7) The provisions of this Section 16(i) shall survive the recordation of this Conservation Easement.

(j) Warranty.

SBVWCD represents and warrants that SBVWCD is the owner of the Property. SBVWCD also represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement.

(k) Additional Interests.

SBVWCD shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall SBVWCD grant, transfer, abandon or relinquish (each a "Transfer") any mineral, air, or water right or any water associated with the Property, without first notifying Trust and the Benefitting Agency 60-days in advance of such Transfer and obtaining the written consent of each of them. Such consent may be withheld if Trust, CDFW, or USFWS determine(s) that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Property. This Section 16(k) shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to and in compliance with this Conservation Easement. SBVWCD shall provide a copy of any recorded or unrecorded grant or Transfer document to the Trust and Benefitting Agency

(l) Recording.

Trust shall record this Conservation Easement in San Bernardino County, and may re-record it at any time as Trust deems necessary to preserve its rights in this Conservation Easement.

(m) Third-Party Beneficiary.

Authority, SBVWCD and Trust acknowledge that the Benefitting Agency (the "Third-Party Beneficiary") is a third party beneficiary of this Conservation Easement with the right of access to the Property and the right to enforce all of the rights and obligations of SBVWCD and Trust under this Conservation Easement.

IN WITNESS WHEREOF all parties have executed this Conservation Easement Deed the day and year first above written.

SBVWCD:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

TRUST:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

AUTHORITY:

BY: _____

NAME: _____

TITLE: _____

DATE: _____

ENDOWMENT AGREEMENT FOR THE DEPOSIT, DISBURSEMENT, AND USE OF FUNDS FOR WASTING AND NON-WASTING ENDOWMENTS

This Endowment Agreement for the Deposit, Disbursement, and Use of Funds for the Wasting and Non-wasting Endowment (“Agreement” or “Endowment Agreement”) is entered into effective this __ day of _____, 2020 (“Effective Date”), by and between the SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT (“District”), a California water conservation district; THE SAN BERNARDINO CONSERVATION TRUST, a 501(c)(3) nonprofit corporation, authorized under California Civil Code section 815.3 to receive, hold, and administer Conservation Easements and endowments (“Trust”); and SAN BERNARDINO COUNTY TRANSPORTATION AUTHORITY, a transportation authority created under the San Bernardino County Transportation Authority Consolidation Act of 2017, Public Utilities Code sections 130800 et seq., with its principal place of business at 1170 West 3rd Street, 2nd floor, San Bernardino, California, (“Authority”). This Agreement is entered into in consideration of all of the following:

A. District is a California water conservation district, duly formed and existing under Water Code sections 74000 et seq. of the California Water Code. District is the owner of certain real property located within the Santa Ana River Wash, consisting of 4.2 acres, located in San Bernardino County, California, and more specifically described and depicted in Exhibits A and B attached hereto (“Property”).

B. The Trust’s duties and purposes include holding and managing lands, monies, and Conservation Easements over property with habitat values for threatened or endangered species under the Federal Endangered Species Act, 16 U.S.C. sections 1531 et seq., and the California Endangered Species Act, California Fish and Game Code sections 2050 et seq. The Trust does so to further compliance with various permitting and regulatory habitat maintenance, enhancement, and protection requirements imposed upon public and private projects, that may or do result in impacts to protected biological resources.

C. The Authority proposes the State Route 210 Mixed Flow Lane Addition Project to widen the existing segment of SR-210 from Sterling Avenue to San Bernardino Avenue from four mixed flow lanes to six mixed flow lanes with the addition of one mixed flow land in each direction within the median (“Project”). Through the course of securing permits and development entitlements for the Project, various habitat enhancement, preservation, management, and mitigation requirements were offered by or imposed upon Authority, or are proposed to be offered by or imposed upon Authority, as a condition to allowing the Project to go forward.

D. District is the sponsor and lead agency for the Upper Santa Ana River Wash Plan Habitat Conservation Plan (“Wash Plan HCP”). The Wash Plan HCP has been formulated, processed, and sponsored by the District, to set habitat management, enhancement, operation, and maintenance responsibilities in connection with a larger “Wash Plan Preserve” defined therein, of which the Property is a part.

E. Authority, District, and Trust have identified District land ownership which is available and that is or may be suitable for meeting the habitat requirements for impacts to

biological resources from the Project. In this regard, the parties hereto have negotiated, and concurrently with this Agreement are entering into, an “Agreement for Acquisition of Conservation Easement” (“Conservation Easement Agreement”). The Conservation Easement Agreement provides for transfer of a Conservation Easement over the Property from District to Trust, contemplated to satisfy the habitat reserve requirements on the Project from its development entitlements. Under the Conservation Easement, the Trust will undertake to fulfill the habitat management, enhancement, and protection requirements set out therein, to meet the responsibilities of the Wash Plan HCP on and over the Property.

F. This Endowment Agreement is intended to provide a mechanism for funding of:

1. A wasting endowment, for the purpose of financing the implementation of the Habitat Management and Monitoring Plan (HMMP) developed for applicable Project permits, for responsibilities of habitat operation, enhancement, and preservation measures and strategies for a period of three (3) years, and administration of same. The wasting endowment shall be paid to the District for the benefit of the Trust, and released by the District to the Trust at the time of recording of the Conservation Easement from the District to the Trust.

2. A non-wasting endowment, for the purpose of financing the ongoing and recurring responsibilities of habitat operation, enhancement, and preservation measures and strategies, of the Conservation Easement, and administration of same. The non-wasting endowment shall be paid to the District for the benefit of the Trust, and released by the District to the Trust at the time of recording of the Conservation Easement from the District to the Trust.

H. This Endowment Agreement also defines various terms and obligations of Authority, District, and the Trust in connection with the Authority’s required deposit of funds needed by the District and the Trust to review, process, and approve the transfer of the Conservation Easement to the Trust, and to assure that the responsibilities of habitat preservation, maintenance, enhancement, and operation, consistent with the Wash Plan HCP, can be performed within the funding required under the non-wasting endowment.

NOW, THEREFORE, in consideration of all the foregoing, the parties do hereby agree as follows:

1. Review by District and Trust of Permitting by Authority.

(a) If not already provided, Authority shall, as soon as practical after the execution of this Endowment Agreement, provide to both District and Trust copies of all habitat mitigation dedication requirements and habitat preservation, maintenance, enhancement, and operational requirements on the Project, whether required by CDFW, USFWS, or either applicable regulatory agency. These requirements may come in the form of an HCP, HMMP, proposed conditions for any incidental take permit, Biological Opinion, subdivision or land use entitlement conditions of approval, or other development condition, exaction or requirement (collectively, “Biological Permit”). Copies of the Biological Permit shall be provided to the District and to the Trust without cost to either. The Biological Permit information shall include any property analysis record (“PAR”) or other cost estimates, any biological studies or reports

submitted in conjunction with or connection with securing the Biological Permit, and all correspondence with USFWS, CDFW, and any biological permitting agencies.

(b) The Trust and the District will work as quickly as possible but shall have 90 days from receipt of the Biological Permit to review all aspects thereof to determine consistency of same with the Wash Plan HCP, or the ability of the Trust or the District, respectively, to otherwise meet the requirements of the Biological Permit consistent with its performance of activities required under the Wash Plan HCP. The review of District and Trust as may be extended by mutual agreement of the parties and shall include, but not be limited to, all of the following:

(i) Consistency of the Biological Permit with Wash Plan HCP standards, strategies, and obligations.

(ii) Adequacy of the proposed wasting endowment to fund Biological Permit needs to ensure the property can be managed at the Wash Plan HCP Preserve standards.

(iii) Adequacy of the proposed non-wasting endowment to fund Wash Plan HCP activities on the Property pursuant to the Conservation Easement.

(iv) The adequacy and accuracy of the PAR in establishing the amount of the wasting and non-wasting endowments.

(v) The amount of acreage required for habitat set aside under the Biological Permit, and the availability of such acreage owned by the District, and eligible for the Conservation Easement.

(vi) The impact of the issuance of a Conservation Easement and the incorporation or joint administration of the Conservation Easement on the Property with the Wash Plan HCP, to assure both District and Trust can meet “stay ahead” mitigation obligations, and other obligations under the Wash Plan HCP Implementing Agreement.

(c) After such review, Trust and District, and each of them, shall advise Authority in writing as to whether it agrees to go forward with the acceptance of the non-wasting endowment, in response to Authority’s Biological Permit. Trust and District may approve, disapprove, or require in writing clarification of the provisions, conditions, or requirements of the Biological Permit. Authority shall provide final, signed copies of all permits utilizing Conservation Easement for mitigation to District and Trust prior to close of escrow.

(d) In the event both District and Trust approve requirements of the Biological Permit, the parties shall proceed to full implementation of this Agreement including payment by the Authority of the amounts set forth in Section 2 below. .

(e) In the event either Trust or District disapproves of the Biological Permit, this Endowment Agreement shall terminate, and all remaining deposit amounts unused to that point shall be refunded to Authority, without interest, and all continuing and further obligations between and among the parties shall cease.

(f) In the event either District or Trust require amendment or clarifications in writing to the requirements of the Biological Permit, the parties shall meet and confer in good faith, including as necessary seeking any clarification or modification to permit requirements from USFWS, CDFW, or other applicable regulatory agency. This meet and confer process shall proceed for a period not to exceed ninety (90) days, unless extended in writing by all parties. If the matter is resolved pursuant to this additional clarification, the parties shall proceed with approval and to close of escrow, if not, the Biological Permit shall be deemed disapproved.

(g) Review and approval of the Biological Permit and all matters incident thereto by the District and the Trust is solely for the purpose of determining the suitability, achievability, and compatibility of the Biological Permit requirements for inclusion into the Wash Plan HCP, and its approved habitat preservation, enhancement, operation, and management strategies. Neither District nor Trust makes any representation, warranty, guaranty, or indemnity to Authority that the Wash Plan HCP, or management of the Property pursuant to the requirements thereof, complies with Authority's obligations under the Biological Permit. Any responsibilities, obligations, or requirements of the Biological Permit that are not met by the imposition of the Conservation Easement over the Property, its inclusion into the Wash Plan Preserve, or its management pursuant to the Wash Plan HCP are, and shall remain, the sole responsibility of Authority.

2. Deposits with District.

Within 15 days of the approval of the Biological Permit, Authority shall provide payment to the District as follows: :

(a) The amount of Five Hundred Sixty-Seven Thousand Dollars (\$567,000) as payment for the Conservation Easement as such is described in the the Conservation Easement Agreement purchase price.

(b) The amount of Fifty-eight Thousand Two Hundred and Fifty Dollars (\$58,250) to fund the wasting endowment for Biological Permit start-up requirements on the property to ensure it is able to meet Wash Plan Preserve standards.

(c) The amount of Eighty-seven Thousand Sixty Dollars (\$87,060) , to fund the wasting endowment for Biological Permit initial and interim requirements on the property to ensure it is able to meet Wash Plan Preserve standards.

(d) The amount of Ninety-Seven Thousand Five Hundred Ninety-One Dollars (\$97,591), to fund the permanent non-wasting endowment for managing the Property consistent with the Wash Plan HCP.

(e) District shall record the Conservation Easement within 90 days of payment of the amounts set forth in 2(a)-(c) above.

(f) All parties shall deposit any additional amounts, or execute such additional documents or instructions, as may be required to effectuate the transfer and recording

of the Conservation Easement. All costs of document preparation, recording fees, title transfer fees, document transfer taxes, etc., shall be borne by Authority. At least three (3) days prior to recording of the Conservation Easement, District shall advise all parties of such costs, and Authority shall deposit all of same, and such deposit shall be a condition of the transfer and recording of the Conservation Easement.

3. Disbursements by District. Once all documents, funds, and other materials are deposited with District, and all conditions to this Endowment Agreement and the Conservation Easement have been met, District shall do all of the following:

(a) Disburse the amount of the wasting and non-wasting endowment to the Trust.

(b) Record the Conservation Easement in the name of the Trust.

(c) Refund any unused deposits or payments for costs to Authority.

4. Limitation of District Liability in Acting as Transactional Intermediary.

(a) In acting as the intermediary for the deposit of funds and documents hereunder, the District shall not be liable for any error of judgment or any act done, or omitted to be done, hereunder by it in the absence of its gross negligence or willful misconduct.

(b) The District may act in reliance upon any writing, instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and shall not be required to investigate the truth or accuracy of any statement contained in any such writing or instrument. Also, the District may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized so to do.

(c) The District shall be entitled to consult with legal counsel in the event that a question or dispute arises with regard to the construction of any of the provisions hereof, and shall incur no liability and shall be fully protected in acting in accordance with the advice or opinion of such counsel.

(d) The District shall not be required to use its own funds in the performance of any of its intermediary obligations or duties or the exercise of any of its rights or powers under this Agreement, and shall not be required to take any action which, in the District's sole and absolute judgment, could involve it in expense or liability unless furnished with security and indemnity which it deems, in its sole and absolute discretion, to be satisfactory.

(e) As an inducement for the District to perform the intermediary transactional duties specific in this Agreement, prior to or at the time such compensation is earned, Authority shall pay to the District compensation for its services hereunder.

(f) Except in the case of a final, non-appealable order of a court of competent jurisdiction which holds the District liable for the performance of its transactional intermediary duties hereunder, on account of its own negligence or willful misconduct, Authority shall

indemnify and hold harmless the District (and any successor) from and against any and all liabilities, losses, actions, suits or proceedings at law or in equity, and any other reasonable expenses, fees or charges of any character or nature, including, without limitation, any liability or losses, including attorneys' fees, resulting from any losses incurred by District, Trust, USFWS or CDFW, which the District may incur by reason of its acting as the transactional intermediary under this Agreement or arising out of the transfer of the Conservation Easement, or funds provided for hereunder. The terms of this paragraph shall survive termination of this Agreement.

5. Trust Holding, Use, and Disbursement of Funds. Upon disbursement of the non-wasting endowment funds to the Trust, the Trust shall hold, invest, use, apply, protect, and manage all such funds consistent with the applicable Investment Policies of the Trust, District, and any agreements between them, relating to the Wash Plan HCP or otherwise applicable to the Wash Plan Preserve.

6. Termination. Any party may terminate this Agreement prior to approval of the Biological Permit, by providing 30 days' written notice to each of the other parties. At the time of receipt of such notice of termination, all work being undertaken by either District or Trust in terms of review of Biological Permits, generation of agreements or amendments to same, preparation of deeds or other documents attendant to close of escrow, property inspections, surveys, or investigations, document review, or other inspections attendant to transfer of the Conservation Easement or the non-wasting endowment shall cease. Any deposits unused at that point shall be returned to Authority, without interest, as of the effective date of termination, but District and Trust shall retain all portions of any deposits necessary to reimburse both, or either, for all work done prior to the receipt of the notice of termination, or work or other charges incurred by District or Trust incident to the termination. All work product generated by District, Trust, or either of them during the course of such work shall be, and remain, the sole property of District or Trust, respectively. Any payments made by the Authority shall be returned to the Authority, without interest, within 30 days of the written notice provided in this Section.

7. Notices. All notices required to be provided hereunder shall be provided in writing, and either served personally, or sent by United States mail. Such notices shall be provided through either personal delivery, First-Class Mail, or overnight carrier, such as Federal Express, and all such notices shall be deemed effective on the 3rd day following mailing. Such notices shall also be provided by electronic mail delivery at the e-mail addresses listed below, but the calculated time hereunder for delivery of notices shall be from the written notice provided. Such notices shall be directed to the parties at the addresses, and to the attention of the persons, listed below, which designated recipients of notice or addresses may be changed by the parties from time to time by notice to the others in writing:

If to the District:	San Bernardino Valley Water Conservation District 1630 West Redlands Boulevard, Suite A Redlands, CA 92373-8032 Attention: General Manager e-mail: dcozad@sbvwcd.org
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If to the Trust:	San Bernardino Conservation Trust 1630 West Redlands Boulevard, Suite A
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Redlands, CA 92373-8032
Attention: Corporate Secretary
e-mail: dcozad@sbvwcd.org

If to Authority: San Bernardino County Transportation Authority
1170 West 3rd Street, 2nd floor
San Bernardino, CA 92410
Attention: Paula Beauchamp
e-mail: pbeauchamp@gosbcta.com

8. Entire Agreement. This Endowment Agreement, in conjunction with the Conservation Easement Agreement entered into concurrently herewith, contains the entire agreement of the parties hereto with respect to the matters contained herein, and supersedes all negotiations, prior discussions, and preliminary agreements or understandings, whether written or oral. No waiver or modification of this Endowment Agreement shall be binding unless consented to by all parties in writing.

9. Waiver. No waiver of any default shall constitute a waiver hereunder of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give any other party any contractual rights by custom, estoppel, or otherwise. Nothing herein is intended to, nor shall be construed as, any waiver by any party of any applicable Government Tort Claims Act requirements.

10. Cooperation and Further Acts. All parties hereto agree to use reasonable care and diligence to perform their respective obligations under this Endowment Agreement, and the Conservation Easement Agreement. All parties agree to act in good faith and execute all instruments, prepare all documents, and take all actions as may be reasonably necessary, appropriate, or convenient to carry out the purposes of this Endowment Agreement.

11. Governing Law. This Endowment Agreement shall be governed by, and construed under, the laws of the State of California.

12. Attorneys' Fees. In the event of any proceeding, in law or equity, to enforce any provision of this Endowment Agreement, or the related Conservation Easement Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees. The term "attorneys' fees" herein shall include reasonable costs for investigating the action, conducting discovery, cost of appeal, costs and fees for expert witnesses, and other normally allowable costs incurred in such litigation, whether or not such litigation or other proceeding is prosecuted to final judgment. Service of process on any party shall be made in any matter permitted by law, and shall be effective whether served inside or outside of California.

13. Construction. The language of this Endowment Agreement shall be accrued according to its fair meaning, and not for or against any party hereto based on authorship. The captions of the various sections and paragraphs hereunder are for convenience and ease of reference only, and do not define, limit, augment, or interpret the scope, content, or intent of this Endowment Agreement.

14. Severability. Each provision of this Endowment Agreement shall be severable from the whole. If any provision of this Endowment Agreement shall be found contrary to law, it is the intention of all the parties, and each of them, that the remainder of this Endowment Agreement shall continue in full force and effect.

15. Corporate Authority. Each party hereto represents to the others that the person whose signature appears below on its behalf has all requisite power and authority to execute and perform this Endowment Agreement, and to bind his or her respective party, and that in so doing, such party is not thereby in breach of any other contract or agreement.

16. Counterparts. This Endowment Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the parties hereto have entered into this Endowment Agreement as of the day and year first set forth above.

Date: _____ San Bernardino Valley Water Conservation District

By: _____
Its: _____

Date: _____ "TRUST"
San Bernardino Conservation Trust

By: _____
Its: _____

Date: _____ San Bernardino County Transportation Authority

By: _____
Its: _____