

**IN-LIEU FEE ENABLING INSTRUMENT**  
**INLAND EMPIRE RESOURCE CONSERVATION DISTRICT**  
**IN-LIEU FEE PROGRAM**

This In-Lieu Fee Enabling Instrument (“Instrument”) is made by and between Inland Empire Resource Conservation District (“Program Sponsor”), the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the U.S. Environmental Protection Agency (“USEPA”), and the California Regional Water Quality Control Board, Region 8 (“RWQCB”). The USACE, USEPA, and RWQCB comprise and are referred to jointly as the Interagency Review Team (“IRT”). The Program Sponsor and the IRT are hereinafter referred to jointly as the “Parties.”

**RECITALS**

- A. The Program Sponsor is responsible for the establishment, use, operation and maintenance of the Inland Empire Resource Conservation District In-Lieu Fee Program (the “Program”).
- B. USACE and USEPA have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq.* Waters of the U.S. include jurisdictional wetlands.
- C. RWQCB is charged with preserving, protecting, enhancing, and restoring water quality pursuant to section 401 of the Clean Water Act.
- D. The IRT is the interagency group which oversees the establishment, use, operation, and maintenance of the Program.
- E. The primary goal of the Program is to provide effective Compensatory Mitigation for the Functions and Services of Waters of the U.S. lost through authorized Impacts.
- F. The objectives of the Program are (1) to provide an alternative to permittee-responsible Compensatory Mitigation by implementing In-Lieu Fee (“ILF”) Projects adequate to meet current and expected demand for Credits in the Service Area; (2) create a Program that has a level of accountability commensurate with mitigation banks as specified in 33 C.F.R. Part 332; and (3) achieve ecological success on a watershed-basis by siting ILF Projects using the best available decision support tools, and by integrating ILF Projects with ongoing conservation activities being undertaken within the region.
- G. The mitigation plan, as referenced in 33 C.F.R. 332.4 and containing the requirements in paragraphs c2-c14 of that section, will be addressed in each proposed ILF Project by submissions required in Exhibits D-F of this Instrument (Development Plan, Interim Management Plan, Long-term Management Plan).

NOW, THEREFORE, in consideration of the foregoing Recitals, the Parties agree as follows:

## **AGREEMENT**

### **SECTION I. PURPOSE AND AUTHORITIES**

#### *A. Purpose*

The purpose of this Instrument is to establish guidelines, responsibilities, and standards for the establishment, use, operation, and maintenance of the Program. The Program will be used for Compensatory Mitigation for (1) unavoidable Impacts to Waters of the U.S. that result from activities authorized under section 404 of the Clean Water Act and section 401 of the Clean Water Act water quality certifications or (2) completed enforcement actions under the auspices of sections 404 and 401 of the Clean Water Act.

#### *B. Authorities*

The establishment, use, operation and maintenance of the Program will be carried out in accordance with the following authorities:

1. Federal Authorities
  - a. Clean Water Act (33 U.S.C. § 1251 *et seq.*);
  - b. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*);
  - c. Endangered Species Act (16 U.S.C. § 1531 *et seq.*);
  - d. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*);
  - e. National Historic Preservation Act (54 U.S.C. § 306108);
  - f. Regulatory Program of the USACE (33 C.F.R. Parts 320-332); and
  - g. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230).

2. Authority of the USACE

The USACE will make the final decision regarding the amount and type of Compensatory Mitigation to be required of federal permittees, and determine whether and how use of Credits from the Program is appropriate to compensate for unavoidable Impacts.

## SECTION II. DEFINITIONS

The initially-capitalized terms used and not defined elsewhere in this Instrument are defined as set forth below.

1. “Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Program Sponsor based upon annual report results and IRT review of overall Program performance and compliance.
2. “Advance Credits” means any Credits of the Program that are available for sale prior to being fulfilled in accordance with an approved Development Plan.
3. “Buffer” means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, stream, and lakes from disturbances associated with adjacent land uses.
4. “Compensatory Mitigation” means the Restoration, Establishment, Enhancement, and/or in certain circumstances Preservation of aquatic resources for the purposes of offsetting unavoidable Impacts which remain after all appropriate and practicable avoidance and minimization measures have been achieved.
5. “Conservation Easement” means a perpetual conservation easement, as defined by California Civil Code § 815.1, substantially in the form of **Exhibit H**.
6. “Credit” is a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at an ILF Project site(s). The measure of aquatic functions is based on the resources Restored, Established, Enhanced, or Preserved.
7. “Credit Release” means an action by the USACE to make specified Credits available for Transfer pursuant to this Instrument.
8. “Development Plan” is the document that formally establishes an ILF Project and stipulates the terms and conditions of its construction and habitat establishment or other activities required to be conducted on the ILF Project site to establish Credits. Each Development Plan will be bound by the terms and conditions of the Instrument by reference.
9. “Enhance” or “Enhancement” means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource Function(s). Enhancement results in the gain of selected aquatic resource Function(s), but may also lead to a decline in other aquatic resource Function(s). Enhancement does not result in a gain in aquatic resource area.

10. “Establish” or “Establishment” means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and Functions.
11. “Extraordinary Circumstances” shall mean an event or circumstance that has a material and detrimental impact on the ILF Project site or on the ability of Program Sponsor to attain Performance Standards and: (1) was neither foreseen nor foreseeable by the Program Sponsor or IRT agencies; and (2) neither Program Sponsor nor anyone acting on behalf or under the control of it caused or could have prevented; and (3) prevents Program Sponsor from achieving an objective or undertaking an action required of it under this Instrument. Extraordinary Circumstances excludes mere economic hardship.
12. “Functions” mean the physical, chemical, or biological processes that occur in ecosystems.
13. “ILF Project” means Compensatory Mitigation implemented by the Program Sponsor under the Program.
14. “Impacts” mean adverse effects.
15. “Interim Management Period” means the period from the date of the Instrument Amendment for the Development Plan for each ILF Project until all the Performance Standards in the Development Plan have been met.
16. “Interim Management Plan” means the document that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Program Sponsor during the Interim Management Period. Each Interim Management Plan will be bound by the terms and conditions of the Instrument by reference.
17. “Long-term Management Period” means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which each ILF Project is to be managed, monitored and maintained pursuant to the Long-term Management Plan.
18. “Long-term Management Plan” means the document that identifies specific land management activities that are required to be performed at each of the ILF Project sites, including, but not necessarily limited to, biological monitoring, improvements to biological carrying capacity, enforcement measures, and other actions designed to protect or improve the habitat values of the ILF Project site. Each Long-term Management Plan will be bound by the terms and conditions of the Instrument by reference.

19. “Performance Standards” means the minimum standards set forth in the Development Plan to define the successful development of Waters of the U.S.
20. “Phase I Environmental Site Assessment” is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard which is active at the time of the assessment.
21. “Preservation” means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.
22. “Program Account” means an account established by the Program Sponsor at an institution that is a member of the Federal Deposit Insurance Corporation and that is used by the Program Sponsor for the purpose of providing compensatory mitigation for Department of the Army permits.
23. “Program Establishment Date” is the date determined pursuant to Section IV.D., when the Program is considered established and Transfer of Advance Credits may begin.
24. “Property Assessment” means the written ILF Project site evaluation signed by the Program Sponsor, substantially in the form attached in **Exhibit I**.
25. “Remedial Action” means means any measures needed to remedy any failure to achieve the Performance Standards or any injury or adverse impact to the ILF Project site.
26. “Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area, Functions and services.
27. “Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource Function, but does not in a gain in aquatic resource area.
28. “Restore” or “Restoration” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

29. “RIBITS” means the Regulatory In-Lieu Fee and Bank Information Tracking System.
30. “Services” mean the benefits that human populations receive from Functions that occur in ecosystems.
31. “Service Area” means the geographic area(s) within which Impacts to Waters of the U.S. that occur may be compensated through Credits from the Program.
32. “Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the ILF Project site makes the lien or encumbrance subject to and of lower priority than the Conservation Easement or equivalent protection mechanism, even though the lien or encumbrance was recorded before the Conservation Easement or equivalent protection mechanism.
33. “Transfer” means the use, sale, or conveyance of Credits by the Program Sponsor.
34. “Waters of the U.S.” mean waterbodies, including wetlands, over which there is federal jurisdiction under section 404 of the Clean Water Act.

### **SECTION III. STIPULATIONS**

#### *A. Disclaimer*

This Instrument does not in any manner affect the statutory authorities and responsibilities of the Parties.

#### *B. Exhibits*

The following Exhibits are attached to and incorporated by this reference into this Instrument:

- A - Prioritization and Compensation Planning Framework
- B - Service Area
- C - Instrument Modification Procedure
- D - Development Plans
- E - Interim Management Plans
- F - Long-term Management Plans
- G - Statement of Sale of Credit
- H- Real Estate Instrument

- I- Property Assessment Form
- J- Credit Ledger Report Form

#### **SECTION IV. PROGRAM STRUCTURE**

##### *A. Framework*

This Instrument is intentionally broad and sets the framework under which Program sponsored ILF Projects will be identified, funded, operated, maintained and managed. The Instrument provides the authorization for the Program to provide Credits to be used as Compensatory Mitigation for Department of the Army permits and associated Clean Water Act section 401 water quality certifications or as a result of completed enforcement actions under the auspices of section 404 and 401 of the Clean Water Act. As ILF Projects are identified, the Program Sponsor will submit site-specific Development Plans, Interim Management Plans, and Long-term Management Plans to the USACE for review and approval as modifications to the Instrument through the process outlined in **Exhibit C**, and included in this Instrument as subparts of **Exhibits D-F**.

##### *B. Service Area*

The Service Area for the Program is defined as the Santa Ana River watershed, excluding the San Diego Creek watershed, shown on **Exhibit B**. This specific Service Area was chosen based on environmental considerations and the Program Sponsor's jurisdictional boundary.

##### *C. Program Account*

1. Upon the Instrument being fully executed by all of the Parties and prior to accepting any fees from federal permittees, the Program Sponsor must establish a Program Account. The Program Account will collect deposits from the sale of Credits, and will be used only for the comprehensive costs associated with site selection, design, acquisition, implementation, and management of ILF Projects, and administrative costs for the Program Sponsor. Administrative costs equal to 15% of each Credit sale will be allowed for the Program Sponsor to manage the Program. All interest and earnings from the Program Account will remain in that account for the purpose of providing Compensatory Mitigation for impacts to Waters of the U.S. Funds for the operation of the Program may be obtained from other sources and repaid to the Program Sponsor or such other sources from the Program Account as Credits are sold.
2. Complete budgets for individual ILF Projects will be approved as part of Development Plans.
3. Annual accounting reports will be presented by September 30<sup>th</sup> for approval by the USACE. Reports will include detailed summaries of Program Account deposits and disbursements for each ILF Project made over the previous state

fiscal year (July 1 – June 30) (Section VII). Any deviation in excess of ten percent from the approved budget will require USACE approval before additional funds are disbursed. The USACE may review Program Account records with 14 days written notice. When so requested, Program Sponsor shall provide all books, accounts, reports, files, and other records relating to the Program Account.

*D. Program Establishment Date*

The Program Establishment Date will occur and Transfer of Advance Credits may begin only after (1) the Instrument has been fully executed by all of the Parties and (2) the Program Account has been established. Within 30 days of the Program Establishment Date, the Program Sponsor shall upload the final, signed Instrument including all of its Exhibits, to RIBITS and provide an electronic copy each member of the IRT.

*E. ILF Projects*

Program Sponsor will identify potential ILF Projects consistent with the Instrument and submit a Development Plan, including a project budget, Interim Management Plan, and Long-term Management Plan to the USACE along with a written request for an Instrument Modification (**Exhibit C**). Program Sponsor will implement the ILF Projects upon approval and report annually to the IRT (Section VII).

*F. Establishment and Use of Credits*

In accordance with the provisions of this Instrument and upon satisfaction of the Credit Release schedule described in Development Plans (contained herein as subparts of **Exhibit D**) and in Section VI.C, Credits are available for Transfer as Compensatory Mitigation in accordance with all applicable requirements for permits or enforcement actions issued under section 404 of the Clean Water Act and associated Clean Water Act section 401 water quality certifications. The USACE, based on recommendations of the IRT, will determine the number of Credits available for each ILF Project based upon the approved design and the resulting habitats achieved, in accordance with the terms and conditions contained herein.

**SECTION V. ILF PROJECT ESTABLISHMENT AND OPERATION**

This section identifies the general framework in which individual ILF Projects will be established and operated. Each ILF Project will be approved individually, as detailed herein, and the specific requirements for its operation, monitoring, and management will meet the USACE standard operating procedures at the time of its approval. The Program Sponsor shall provide for access to the ILF Project site by members of the IRT or their agents or designees at reasonable times as necessary to conduct inspections and compliance monitoring with respect to the requirements of this Instrument. Inspecting parties shall not unreasonably disrupt or disturb activities on the ILF Project site, and will provide written notice within reasonable time prior to the inspection.



A. *Establishment*

1. Project Site Selection

All individual ILF Projects will be located within the Program Service Area. Program Sponsor will seek ILF Projects based on the prioritization and compensation planning framework outlined in **Exhibit A**.

2. Instrument Modifications

As ILF Projects are identified, Program Sponsor will prepare a Development Plan, including a project budget, Interim Management Plan, and Long-term Management Plan and submit a written request to the USACE to modify the Instrument. This process is outlined in **Exhibit C**.

3. Permits

The Program Sponsor will obtain all applicable permits and authorizations needed to construct and maintain the ILF Project(s). This Instrument does not constitute or substitute for any such approval.

4. Financial Assurances

Notwithstanding any other provision of this Instrument, the Program Sponsor's financial obligation for the Program will be limited to funds in the Program Account. The Program Sponsor will take the following actions to ensure funds are available to meet mitigation requirements for Credits Transferred:

- a. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account, and disbursed to Program Sponsor or others undertaking work under the Program Sponsor's oversight on ILF Project sites as work is accomplished to operate and monitor the individual ILF Projects.
- b. Funds outlined in approved ILF Project budgets will be earmarked, held in and disbursed from the Program Account to manage the individual ILF Project, including contingency and Remedial Actions.
- c. A financial assurance for each ILF Project in accordance with 33 C.F.R. 332.3(n).

Each approved ILF Project will have an identified schedule for the release of the financial assurances as the ILF Project meets its approved Performance Standards.

*B. Operation*

1. Development Plans

Program Sponsor shall be responsible for preparing Development Plans in accordance with **Exhibit D**. The Development Plans shall outline measurable objectives, Performance Standards, and monitoring requirements. Pre- and post-ILF Project implementation jurisdictional determination and delineations (as appropriate) and functional assessments will be completed using USACE-approved techniques. Development Plans must include a survey or other document acceptable to the USACE, completed by a professional land surveyor or other qualified person or entity, defining the ILF Project site, and a Property Assessment using the Form in **Exhibit I**. Upon approval of the Development Plan by the USACE, the Program Sponsor shall be responsible for implementing the plan.

2. Interim Management and Monitoring

Program Sponsor shall be responsible for preparing Interim Management Plans in accordance with **Exhibit E**. Upon approval of the Interim Management Plan by the USACE, the Program Sponsor shall be responsible for conducting management and monitoring activities according to the Interim Management Plan until completion of the Interim Management Period.

3. Long-term Management and Monitoring

ILF Projects shall be designed, to the maximum extent practicable, to be self-sustaining once Performance Standards have been achieved. Program Sponsor shall be responsible for preparing Long-term Management Plans in accordance with **Exhibit F**. Once the Interim Management Period is completed, the Program Sponsor shall implement long-term management and monitoring of the ILF Project site(s) according to the Long-term Management Plan. Program Sponsor shall be obligated to manage and monitor the ILF Project site in perpetuity to preserve its habitat and conservation values in accordance with this Instrument, the real estate instrument (e.g., Conservation Easement), and the Long-term Management Plan. Such activities shall be funded through the Program Account, including, but not limited to, the potential transfer of long-term management funds to be managed by the steward in a separate endowment account pursuant to 33 C.F.R. § 332.8(u)(3) and endowment management agreement approved by the USACE. Program Sponsor and the IRT members shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan which may be necessary or appropriate to better conserve the habitat and conservation values of the ILF Project site(s). During the Long-term Management Period, Program Sponsor shall be responsible for submitting annual reports to

each member of the IRT in accordance with Section VII.A of this Instrument. The Program Sponsor shall upload annual reports into RIBITS.

4. Remedial Action Plan

Prior to Program closure, if any Party discovers any failure to achieve the Performance Standards or any injury or adverse impact to the ILF Project site as Preserved, Established, Restored, or Enhanced, and the IRT does not determine that such damage is a result of Extraordinary Circumstances, the Party making the discovery shall notify the other Parties. The IRT may require the Program Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section VII.A. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

- a. Within 60 calendar days of the date of written notice from the IRT, the Program Sponsor shall develop a Remedial Action plan and submit it to each member of the IRT for written approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse impact to the ILF Project site and set forth a schedule within which the Program Sponsor will implement those actions. The Program Sponsor shall implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the IRT.
- b. If (A) the Program Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the IRT, in accordance with this section, or (B) a Remedial Action plan is agreed upon and implemented, but the conditions do not satisfy the plan's objective and measurable Performance Standards by the dates specified in the plan, then the IRT may find the ILF Sponsor in default pursuant to Section XII.B. and take action accordingly.
- c. If the USACE determines, in consultation with the other members of the IRT, that the Program is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this Instrument), then the USACE shall notify the Program Sponsor of its default pursuant to Section XII.B. and take action accordingly. Upon receipt of notification, Program Sponsor shall cease Credit Transfers immediately and is not authorized to resume Credit Transfers until notified in writing by the USACE.
- d. If there is damage to an ILF Project site as a result of Extraordinary Circumstances, the provisions of Section XII.A apply.

5. Long-term Ownership and Protection

Program Sponsor shall be responsible for ensuring long-term protection of each ILF Project through the use of real estate instruments in accordance with 33 C.F.R. 332.7(a). Program Sponsor will ensure that the real estate instrument is in place *prior to* ILF Project implementation, as stipulated in each Development Plan. The draft real estate instrument, substantially in the form of **Exhibit H**, shall be submitted to the IRT for review and USACE approval. The real estate instrument shall include, but is not limited to, assigning long-term management responsibility for the ILF Project and will, to the extent practicable, prohibit incompatible uses that might otherwise jeopardize the objectives of the ILF Project. A copy of the recorded real estate instrument shall be furnished to the USACE and become part of the official Program record. If any action is taken to void or modify an ILF Project real estate instrument, Program Sponsor must notify the USACE in writing.

## SECTION VI. CREDIT ACCOUNTING

A. *Advance Credits*

1. Upon the Program Establishment Date, Program Sponsor is permitted to Transfer fifty (50) Advance Credits. The number of Advance Credits that are approved for Transfer was developed in coordination with the USACE and other members of the IRT and is based on (1) the percentage of the projected mitigation opportunities within the Service Area as outlined in the compensation planning framework in **Exhibit A**, (2) the Program Sponsor's past performance for implementing Enhancement, Restoration, Establishment, and/or Preservation activities within the Service Area, and (3) the projected financing necessary to begin planning and implementation of ILF Projects. No more than 25%, or 18.75, Advance Credits may be Transferred and later fulfilled as Preservation Credits. At least 75% of the Advance Credits must be fulfilled as Establishment, Enhancement, Buffer and/or Restoration Credits.
2. Program Sponsor must stop Transferring Advance Credits when all fifty (50) Advanced Credits are Transferred; provided, however, that Program Sponsor may continue to Transfer Advance Credits if some of the previously Transferred Advance Credits have been released in accordance with the approved Credit Release schedule outlined in an ILF Project-specific Development Plan, as long as the total number of unreleased Advanced Credits Transferred at any time never exceeds fifty (50). Credits made available through such a Credit Release will become available for Transfer by Program Sponsor; provided that, before Program closure, the Program Sponsor shall have undertaken a sufficient number of ILF Projects to fulfill all of its Advance Credits. Once all Advance Credits are fulfilled, an equivalent number of Advance Credits may be made available for Transfer, at the discretion of the USACE.

3. Program Sponsor shall complete land acquisition and initial physical and biological improvements by the third full growing season after the Transfer of Advance Credits. If Program Sponsor fails to meet these deadlines, the USACE must either make a determination that more time is needed to plan and implement an ILF project or, if doing so would not be in the public interest, direct the Program Sponsor to disburse funds from the Program Account to provide alternative Compensatory Mitigation to fulfill those compensation obligations.

*B. Generation of Credits*

Each approved ILF Project Development Plan will include the method for determining the Credits generated by the individual ILF Project. Program Sponsor may only generate Credits from an ILF Project when there is a net benefit to aquatic resources at the site as determined by the difference between pre- and post-site conditions. Credit generation will be determined using the California Rapid Assessment Method or the functional assessment method as defined in the current USACE standard operating procedures. Preservation of existing waters of the United States that support a significant population of rare plant or animal species, or that are a rare aquatic resource type may be proposed to generate Credits. Credits may also be proposed for Preservation or improvements of riparian areas, Buffers, uplands, or any combination of the three, if the resources in these areas are essential to maintain the ecological viability of a water of the United States. Credits generated for Preservation and Buffers will be determined on a case-by-case basis by the USACE, in consultation with the other members of the IRT, in accordance with 33 C.F.R. 332.3(h) and (i).

*C. Credit Release*

Each approved ILF Project Development Plan will include a Credit Release schedule referenced to Performance Standards. As milestones in an individual ILF Project's Credit Release schedule are reached (i.e., Restoration, Establishment, Enhancement and/or Preservation is implemented), Advance Credits are converted to released Credits. At a minimum, Credits will not be released until the Program Sponsor has obtained USACE approval of the Development Plan for the ILF Project site, has achieved the applicable milestones in the Credit Release schedule, and has submitted a request for Credit Release to the USACE along with documentation substantiating achievement of the criteria for release to occur and Credit Releases have been approved by the USACE. If the ILF Project does not achieve the performance-based milestones, the USACE may modify the Credit Release schedule, including reducing the number of Credits.

1. Establishment, Enhancement, Restoration Credits. In general, the Credits for Establishment, Enhancement, and Restoration areas may be released according to the following schedule:
  - a. Up to 25% of anticipated Credits may be released upon approval of a Development Plan and recordation of a real estate instrument for the purpose of implementing an ILF Project.

- b. Up to an additional 25% of anticipated Credits may be released upon completion of improvements per the approved Development Plan and USACE approval of the as-built report.
  - c. Up to an additional 25% of anticipated Credits may be released incrementally upon achievement of short term (i.e., Years 2-4) Performance Standards.
  - d. The remaining generated Credits may be released upon achievement of long-term (i.e., Year 5) Performance Standards.
2. **Preservation and Buffer Credits.** In general, because Preservation and Buffers do not involve construction of improvements or meeting short term Performance Standards, up to 80% of anticipated Credits associated exclusively with Preservation and Buffers may be released upon acquisition and full legal protection of the lands to be Preserved. Up to an additional 20% of anticipated Credits may be released upon achievement of long-term Performance Standards, which, under normal circumstances, will be no later than five (5) years after the approval of the Development Plan for the site.

#### *D. Balance of Credits*

The Program will have available for Transfer the number of available Advance Credits for the Program, plus any released Credits generated by ILF Projects; provided that all Advanced Credit Transfers shall be fulfilled before Program closure.

#### *E. Fee Schedule*

The cost per unit of Credit must include the expected costs associated with the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources in the Service Area. These costs must be based on full cost accounting, and include, as appropriate, expenses such as land acquisition (including, without limitation, options to purchase), project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or adaptive management activities, as well as administration of the Program. This list is not meant to be exhaustive and may include other categories, as appropriate, as determined by the Program Sponsor on a case-by-case basis. The cost per unit of Credit must also take into account contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses. The cost per unit of Credit must also take into account the resources necessary for the long-term management, protection of the ILF Project, and enforcement of the long-term instrument or other protection mechanism. In addition, the cost per unit of Credit must include financial assurances that are necessary to ensure successful completion of ILF Projects. These fees shall be reviewed at least annually and updated as appropriate.

*F. Transfer of Credits*

1. All activities regulated under section 404 and 401 of the Clean Water Act may be eligible to use the Program as Compensatory Mitigation for unavoidable Impacts.
2. Credits purchased may only be used in conjunction with a USACE permit authorization or resolution of an unauthorized activity.
3. Deposits for such Credits shall be placed in the Program Account.
4. The USACE will make decisions about the most appropriate Compensatory Mitigation on a case-by-case basis, during evaluation of a Department of the Army permit application. This Instrument does not guarantee that the USACE will accept the use of Program Credits for a specific project, and authority for approving use of the Program for Compensatory Mitigation lies with the USACE.
5. The responsibility to provide Compensatory Mitigation remains with the permittee unless and until Credits are purchased from the Program. Upon USACE approval of purchase of Credits from the Program, the permittee may contact the Program Sponsor to secure the necessary amount and resource type of Credits, as outlined in Department of the Army permit conditions. Upon Transfer of Credits, the Program Sponsor shall enter the Transfer into RIBITS.
6. Program Sponsor assumes all legal responsibility for fulfilling Compensatory Mitigation requirements for USACE-authorized activities for which fees have been accepted. The transfer of liability is established by: 1) the approval of this Instrument; 2) receipt by the USACE of a Credit sale certificate that is signed by the Program Sponsor and the permittee and dated (see **Exhibit G**); and 3) the transfer of fees from the permittee to the Program Sponsor. A copy of each certificate will be retained in the administrative and accounting records for the Program Instrument. Other than what is described in this paragraph, no other legal responsibility for the permit will transfer to the Program Sponsor, unless a separate agreement is entered into between the Program Sponsor and the permittee.
7. Program Sponsor shall notify all members of the IRT upon any Credit Transfer in accordance with Section VII of this Instrument. Upon Transfer of Credits, the Program Sponsor shall enter the Credit Transfer into RIBITS.
8. If a ILF Project site is damaged after the Program Establishment Date, and such damage materially impairs Waters of the U.S. or habitat values on such damaged ILF Project site, the Program Sponsor shall implement the provisions of Section V.B(4) or Section XII.A. Failure to comply with either Section shall constitute default, and the IRT will take action accordingly.

## SECTION VII. PROGRAM REPORTING

### A. *Annual Report*

Program Sponsor shall upload an annual report to RIBITS and furnish a copy to each member of the IRT, in hard copy and in editable electronic format, on or before September 30<sup>th</sup> of each year following the Program Establishment Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Program Establishment Date for the first annual report) through June 30<sup>th</sup> of the current year (the “Reporting Period”). The annual report shall address the following:

#### 1. ILF Project Development

The annual report shall document the degree to which each ILF Project site in the Program is meeting its Performance Standards. The annual report shall describe any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If Remedial Action has been completed, the annual report shall also evaluate the effectiveness of that action.

#### 2. Interim Management and Long-term Management

The annual report shall contain an itemized account of the management tasks conducted during the reporting period in accordance with the Interim Management or Long-term Management Plan for each ILF Project site, including the following:

- a. The time period covered, i.e. the dates “from” and “to”;
- b. A description of each management task conducted, the dollar amount expended and time required; and
- c. The total dollar amount expended for management tasks conducted during the reporting period.
- d. A description of the overall condition of each ILF Project site, including color photographs documenting the status of the ILF Project site and a map documenting the location and direction of the photo points.

#### 3. Credit Ledger Report

The annual report shall include an updated Credit Transfer Ledger (**Exhibit J**) for each ILF Project site) showing the beginning and end balance of available Credits and permitted impacts for each resource type, all additions and subtractions of Credits, and any other changes in Credit availability (e.g., additional Credits released, Credit sales suspended).



4. Program Account

The annual accounting report in accordance with Section IV.C.3.

*B. Credit Transfer Reporting*

Upon the Transfer of each and every Credit, the Program Sponsor shall enter the Credit Transfer into RIBITS and submit to each member of the IRT:

1. A copy of the certification in the form provided at **Exhibit G** that identifies the permit number, a statement indicating the number and resource type of Credits that have been secured from the Program Sponsor, and that legal responsibility has transferred from the permittee to Program Sponsor; and
2. An updated Credit Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit J**.

**SECTION VIII. OTHER PROVISIONS**

*A. Extraordinary Circumstances*

1. The Program Sponsor and IRT in its review of the ILF Projects, have made a concerted effort to identify the preservation, restoration and management measures for the ILF Project site, including Adaptive Management, necessary to qualify as compensatory mitigation for Waters of the U.S. and to manage and maintain these resources in perpetuity. However, the Parties recognize that there may be a rare event (an Extraordinary Circumstance) in which an ILF Project site can no longer serve its intended purpose as compensatory mitigation, in whole or in part, for the specific resources for which it was established. An Extraordinary Circumstance of this type may lead to Program Sponsor being relieved of some or all of its obligations under this BEI. The Parties agree that the IRT will consider whether it is appropriate to relieve any obligations under the process outlined below:
  - a. If the Program Sponsor believes that an Extraordinary Circumstances event has taken place that Party shall send written notification to the IRT agencies as promptly as possible, but no later than 14 calendar days following the date of discovery of the event. The Party sending the notification (invoking) will fully describe the nature of the Extraordinary Circumstances event, its effect on the Party's performance of the obligations under this Instrument, the habitat values affected by the event, and any expected timeframe of non-performance attributable to the Extraordinary Circumstances event. As promptly as reasonably possible after providing notification, the Party invoking Extraordinary Circumstances shall meet with the IRT agencies to discuss whether the event qualifies as an Extraordinary Circumstance. The Party invoking

Extraordinary Circumstances shall bear the burden of demonstrating that Extraordinary Circumstances have occurred. Until such time the IRT agencies determine whether the event qualifies as an Extraordinary Circumstance and whether it is appropriate to suspend performance pursuant to Section XII.A.1.d, the Program Sponsor shall continue to manage and maintain the ILF Project site to the fullest extent practicable consistent with this Instrument and other applicable documents.

- b. If the IRT agencies concur that an Extraordinary Circumstances event has taken place, such agencies will provide written notification to the Program Sponsor. Within 14 calendar days of notification of concurrence from the IRT agencies that Extraordinary Circumstances have occurred, or on a date mutually agreed upon by all Parties, the Parties will meet to discuss the course of potential action to be taken in response to such occurrence, including potential Remedial Action as defined in Section II and potential suspension of Performance Standards as described in Section XII.A.1.c. Remedial Action in such circumstances may include, but is not limited to, restoration of the ILF Project site, out-of-kind improvements on the ILF Project site, a smaller restoration on the ILF Project site (taking into account the diminution of habitat values across the Service Area), improvements to another property, or the purchase of credits from a mitigation bank. Once approved by the IRT, the Party invoking Extraordinary Circumstances shall carry out the Remedial Action within a mutually agreed upon timeframe.
- c. If the Program Sponsor is prevented from or delayed in performing an obligation under this Instrument by Extraordinary Circumstances that commences after the Program Establishment Date, the IRT may suspend the Program Sponsor's obligation to perform, as well as the ability of the Program to provide any remaining Credits released, but not yet Transferred, as compensatory mitigation.
- d. Following the meeting discussed in Section XII.A.1.b. to consider potential actions to be taken in response to the event, the IRT agencies will, in writing, (1) inform the Program Sponsor as to what, if any, performance is suspended, and (2) direct the Program Sponsor as to what specific Remedial Action is required. The Program Sponsor will continue to perform all other obligations that are not suspended.
- e. Within 60 calendar days of notification described in Section XII.1.d., or by a date mutually agreed upon by all Parties, the Party invoking Extraordinary Circumstances will submit to the IRT, in writing, the implementation plan to meet the required Remedial Action. At a minimum, the Remedial Action will be sufficient to ensure that the habitat values which underlie all previously Transferred Credits will be supported.

- f. If the Remedial Action agreed upon and implemented do not meet an agreed upon objective or standard within the agreed upon timeframe, the Program Sponsor and the IRT will reconvene to evaluate if alternative Remedial Action would be appropriate.
2. Failure to act in good faith to participate in the process outlined above in Section XII.A.1 or to implement any IRT-approved Remedial Actions shall be a default under this Instrument.
3. The IRT agencies may, at their discretion, direct Program Sponsor to suspend the Transfer of Credits, prohibit the release of additional Credits, and/or reduce the number of Credits allocated to an ILF Project in proportion to such damaged area unless and until the Program Sponsor has remedied the defect pursuant to the Remedial Action as described in Section XII.A.1.d.
4. Disputes over whether an event is a result of Extraordinary Circumstances, or any Remedial Action taken in response pursuant to this Section, shall be resolved in accordance with Section VIII.C.
5. Program Sponsor is not entitled to terminate this Instrument under Section VIII.D as a result of Extraordinary Circumstances.

*B. Default*

The Program Sponsor shall be in default if that party fails to observe or perform any obligations or responsibilities required of it by this Instrument. In the event of default, the IRT shall issue a notice of default to Program Sponsor, which includes direction and specified time period to cure the default. If the Program Sponsor fails to remedy the default within the allotted time, the IRT will take appropriate action, which includes but is not limited to, suspending Credit Transfers, reducing available Credits, and terminating the Instrument. This Section shall not be construed to modify or limit any specific right, remedy, or procedure in any Section of this Instrument or any remedy available under applicable State and/or Federal law.

*C. Dispute Resolution*

The Parties agree to work together in good faith to resolve disputes concerning this Instrument. Unless a Party has initiated legal action in connection with the particular dispute, any Party may elect ("Electing Party") to employ an informal dispute resolution process whereby:

1. The Electing Party shall notify all other Parties to this Instrument of the dispute through a Dispute Notice. The Dispute Notice shall identify the Parties against which the Electing Party is commencing the informal dispute resolution process ("Implicated Parties"), the position of the Electing Party (including, if applicable, the basis for contending that a violation has occurred), and the resolution the Electing Party proposes.

2. Each Implicated Party shall have 45 calendar days after receipt of the Dispute Notice (or such other time as the Parties may mutually agree) to respond to the electing Party. During this time, any Party to this Instrument that received the Dispute Notice may seek clarification of the Dispute Notice.
3. Within 45 calendar days after each Implicated Party's response was provided or due, whichever is later, the Electing Party and the Implicated Parties shall confer and negotiate in good faith toward a mutually satisfactory resolution, or shall establish a specific process and timetable to seek such resolution.
4. The dispute resolution process may be terminated by the Electing Party or any Implicated Party upon written notice to all other Parties to this BEI.

Resolution of disputes relating to amendments shall be in accordance with 33 C.F.R. § 332.8.

*D. Modification, Amendment and Termination/Program Closure*

1. *Modification and Amendment.* This Instrument, including its Exhibits, may be amended or modified only with the written approval of the Parties. Instrument modifications, including the addition or expansion of ILF Projects, will follow the process outlined in **Exhibit C**. The USACE may use a streamlined modification review process for changes reflecting Adaptive Management of an ILF Project site, Credit Releases, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant (**Exhibit C**).
2. *Termination/Program Closure.* Any Party to this Instrument may terminate its participation in this Instrument by giving 60 days written notice to the other Parties. In the event that the Program operated by Program Sponsor is terminated (i.e., closed), Program Sponsor is responsible for fulfilling any remaining ILF Project obligations including the successful completion of ongoing mitigation projects, relevant maintenance, monitoring, reporting, and long-term management requirements. Program Sponsor shall remain responsible for fulfilling these obligations until such time as the long-term financing obligations have been met and the long-term ownership of all mitigation lands has been transferred to the party responsible for ownership and all long-term management of the project(s). Funds remaining in the Program Account after these obligations are satisfied must continue to be used for the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources within the Service Area. The USACE shall direct the Program Sponsor to use these funds to secure Credits from another source of third-party mitigation, such as another in-lieu fee program, mitigation bank, or another entity such as a governmental or non-profit natural resource management entity willing to undertake the compensation activities. The funds should be used, to the maximum extent practicable, to provide compensation for the amount and type of aquatic resource for which the fees were collected.

*E. Controlling Language*

The Parties intend the provisions of this Instrument and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this Instrument conflicts with specific language in any document that is incorporated into this Instrument by reference, the specific language within the Instrument shall be controlling.

*F. Entire Agreement*

This Instrument, and all exhibits, appendices, schedules and agreements referred to in this Instrument, constitute the final, complete and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Program, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this Instrument, shall be binding or valid. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section VIII.D. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

*G. Reasonableness and Good Faith*

Except as specifically limited elsewhere in this Instrument, whenever this Instrument requires a Party to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If a Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

*H. Successors and Assigns*

This Instrument and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this Instrument.

*I. Partial Invalidity*

If a court of competent jurisdiction holds any term or provision of this Instrument to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this Instrument would be defeated by loss of the invalid or unenforceable provision.

*J. Notices*

1. Any notice, demand, approval, request, or other communication permitted or required by this Instrument shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.
3. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section VIII.J.

Program Sponsor:

Inland Empire Resource Conservation District  
25864-K Business Center Drive  
Redlands, CA 92374  
Attn: District Manager  
Telephone: (909) 799-7407  
Fax: (909) 478-5501

IRT Members:

U.S. Army Corps of Engineers  
Los Angeles District  
915 Wilshire Blvd.  
Los Angeles, CA 90017  
Attn: Chief, Regulatory Division  
Telephone: (213) 452-3406  
Fax: (213) 452-4196

U.S. Environmental Protection Agency  
Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Attn: Director, Water Division  
Telephone: 415-947-8707  
Fax: (415) 947-3549

California Regional Water Quality Control Board  
Region 8  
3737 Main Street, Suite 500  
Riverside, CA 92501

Telephone: (951) 782-4130  
Fax: (951) 781-6288

*K. Counterparts*

This Instrument may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

*L. No Third Party Beneficiaries*

This Instrument shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this Instrument. The duties, obligations and responsibilities of the Parties to this Instrument with respect to third parties shall remain as otherwise provided by law in the event this Instrument had never been executed.

*M. Availability of Funds*

Implementation of this Instrument by the IRT is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No agency of the IRT is required under this Instrument to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

*N. No Partnerships*

This Instrument shall not make or be deemed to make any Party to this Instrument an agent for or the partner or joint venturer of any other Party.

*O. Governing Law*

This Instrument shall be governed by and construed in accordance with the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and other applicable federal and laws and regulations.

*P. Headings and Captions*

Any paragraph heading or captions contained in this Instrument shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Instrument.

*Q. Right to Refuse Service*

USACE approval of Transfer of Credits from the Program does not signify Program Sponsor's acceptance or confirmation of Program Sponsor's offer to Transfer. Program Sponsor reserves the right to refuse to Transfer Credits from the Program for any reason.

*R. No Contract*

USACE approval of this Instrument constitutes the regulatory approval required for the Inland Empire Resource Conservation District's In-Lieu Fee Program to be used to provide compensatory mitigation for Department of the Army permits pursuant to 33 C.F.R. 332.8(a)(1). This Instrument is not a contract between the Program Sponsor and USACE or any other agency of the federal government. Any dispute arising under this Instrument will not give rise to any claim by the Program Sponsor for monetary damages. This provision is controlling notwithstanding any other provision or statement in the Instrument to the contrary.

**SECTION IX. EXECUTION**

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this Instrument. This Instrument shall be deemed executed on the date of the last signature by the Parties.



IN WITNESS WHEREOF, the Parties have executed this Instrument as follows:

Program Sponsor  
Inland Empire Resource Conservation District

\_\_\_\_\_  
Paul Williams  
President, Board of Directors

\_\_\_\_\_  
Date

U.S. Army Corps of Engineers,  
Los Angeles District

\_\_\_\_\_  
David J. Castanon  
Chief, Regulatory Division

\_\_\_\_\_  
Date

U.S. Environmental Protection Agency, Region IX

\_\_\_\_\_  
Director, Water Division

\_\_\_\_\_  
Date

California Regional Water Quality Board  
Region 8

\_\_\_\_\_  
Hope Smythe  
Executive Officer

\_\_\_\_\_  
Date

## **Exhibit A**

### **Prioritization and Compensation Planning Framework**

See attached

Exhibit A-1

Inland Empire Resource Conservation District In-Lieu Fee Program

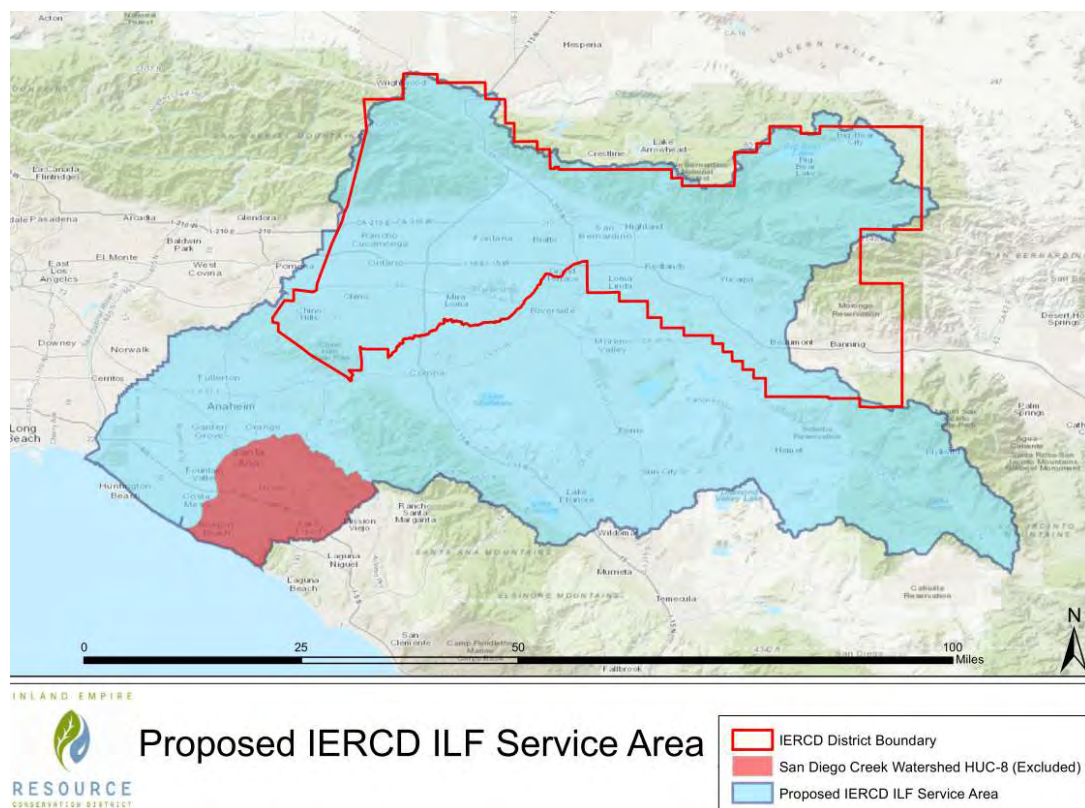
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## ATTACHMENT A: PRIORITIZATION AND COMPENSATION PLANNING FRAMEWORK

Strategies that will be used by the IERCD (the District) to select, secure and implement aquatic resources will involve the following.

- a. **The geographic service area, including a watershed-based rationale for the delineation of each service area (33 C.F.R. § 332.8(c)(2)(i))**

The Program focuses on the Santa Ana River watershed, a Hydrologic Unit Code (HUC) 8 riverine system encompassing approximately 2,650 square miles; however, while credit sales will occur within the full Program Service Area, In-Lieu Fee projects will be legally restricted to be facilitated within the IERCD's jurisdictional boundaries which encompass approximately 1,286 square miles of the upper Watershed. The full HUC-8 Santa Ana River watershed is impacted by a variety of threats to functionality as further described in Section b of this document, many of which affect immediate area in addition to watershed remaining downstream. Due to the likelihood of aquatic resource threats impacting full remainder of watershed below immediate location, credit transfer opportunities will be offered throughout the full watershed. All impacts for which credit transfer requests are initiated are projected to provide benefits to immediate area in addition to regions downstream of project facilitation location. The difference in Program Service Area and In-Lieu Fee Project Facilitation are demonstrated on the following map:



The Santa Ana River watershed has lost many of its historic aquatic Functions and Services from land use impacts ranging from conversion of waters and wetlands to uplands through historic, authorized and unauthorized fills to indirect impacts from agriculture and urbanization. Using the watershed approach to compensatory mitigation as articulated in the Compensatory Mitigation Rule, impacts within these watersheds would be offset by Compensatory Mitigation within the same watershed, promoting the goal of no-net loss of functions on a watershed basis.

**b. Description of the threats to aquatic resources in the service area including how the in-lieu fee program will help offset impacts resulting from those threats (33 C.F.R. § 332.8(c)(2)(ii))**

Threats to health and function of the aquatic acreage contained within the Service Area correspond very directly back to general human presence within the watershed as well as active management of its resources. These threats have been the subject of analyses of the watershed, including the wadeable streams bioassessment conducted from 2006-2011 as part of the ongoing Surface Water Ambient Monitoring Program of the Santa Ana Regional Water Quality Control Board Region 8 (Santa Ana RWQCB 2015). The recently issued report analyzed indicators of watershed health or dysfunction using a series of metrics, and ultimately concluded that despite pockets of function, most streams measured in the watershed revealed poor functionality. Adding to this study, the Stormwater Monitoring Coalition Bioassessment Workgroup sponsored an analysis of ecological conditions in coastal Southern California (Mazer et al. 2011) that determined that “three of the four highest risk stressors were related to physical habitat. For example, metrics related to substrate size, riparian vegetation, primary productivity, habitat availability, and human disturbance all showed that stressors were higher in urban streams than open streams, and that agricultural streams were intermediate between the other two land-use classes.” The top four stressors include percentage of sand and fines, total phosphorus, channel alteration, and riparian disturbance (Mazer et al. 2011).

Both studies definitively demonstrated challenges of aquatic resource health in systems characterized by significant human population and supporting infrastructure. Such strong conclusions make a clear case for targeting specific areas of IERCD’s heavily urbanized Service Area boundary within which to concentrate activities to uplift resources for the benefit of dependent species. These activities will be designed to best address the major identified threats to the associated high-density Service Area and resource Function, consisting of population growth; habitat loss and degradation; alteration of natural hydrology; and ongoing agricultural operations.

***Program Service Area Threat: Population Growth***

The Service Area for IERCD’s Program is approximately 2,650 square miles of property comprising the Santa Ana River watershed. Collectively, this area comprises a significant portion of the Inland Empire region of southern California, home to one of the country’s most rapidly expanding populations. According to data from the 2015 Southern California Association of Governments (SCAG) Local Profile on San Bernardino County, population has increased to 2,085,669 in 2014, representing a growth rate almost double that of other southern California counties. Growth in the Santa Ana River watershed, an approximately 2,450 square mile region containing sections of Orange, Riverside, and San Bernardino

counties, demonstrated similar trends, with an expected population of 9.9 million by 2050. Much of this projected watershed growth is predicted to occur in the IERCD's Program Service Area, as a result of Orange County determined to be nearly completely built out. (SAWPA 2005)

Rapidly increasing populations have the potential for tremendous impact on resources. In the Inland Empire, projected water needs to satisfy this rising number of residents is predicted to be 30% greater than current demand, in a region where population has historically consumed half of naturally available water resources. (Berg et al. 2004) Escalating water demands and populations such as those in San Bernardino County where 53.9% commute outside of the region for work (SCAG 2015) also demand expanding infrastructure to support water delivery and transportation needs. Construction of new or improvements to existing transportation corridors and water delivery systems further reduces available habitat for dependent species and contributes to decreased pervious surfaces capable of storm and nuisance flow infiltration. Increased impervious surface contributes to elevated 1-2 year frequency flood events and in the Chino Basin has reduced recharge capacity of 40,000AFY since implementation of land use practices lessening natural surface presence began (SAWPA 2014).

Population growth and accompanying resource demand will likely not be reversed in this region. This puts all open space including the more sensitive aquatic resource properties at risk due to overwhelming profits available for development versus conservation. Existing mitigation banks provide opportunities for true in-kind mitigation of development impacts; however, long timelines associated with permitting and build processes result in options that are few and far between. The IERCD's Program has identified a regional approach to addressing and mitigating the aforementioned trends to include but not be limited to identification and conservation of key open spaces; Rehabilitation of degraded riparian properties; and Reestablishment of aquatic resource Function to properties where it is not currently present due to significant impact from proximity to urban systems.

***Program Service Area Threat: Habitat Loss and Degradation, Primarily from Invasive Species Establishment and Spread***

The loss and fragmentation of aquatic resource habitat, and the degradation in Function of remaining aquatic resource habitat both represent significant current problems and ongoing threats in the Program Service Area. According to the Status and Trends of Wetlands report by the U.S. Fish and Wildlife Service; between 1950 and 1970, over 400,000 acres of wetlands were lost annually in the United States, and between 1980 and 2000, the rate declined to 290,000 acres per year, partially due to the passage of the Emergency Wetlands Resources Act of 1986. Between 2000 and 2008, an 80% decrease in losses to 58,000 acres was achieved. Of the wetlands remaining in the IERCD jurisdictional area, 90% represent historical inland freshwater and shrub wetlands, with only 10% of that area remaining intact. In light of the population trends referenced in the previous paragraphs, in addition to the disproportionate valuation between conservation and development land use, it can only be concluded that habitat loss and degradation will continue to destabilize aquatic resource and dependent species health in the proposed ILF service area.

Significant aquatic resource loss within the Program Service Area has occurred primarily over systems characterized as semi-arid, capable of providing support to both those dependent on wetland ecosystems for survival during specific periods of migration and development, and those using these areas on a temporary basis for shelter and food in times of drought (Allen et al.). The large-scale disappearance of these key resources makes protection and uplift of remaining aquatic acreages with compromised Function even more critical. In the Program Service Area, one of the most significant factors contributing to declining habitat quality is the presence and spread of species of invasive vegetation. Both the California Invasive Plant Council (Cal-IPC) and the University of California Agricultural and Natural Resources Program's Statewide Integrated Pest Management Program define invasive species as those that "cause ecological disruption to natural ecosystems [with] the severity of the impact vary[ing] considerably based on plant species and the area being invaded" (UCANR 2007). Species falling under this definition are divided into categories according to potential impact on landscapes, with the ability to be characterized as high, moderate, or light. In the proposed Program service area, 12 of the Cal-IPC-classified high rates invasives have been confirmed as present in a variety of infestations.

The presence of invasive species regardless of rank is harmful to native landscape function and dependent species; however, those ranked as "high" threats pose an even greater danger due to their "reproductive biology and other attributes...conducive to moderate to high rates of dispersal and establishment. Most are widely distributed ecologically" (Cal-IPC 2006). Establishment and spread of the aforementioned populations of these species can result in a range of impacts to wildlands. This primarily results from fundamental alteration of structure of riparian vegetation bordering sensitive aquatic corridors. Emergence of monotypic stands of aggressive invasives reduces structural and species diversity of these riparian and transitional buffer areas, lessening shelter and foraging opportunities for native wildlife and increasing runoff into aquatic systems. Increased runoff into these systems is responsible for a variety of impacts including increased erosion and incision which distances streams and channels from floodplains; elevated sedimentation of streams which decreases pools and other micro-habitats capable of supporting aquatic wildlife; and directs non-point-source pollutants into water which impacts quality. "Runoff can also transport seeds of nonnative and non-riparian plant species...and streambanks lose their ability to buffer and protect streams, resulting in damage to aquatic habitat" (NRCS 2007).

Additional impacts from the presence of non-native species include but are not limited to alteration of soil composition, increased fire and flood risk, and elevation of environmental salinity resulting from salt absorption and distribution via foliage. In the arid Program Service Area, the increased water use of some of the high-rated species is incredibly detrimental, such as *Arundo donax* which has been shown "to transpire 56,200 acre-feet of water over the course of a year, whereas native species only transpired 18,700 acre-feet" (UCANR 2007). Such landscape degradation results in disproportionate resource use, creating increasingly fragile, compromised systems incapable of supporting demands of area wildlife, thereby further reducing overall species diversity and survivability. Finally, the reduction and degradation of aquatic resources and riparian and transitional Buffers is most harmful in consideration of the resulting minimization of benefits otherwise provided by these areas when functional. These include nutrient cycling, water quality improvement, and support of wildlife resulting from their high productivity and structural complexity (USDA 2014).

The IERCD's Program will use a watershed approach to identifying key regions of the Service Area most critical for protection and uplift to prevent further loss of functionality from the presence and spread of noxious species of invasive vegetation. Removal and eventual maximization of control of target species and populations will provide uplift to acreage identified as critical for ongoing recovery of degraded sections of the Service Area, particularly those in and in proximity to riparian systems. Focusing on threatened areas prioritized by proximity to aquatic resources and position in the watershed will enable qualified staff to control presence through a variety of removal methods. These initial treatments will be accompanied by longer-term methods including ongoing maintenance to gain increasing control over treated populations; installation of native species within treated areas to prevent recolonization by invasives; and systematic monitoring designed to reveal invasive establishment and spread prior to becoming uncontrollable. All of these strategies will provide benefits to the Service Area as a result of the minimization of invasives and increase in native presence; these include but are not limited to improved water quality and quantity, elevated soil health, and increased nesting and foraging opportunities for native wildlife.

***Program Service Area Threat: Alteration of Natural Hydrology***

The Santa Ana River and major tributaries total approximately 700 linear miles, all included within a watershed that drains a 2,650 square-mile area including sections of Orange, Riverside, and San Bernardino counties (SAWPA 2005). Within this region, extreme precipitation events later coupled with rising runoff from a growing population combined to result in major flood events such as those recorded in 1862, 1938, and 1969. The toll from these events was destructive and prompted action on the part of watershed managers to begin the process of large-scale modification of channels and flow regulation in an effort to prevent additional devastating flood events as the number of regional residents and required infrastructure continued to rise. Elevated flows in a defined region with rising population mandates active management to continue movement of hydrology while providing flood protection. In the Santa Ana River watershed, this has been accomplished through installation of major dams such as Prado and Seven Oaks, in addition to 75 miles of channel modification and concrete lining associated with the Santa Ana River Mainstem project (SAWPA 2005).

While the above-referenced work has provided flood protection, the artificial capture, retention, and forced movement of water particularly out of season results in a range of impacts to aquatic resources. Dam installation plays a role in the interruption of sediment transport, trapping sediment in upstream areas and starving channels of needed bed load in downstream areas. This contributes directly to riparian vegetation community structural changes by removing high intensity flows that historically caused scour/removal of accumulations of dense vegetation. Without these scour events, vegetation understory becomes sparse and trees remain at mature heights that are often not supportive of species such as least Bell's vireo, and potential water quality benefits are also diminished.

The addition of concrete-lined engineered channels further damages natural hydrology through increasing flow velocity and reducing infiltration that has historically replenished groundwater basins. Concrete channels also create vegetation discontinuity along riparian zones that are used by wildlife for movement corridors, nesting, forage and cover, further

divide floodplains from aquatic resources resulting in discontinuity among habitats critical for wildlife support, and elevate in-stream water temperature (Berg et al.). Within these artificially channelized systems, the addition of off-season effluent flow further alters habitat structure to enabling seasonal availability of summer water. This has unfortunately benefited non-native species such as *Arundo donax*, and *Tamarix spp.* which require more water for survival and are better able to reproduce with perennially available resources.

Increases in population, development, and resident demand for flood protection appear to be continuing to rise, which presents ongoing threats to the integrity of aquatic resources and associated riparian and transitional habitats throughout the Santa Ana River watershed. According to the Final Phase I Report of the Upper Santa Ana River Habitat Conservation Plan (2014), 28 reaches within 19 different watershed drainages totaling 91.2 miles are slated for ongoing modification for the purposes of flood control, groundwater recharge, and water quality improvement (Allen et al.) These covered activities occur within a variety of regions of the Program Service Area, but all have the potential to significantly alter natural hydrology and impact dependent native species throughout a significant geographical range containing a variety of habitats ranging from upland buffer to wetlands and streams.

For all of these reasons, it is critical to address these impacts through a regionally focused and operated mitigation program where options include a similar habitat range rather than focusing solely on riparian forest rehabilitation and conservation (Allen et al.). The Service area of the IERCD ILF program provides the geographic range and corresponding depth in habitat diversity necessary to address the variety of current and anticipated impacts to southern California aquatic habitats. District methods will focus on watershed approach to guide establishment of priority areas in need of functional assessment and action ranging from preservation to reestablishment for the benefit of aquatic resources and dependent species. Credit application will be systematically performed following this priority area and action determination, in an effort to address the most pressing watershed issues as quickly as possible in an effort to maximize remediation of existing altered hydrological systems.

#### ***Program Service Area Threat: Agriculture***

Ten percent of the Santa Ana River Watershed's approximately 2,650 square mile area is dedicated to a variety of agricultural uses (USGS 2013). Of this agricultural use, dairy comprises a significant portion, with a significant period of recent decades listing the City of Chino as the national leader in concentration of dairy cows. The concentration of cows also resulted in extreme concentration of 22.5T of manure per cow on an annual basis (IE Waterkeeper 2013). Dairy cow waste significantly degrades water quality, and has been specifically linked to declining aquatic health in both the Chino Basins and lower Santa Ana River watershed as a result of contribution of excess salts, nutrient loads, and total dissolved solids in both ground and surface water (City of Chino 2001).

The excessive presence of these materials in water has resulted in Chino Creek, Mill Creek and Reach 3 of the Santa Ana River as 303(d) impaired water bodies, and also contributes to decreased oxygen levels, increases aquatic species death, and elevates costs for maintenance of water conveyance infrastructure. Nationally, "in 2000, the National Water Quality Inventory reported agricultural pollution to be the leading source of water quality impacts on surveyed



rivers and lakes, the second largest source of impairments to wetlands, and a major contributor to contamination of surveyed estuaries and ground water (IE Waterkeeper 2013).

In addition to water quality issues, large-scale use of land for agricultural purposes also degrades the function of existing vegetation and contributes to habitat loss and fragmentation. Clearing of habitat for agricultural land use results in habitat "fragments or islands. When habitat is fragmented, plants and animals lose their protective buffers around the fringes and access to each other, food, and water. Eventually the fragments become unable to support their natural diversity and species disappear (SAWPA 2014). Sensitive species such as the tricolored blackbird (*Agelaius tricolor*) have been impacted by multiple threats, with the most looming listed as habitat loss due to urbanization and agricultural uses (SAWA 2004). In one of IERCD's ILF Program project sites, Buffer zones adjacent to the unmodified section of Chino Creek have been altered by agricultural use, resulting in reduced Buffer for sensitive riparian vegetation and the aquatic corridor. Addressing this Buffer habitat loss through Rehabilitation of riparian zone between upland and creek zones as part of available Program mitigation will provide water quality uplift and resource protection in areas directly impacted by historic agricultural land use.

**c. Analysis of historic aquatic resource loss in the service area (33 C.F.R. § 332.8(c)(2)(iii))**

Historic aquatic losses occurring on local, regional, and larger-scale levels have come from the removal and degradation of both riparian and ephemeral habitats. The no-net-loss of wetlands and other nationally based programs have tracked large reductions in wetland and riparian acreage over the last decade. Within the service area (Santa Ana River Watershed) historic wetland loss exceeds 90%. Over 20% of the Santa Ana River itself is concrete lined. The watershed contains two large dam facilities, Seven Oaks Dam and Prado Dam which have significantly impacted watershed dynamics by altering the historic timing and amount of flows and reducing historic levels of sediment transport. Much of the Santa Ana River's historical flows have been diverted for use by local landowners. The majority of the water currently flowing in the Santa Ana River during the non-rainy season comes from effluent from wastewater treatment plants. Many of the prior existing ephemeral and intermittent tributaries to the Santa Ana River within the watershed have been developed into impermeable surface, reducing the sediment transport capabilities of the watershed and increasing the amount and rate of stormwater runoff entering the system. Overall the natural resources and habitat in the Santa Ana Watershed are a small percentage of their historical amounts. The historic aquatic loss of the six HUC-12 subwatershed regions of the Santa Ana River Watershed in which the ILF program will complete mitigation projects are examined in more detail below.

***Region: Big Bear Lake***

Big Bear Lake subwatershed has sustained both aquatic resource transition and loss. Transition has occurred when artificial modification of water capture and conveyance structures and facilities has occurred, such as the creation of Big Bear Dam in 1884. As described by the Big Bear Valley Historical Society, the pre-1884 Valley was a "stream running through marshy meadow" fed by the tributaries of the surrounding mountains. The topography, hydrology, and biogeography of meadow-obligate plant species around the shore of the lake corroborate this vision. The creation of Big Bear Dam and the subsequent flooding of the meadow in 1885 resulted in the permanent inundation of lower Big Bear Valley. The Lake today is approximately

2,500 acres of which a good majority can be rightfully assumed to have been montane meadow and intermittent wetland before inundation. Assuming 2,500 acres; total remnant meadow existing at the edges of big bear lake today totals 154.3 acres which is less than 1% of its original assumed size. However, while properties have been dramatically altered since dam construction, it must be noted that the Lake is supportive of ongoing health of aquatic species, albeit in a radically different manner than that provided by perennially or seasonally wet meadows.

In addition to aquatic transition, Big Bear Valley subwatershed has also incurred losses, resulting primarily from development-related impacts to open space and water conveyance features. The construction of the dam increased water-holding capacity and according to the Big Bear Valley Historical Society, along with improvements in regional transportation corridors also increased short and long-term residents in the Valley. This increase in permanent and temporary populations increased the need for support structures for these residents, which led to increased impervious surface and corresponding increased flows through drainages connected to the lake. In particular, recreational features such as the now-abandoned Snow Forest Ski Resort off of Knickerbocker Creek, have been historically stripped of the natural vegetation and other erosion prevention features. The lack of ability to control sheeting flows was noted in the final report for the Regional Water Quality Control Board's Big Bear Sediment Load Reduction Program, completed in 2008, stating that "sedimentation to Big Bear Lake [has been excessive, leading to]... macrophyte and algae problems which affect the recreation and aquatic life habitat beneficial uses of Big Bear Lake and led to the placement of Big Bear Lake on the 303(d) list for nutrients." Sources of this sedimentation are further noted to originate with drainages connecting to Big Bear Lake, such as Knickerbocker creek which conveys "excessive amounts of sediment ...carried at a rapid rate...deposited in Big Bear Lake." Other examples of developments constructed in response to rising population and contributing sediment and other nutrients to drainages connected to Big Bear Lake include the golf course, Moonridge Zoo, and the former Simmons Commercial Trout Pond, all adjacent to or containing sections of Rathbun Creek which is a significant contributor of hydrology to the Lake.

Along with lake sedimentation, rapid development in the subwatershed has contributed to flood-control lining and artificial shaping of previously natural drainages, which is accompanied by vegetation control and at times eradication to maintain structural function. Modification of hydrology along drainages to Big Bear Lake "has led to problems with channel stability. Bank erosion and stream bottom down cutting are significant problems in the creek, resulting in significant adverse effects on instream habitat and beneficial uses and leading to sediment transport to the lake" (SARWQCB 2008). Clearing and filling of jurisdictional areas in proximity to the Lake have also contributed to aquatic resource loss including the federally listed birdfoot checkerbloom (*Sidalcea pedata*), as these regions are leveled for the higher value use in residential development. Despite the presence and activity of multiple conservation groups, Big Bear Lake is currently demonstrating a reinvigoration of lakefront development project applications, threatening resources in a region that "supports the largest concentration of endemic plants in California, with 11 federally listed species (Stephenson and Calcarone 1999)" (Bond et al. 2004).

**Region: Chino Basin**

According to the Chino Basin Watermaster, the total area of the Basin is 235 square miles of highly urbanized area consisting of 5% in Los Angeles County, 15% in Riverside County, and 80% in San Bernardino County. This region is home to what the Watermaster characterized as a rapidly expanding population, growing from 1.2 million in 2001 to a projected 1.6 million by 2020 (Chino Basin Watermaster 2016); however, that jump in population was preceded by multiple significant expansions aligned with improvements in transportation and corresponding suburban sprawl that defined much of the 20<sup>th</sup> Century. The population of California grew by 88% from 1950 to 1970 (CalTrans 2011) with “build-out” in Los Angeles resulting in mass exodus of residents to Inland Empire’s Riverside and San Bernardino counties. The corresponding demand for housing led to massive vegetation clearing and earth movement, resulting in “not only diminished habitat for birds and other wildlife, but caused extensive soil erosion and the silting of streams. The filling of wetlands increased the frequency and severity of flooding, by eliminating areas that could store and absorb storm water” (CalTrans 2011). Communities in the Inland Empire including in the Chino Creek subwatershed were similarly impacted, as seen in the increased storm and nuisance flows resulting in approximately just 11% of Chino creek and associated drainages remain natural soft-bottomed structures. This transition to nearly exclusively concrete-lined water conveyance structures has been accompanied by aquatic resource loss including lack of riparian and transitional vegetation; reduced ability to provide shelter and foraging opportunities for area wildlife; decreased groundwater recharge; and decreased water quality.

In addition to this expanding population and associated need for increased impermeable supporting infrastructure, this region is also home to heavy agricultural usage. In the mid-20<sup>th</sup> century, low land values and a post-war available workforce combined to create a welcoming atmosphere for dairies, which increased to 110 individual operations by 1955 (Musslewhite, 2005). The resulting establishment of an agriculturally and specifically dairy-focused community led to increased population; however, by the end of the 20<sup>th</sup> century, regulations on water quality for impaired streams such as Chino Creek began to impact the industry. Today, fewer active dairies remain and large-scale projects such as the Preserve development which is proposing to replace a combination of dairy and cropland with a variety of residential infrastructure are becoming increasingly common. Yet projects like the Preserve are not necessarily improving habitat quality due to increasing impermeable surfaces and water demands for new residents, which decreases infiltration and increases nuisance flows. The transition in land use in this area as demonstrated in channelized, concrete drainages, makes the case more than ever for the need to capture what remains of aquatic resources, then place these areas into conservation for uplift for the benefit of remaining area wildlife.

### ***Region: Lytle Creek***

The Lytle Creek subwatershed counts both the Cajon Wash and north Fork Lytle Creek among its major drainages. Collectively, this area was first populated by Native American tribes, then a land grant of 45,000 acres to Ignacio Cornel in 1846, then again in the 1850s by Mormon immigrants who established what was known as the San Bernardino Colony (Cowan et al., 1996), attracted by the year-round water in the Creek. In the 1860s, this initial settlement was joined by a growing population interested in gold discovered in the region, which was eventually harvested using a technique known as hydraulic mining which involved pressurized water flow used to find gold deposits among canyon walls. While this initial find supported early populations, events including flooding in 1891 which damaged much of the mining

equipment devastated the industry and it never again reached its original scale despite ongoing mining by visitors occurring to present day (Blackstock, 2014). The damage from hydraulic mining in this region was significant enough that it was later outlawed.

Eventually with the end of mining, the region became home to permanent residents, but has always attracted a considerable population of day-users, comprised primarily of regional residents seeking to engage in recreational opportunities afforded by the year-round flow of the Creek. As the regional population has expanded, the increase in day-users has also elevated impacts on the creek including sedimentation, modification of hydrology resulting from the movement of boulders, and lower quality of water from source and non-point source pollutants. Aging septic systems associated with long-term residential structures have also contributed historically to lower water quality. Compromised subwatershed health has threatened function of aquatic resources and dependent species, including the state-endangered Santa Ana speckled dace (*Rhinichthys Osculus*) (UC Davis 2007), whose habitat is increasingly compromised by catastrophic fire, debris flows, intensive water consumption, pollution, invasive species, and expanding urbanization and suburban development (CDFW 2010).

In 2008, a multi-partner effort known as the Lytle Creek Watershed Action Project began work on remediation of factors impacting health and function of the 186-square mile Lytle Creek subwatershed region. This project was designed to address deficiencies in water quality and quantity, and in associated dependent species as a result of impacts to aquatic resources based partially on the October 2006 subwatershed health assessment entitled "Lytle Creek Watershed Management Plan." In that document and in grant application documentation, major impacts to regional aquatic resources are listed as recreational day-users, development pressures, and lack of protection in the lower Lytle Creek subwatershed compared with preservation of much of the upper subwatershed via ownership by the United States Forest Service. Cumulatively, these elements have resulted in indicators of resource decline including but not limited to impaired water quality, and fragmentation of aquatic and transitional habitat and impact on dependent species due to ongoing current and planned modification of the Lytle Creek mainstem for development-related flood control purposes.

As noted in the Lytle Creek Watershed Management Plan, in 2006 there were 17 million residents in proximity to the Creek, which resulted in extensive ecosystem impact from artificial damming, placement of trash in water, and excessive sedimentation, among other consequences. In the Lytle Creek Community Plan adopted in 2007, authors noted the continuing "growth and the effects of increased use of its recreational opportunities by both residents and visitors [makes it] imperative that adequate services and infrastructure are provided, that all improvements reflect the needs of locals as well as visitors, and that all development maintains a sense of connection to, and protection of, the natural environment" (San Bernardino County, 2007). However, in the Lytle Creek Watershed Management Plan, the United States Forest Service noted the lack of funding and corresponding inability to adequately staff this area, nor to provide level of amenities required to ensure proper stewardship (Cal-Fed 2006). This disconnection between needs and funding has resulted in impacts to aquatic resources consisting primarily of listing of 41 miles of Lytle Creek in the 2012 California Integrated Report (Clean Water Act Section 303(D) List/305 (B) Report, published June 2015), due to contribution of pathogens at a level exceeding TMDL.

In addition to concentrated recreational usage, Lytle Creek has also experienced habitat fragmentation due to channel modification stemming from development pressure in the southern section of the subwatershed. Increase in current applications for development includes one for Lytle Creek Ranch where 8,400 dwelling units will potentially be constructed, requiring Creek channelization for improved flood control. This modification of the existing creek is predicted to exacerbate habitat fragmentation and its impacts on continuity “needed to provide critical migration for fish and wildlife. The Santa Ana Speckled Dace population is fragmented and in danger of extirpation. Without habitat continuity, each sub-population will become more delicate in the face of higher disturbance by more human use” (Cal-Fed 2006). Aquatic habitat fragmentation will impact transition and buffer zones, which will also threaten the stability of species including the San Bernardino kangaroo rat and the southwestern willow flycatcher (Draft Economical Analysis of Critical Habitat Designation for the San Bernardino Kangaroo Rat, Aug 2001/Cal-Fed 2006).

***Region: San Timoteo Creek***

San Timoteo Creek subwatershed is 126 square miles or 80,640-A, stretching over multiple cities and unincorporated sections of Riverside County, fed by multiple drainages and connecting with the Santa Ana River mainstem north and east of the 10/215 freeway interchange. The region has been populated for at least 300 years, first by Cahuilla Tribes, then as the Guachama Estancia, the first of many regional ranches using perennial creek flow to support crop production (RLC 2008). In the 1850s, additional settlers arrived, beginning the establishment of larger-scale orchard and confined feeding operations, later transitioning into uses ranging from grazing to the establishment of nurseries. Ownership of aquatic resources including Creek water began to be assigned in the late 1800s, followed by additional road development and completion of sections of railroad to enable easier passage. Impacts from this suite of historical uses includes but is not limited to conversion of native habitat to crop production; introduction of invasive species such as the brown-headed cowbird; clearing of oak woodlands; and diversion of water, among other things (RLC 2008).

Resources in San Timoteo Canyon are incredibly well-documented, primarily due to nearly 10% of the total area in perpetuity preservation by virtue of ownership by conservation organizations and/or public agencies with missions aligning with protection of natural resources, including California State Parks, the Regional Conservation Authority of Western Riverside County (RCA) and the Riverside Land Conservancy (RLC), among others. In addition to current conservation, an additional 355-A is under consideration for placement within a conservation easement. Ongoing protection of this area helps provide protection of Creek benefits “identified in the Water Quality Control Plan for the Santa Ana River Basin (CRWQCB 2008) [as] rare, threatened, and endangered species habitat; wildlife habitat; warm freshwater habitat; water contact and non-contact water recreation; groundwater recharge; and agricultural supply. Excessive erosion and sedimentation, even that occurring naturally, could compromise the beneficial uses of San Timoteo Creek” (RLC 2008).

While not as impacted by extensive concrete-lining of formerly natural channels as other regions listed in IERCD’s Program Service Area, San Timoteo Creek and its associated aquatic resources have still sustained significant damage primarily from human activities. Factors impacting aquatic resources and resulting in losses in this region primarily include active

modification of San Timoteo Creek for flood control purposes; a rising population with corresponding increase in impervious surface, run-off, and corresponding bank incision and separation from floodplain; and large-scale agricultural uses such as grazing and crop production. The last of these three listed impacts has negatively affected San Timoteo Creek both due to direct resource impact and indirect introduction and support of the predatory and invasive brown-headed cowbird to the region. Primarily, "grazing is not compatible with habitat preservation as grazing can result in destruction of native plants; loss of biodiversity; lowering of population densities for a wide variety of taxa; disruption of ecosystem functions, including nutrient cycling and succession; change in community organization; and change in the physical characteristics of both terrestrial and aquatic habitats" (RLC 2008). It is incredibly difficult to quantify the total acreage impacted in the subwatershed by grazing, but its continuation in both legal and illegal instances poses a continual risk for functionality of aquatic resources in the region.

In addition to impacts from agriculture, the ongoing development and increase in impervious surfaces also accounts for some of the aquatic resource loss in the region. In its Master Habitat Restoration Plan for San Timoteo Canyon, the Riverside Land Conservancy noted that the Creek and major tributaries can be characterized by extreme incision at some points, and further points out that the accompanying aquatic sedimentation "resulting from anthropogenic sources (i.e. human induced land disturbance activities) is considered a pollutant by the California Regional Water Quality Control Board." Some of the major impacts from sedimentation can include its ability to "destroy fish-nesting areas, clog animal habitats, and cloud waters so that sunlight does not reach aquatic plants. Suspended and settleable solids (from sediment, trash, and industrial activities) can be deleterious to benthic organisms and may cause anaerobic conditions to form. Sediments and other suspended particulates can cause turbidity, clog fish gills and interfere with respiration in aquatic fauna (CRWQB 2002)." In addition to impact within the Creek and major drainages, increased incision also distances aquatic resources from floodplains, elongating distance between water availability and shelter and foraging opportunities, and decreasing buffer and transitional habitat connectivity.

Finally, the 2002 modifications made to 14,300 lineal feet impacting approximately 108-A, associated with the Reach 3B Flood Control Project represent the third major factor in regional aquatic resource loss. The transition of soft-bottomed channel into a rip-rap lined section transitioning into complete concrete lined trapezoidal section leading to the mainstem resulted in complete loss of long-term establishment of riparian habitat and associated benefits to soils, water quality, and dependent species. Regular maintenance in the hybrid soft-bottomed yet riprap lined section prevents establishment of mature vegetation, while the concrete-lined section further downstream prevents both habitat establishment and groundwater recharge from occurring. Aquatic losses associated with these improvements will likely never be reversed, thereby permanently limiting system function and ability to support area native species.

### ***Region: Santa Ana – Middle***

This major drainage of this subwatershed region include Santa Ana Reaches 3, 4 and Mill Creek Reach 1, and includes some of the highest-density urbanization in addition to some of the most active equestrian communities in the IERCD's Program Service Area. Cities included within this region features but are not limited to sections of the largely built-out Fontana, Ontario, and

Rialto, as well as those communities focusing on equestrian use and access while transitioning into more resident inclusion such as Jurupa Valley, Limonite, and Pedley. The activities focused within this region threaten health and function of aquatic resources due to high-impact land use, due to significant impervious surface development, high concentration of animals in and around water and buffer zones, or a combination of both. In addition to these impacts, this subwatershed also includes sections of the Santa Ana River mainstem previously treated for infestation of non-natives such as *Arundo donax*; however, these infestations persist and continue to impact communities downstream to include Orange County.

The significant urbanization of communities such as the City of Ontario can be traced back repeated regional settlements, beginning with thousands of years of native American presence including Tongva, Cahuilla, and Serrano tribal communities. History archived by San Bernardino County in connection with operation of the North Etiwanda Preserve at the north end of the Middle Santa Ana River watershed notes the 1882 purchase of land and water rights by the Chaffey brothers as the most significant turning point in urbanization, leading to the development of regional communities including Ontario. The Post-World War II history referenced on the City of Ontario's website notes that the economy did transition into a more urbanized environment, with ten thousand acres zoned for industrial use, including three major railroads, the San Bernardino, Pomona, and Devore Freeways (10, 60, and 15), and the Ontario International Airport all contained within City limits. While this development has increased the value of Ontario as an efficient centrally located transportation hub, impacts of this rapid urbanization have impacted aquatic resources and include major modification of waterways to combat flood risk and capture increasing nuisance flows; reduction in percolation ability of now-developed majority of City acreage; and associated removal of support for dependent wildlife, among other things.

Other communities in the Middle Santa Ana River region can be characterized as much more rural, despite recent incorporation of formerly County areas such as Jurupa Valley, and accompanying development necessary for resident support such as transportation infrastructure, residential communities, and commercial centers. Historically, there has been a significant equestrian community presence in communities in the lower subwatershed region, responsible for much of the aquatic resource issues associated with widespread horseback riding such as soil compaction, erosion, disturbance (due to noise & motion), pollution, nutrient loading, and introduction of non-native invasive plant species (Jordan, 2000). Impacts from equestrian use in established though illegal trails along the Santa Ana River are evidenced in proliferation of non-native species such as *Arundo donax*, presence of horse manure, and habitat fragmentation from improper trail establishment and use. These activities are continuing in present day, primarily due to the difficulty in enforcing against a community using subversive methods of recreation such as hidden trails, and therefore continue to threaten regional aquatic resource health.

#### ***Region: Santa Ana - Upper***

Much of the Upper Santa Ana regional subwatershed is located within the San Bernardino National Forest, and contains major drainages including Santa Ana River Reach 5, 6; Forsee Creek; Mill Creek; Warm Creek; Plunge Creek; East Twin Creek; City Creek and Siberia Creek. Major cities in this subwatershed include Highland and Redlands, and also include unincorporated San Bernardino County communities such as Mentone and Oak Glen.

Historically, aquatic resources contained within this subwatershed have been directly impacted and marginalized by activities including but not limited to multi-agency active management of forests; large-scale sand and gravel mining; and urbanization as residential populations boomed at the turn of the 20<sup>th</sup> century. Significant issues associated with the aforementioned activities have included increasing forest fuel loads exacerbating already aggravated fire events due to stock weak from drought, elevated temperatures, and pests; increasing impervious surface from population growth mandating modification of natural hydrology and reducing area open for native species support and water infiltration; and major excavation and large-scale impacts in sections of the subwatershed over now-listed species such as the San Bernardino kangaroo rat, the Santa Ana River woollystar (*Eriastrum densifolium sanctorum*), and the slender-horned spineflower (*Dodecahema leptoceras*).

Management of forested areas in the upper Santa Ana River subwatershed has become increasingly mandatory as mountain communities have grown and expanded outward. Suppressing natural fire occurrence that previously provided natural forest thinning has saved life and property in the short term, but threatened both in addition to forest resources as a result of the larger-scale catastrophic fire events resulting from the presence of standing dead trees and significant understory. As the ongoing health of forests statewide has continued to become a larger issue, efforts to manage forest and fire to maximize habitat health has increased, involving federal, state, and local agencies, and offering a number of financial incentives for property owners to engage in pre-fire fuel modification. In 2013, the United States Forest Service and Department of Agriculture teamed to directly three million dollars toward activities exclusively designed to elevate forest health, and in 2014, the California Department of Fire Protection offered large-scale grants to address fuel loads and pest presence to further incentivize forest health improvement. Yet despite these incentives, fire continues to persist as a huge issue for aquatic resources, primarily due to the ongoing trend of higher-intensity fires, with impacts including soil erosion, direct vegetation and wildlife death, and suspended sediment, elevated streamflow temperatures, increased pH values, and changed chemical concentrations and aquatic organism populations (USFWS 2009).

The Upper Santa Ana subwatershed also includes a significant section of Reach five of the Santa Ana River, which has been historically mined for aggregate such as sand and gravel, activities which have impacted regional native and ultimately threatened/endangered species from habitat loss, noise, and water quality impairment (SAWPA 2014). In 1997, area stakeholders with forms of jurisdiction over aquatic and transitional resources in this section of the Santa Ana River Wash began meeting in what would later transition into the foundation for development of the Wash Plan, and long-term management proposal for the region. The Wash Plan is designed to enable continuation of mining activities in exchange for funding of corresponding conservation and enhancement, particularly of impacted resources. As a result of development and adoption of this plan, almost 2,000-A will be set aside in conservation for the benefit of native wildlife and vegetation, while covered activities such as excavation of land for mining and water percolation will be enabled to continue despite adverse impacts to species (SBVWCD 2013).

The final major impact category in the upper Santa Ana River subwatershed area is directly connected to population increases traceable back to influx of residents in response to an increasingly booming citrus industry. As the industry spread, corresponding population grew,



necessitating the capture and control of water and modification of landscape to provide support for increasing resident needs. The elevating populations of cities and unincorporated regions of San Bernardino County resulted in the establishment of flood control structures such as those on a significant number of reaches of the once exclusively soft-bottomed Zanja Creek moving through the City of Redlands. Such concrete lining increases runoff, decreasing percolation and recharge of groundwater, and reduces opportunity for establishment of native mature riparian forest for dependent species.

**d. Analysis of current aquatic resource conditions in the service area (33 C.F.R. § 332.8(c)(2)(iv))**

The Service Area of the IERCD In-Lieu Fee Program is the full Santa Ana River Watershed; however, active In-Lieu Fee Credit projects will be facilitated only in the upper half of the watershed coincident with IERCD's District Boundary. Current aquatic resource conditions are similar throughout the entire Service area. Aquatic resources in the Santa Ana River watershed are all severely impacted by the extensive draw down of aquifers, poor water quality due to effluent releases, and urban or agricultural run off, reduced sediment transport, and extensive areas dominated by invasive species. The aquatic resource conditions of the six HUC-12 subwatershed regions of the Santa Ana River Watershed in which the ILF program will complete mitigation projects are examined in more detail below.

***Region: Big Bear Lake***

The Big Bear Lake subwatershed region encompasses 88.2 square miles of habitat representing headwaters of the Santa Ana River watershed. Within this region, approximately 111 linear miles of streams and drainages flow to the Lake, comprised of a combination of functional sites characterized by mixed willows (*Salix spp.*) and *Acer spp.* and sections defined by channelization and associated vegetation gaps, bank incision, and interruption by human development, among other evidence of degradation (Caplan 2015). Water quality within these streams and drainages has also been compromised, as evidenced by listing of multiple water bodies in the Big Bear Lake watershed within the 2012 California Integrated Report (EPA 2015). This report lists Big Bear Lake (2,865 acres; polychlorinated biphenyls/PCBs at a level exceeding TMDL) and major tributaries including Rathbun Creek (also referred to as "Rathbone;" 4.7 miles total, cadmium and copper contribution at levels exceeding TMDL) and Knickerbocker Creek (two miles total, contributing unknown pathogens at levels exceeding TMDL) current as of the year of publication.

Other significant aquatic resources of the Big Bear Lake subwatershed exist in the form of scattered montane meadows, defined by the Environmental Protection Agency as "the most prevalent and widely distributed wetlands in North America...[characterized by] highly organic, mineral rich soils of sand, silt and clay...Due to their high levels of nutrients, freshwater marshes are one of the most productive ecosystems on earth." Those present in the Big Bear subwatershed vary in functional quality due to multiple factors including urbanization, use of off-road vehicles, and cattle grazing (USFWS 2011). Development specifically has replaced many historic meadows along the south shore of Big Bear Lake which has resulted in significant disturbance to meadows, including altered hydrology and high presence of invasive plant species including tumbling mustard (*Sisymbrium altissimum*) and flax weed (*Descurainia sophia*).

Assuming 2,500 acres; total remnant meadow existing at the edges of big bear lake today totals 154.3 acres which is less than 1% of its original assumed size.

Significant meadow habitat in Big Bear valley includes the following:

- **Shay meadow:** 30-A wetland and vestigial section remaining from reduction in area wetlands by just under 3,000-A during development of Big Bear Lake dam in 1911. Subsequent additional development around Big Bear Lake and Baldwin Lake has further reduced available wetland acreage (SAWPA 2014)
- **Stanfield marsh:** 145-A wildlife preserve, originally designed to enhance existing wetland; however, no longer under active management by the now-defunct Natural Heritage Foundation, Inc.
- **Metcalf Meadows:** two lakefront open space wetland properties with a varying degree of degradation as a result of human activity, with one owned by the IERCD and the adjacent property owned by the San Bernardino Mountains Land Trust
- **Other regional meadows include:** Belville Meadow/Holcomb Valley, Baldwin Lake, Bluff lake reserve, and Fawnskin meadow

Total aquatic resources in the Big Bear Valley consist very approximately of 1,312 acres of meadow/ seasonal wetland, and 1,018 acres of which make up the intermittently filled Baldwin Lake, as shown on the attached map. Development of the southern lakeshore as valuable real estate space has further degraded wetland on the perimeter of Big Bear Lake. Most meadows along the south shore occur as small isolated islands, sandwiched between mountain cabins and roads.

### ***Region: Chino Basin***

The total area of the Chino Basin subwatershed is approximately 10,957 acres and is comprised of estimated land uses including 1,691 acres of residential, 3,949 acres of open space/ agricultural and 5,317 acres of industrial/commercial (SCWC 2012). Within this region, there are approximately 73.8 linear miles of channelized stream and 78.8 linear miles of vegetated stream, however 70.6 miles of the latter category are fully contained within montane areas of the San Bernardino National Forest Lands. Excluding mountain drainages, it is estimated that just 11% of streams and waterways contain some form of riparian habitat of varying quality, with the remaining 89% concrete-lined and channelized for flood protection and control.

The montane drainages at the north end of Chino Basin subwatershed are functional, characterized by natural flow paths and high native cover, likely due to absence of development and major historical disturbances on lands that have been historically managed by the United States forest Service. Within this region, only the San Antonio Creek waterway appears compromised due to the significant presence of the highly invasive Spanish broom (*Spartium junceum*).

Excluding the aforementioned montane region, the remaining aquatic resources include approximately 131.1-A of degraded riparian habitat over four drainages at the east end of the City of Chino Hills. Much of this area has limited function due to dairy waste runoff, increased soil erosion, and increased stormwater flows which have decreased water quality, increased channel incision, lowered infiltration rates, and resulted in elevated risk of flooding (SARWQCB 2013). The resulting remaining riparian area is composed of mixed willow woodland

(*Salix/Populous ssp.*) with compromised function due to the presence of a moderate level of woody invasive plant species including Mexican fan palm (*Washingtonia robusta*), castorbean (*Ricinus communis*), and giant reed (*Arundo donax*). Water quality in this region is impaired as evidenced in drainages listed in the 2012 California Integrated Report (Clean Water Act Section 303(D) List/305 (B) Report, published June 2015) including Chino Creek (approximately 10 miles, contribution of pathogens, sediment, and pH at levels exceeding TMDL) and Cucamonga Creek (cadmium, copper, lead, zinc, and pH at levels exceeding TMDL).

The IERCD is in the process of gaining control over 12-A of degraded riparian corridor and transitional habitat in this southern section of the Chino Basin subwatershed. This acreage is slated to gain functional improvement through implementation of invasive species control and reintroduction of riparian vegetation; once completed, it will connect to a corridor providing a linkage to the Prado Wetlands, 1,153 acres dominated by mixed willow woodland, open water, and percolation basins available for a variety of wildlife support.

### **Region: Lytle Creek**

The region defined as the Lytle Creek subwatershed consists of 164.3 square miles, including approximately 273 miles of natural, vegetated streams of varying function and just 9.6 miles of concrete-lined channelized sections. Though largely intact, streams of the Lytle Creek subwatershed face numerous threats including extensive dumping, of which severe cases can be observed along Cajon Creek; presence of invasive plant species including several large infestations of Spanish broom (*Spartium junceum*), giant reed (*Arundo donax*), and salt cedar (*Tamarix ramosissima*); and non-permitted use of off-highway vehicles in wash areas. These impacts have contributed to the listing of 41 miles of Lytle Creek in the 2012 California Integrated Report (Clean Water Act Section 303(D) List/305 (B) Report, published June 2015), due to contribution of pathogens at a level exceeding TMDL. High levels of recreational use in combination with unmaintained septic systems likely also played a role in this listing (SAWPA 2010).

In addition to riparian uplift potential, this region has been identified as a candidate for Critical Biological Zone (CBZ) designation, due to its availability of otherwise scarce alluvial fans of Lytle and Cajon Creeks that provide support for listed vegetation including the slender-horned spineflower (*Dodecahema leptoceras*), and Santa Ana woollystar (*Eriastrum densifolium sanctorum*) and endangered wildlife including the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and coastal California gnatcatcher (*Polioptila californica*) (Bond et al. 2004). Uplift through execution of projects under IERCD's pending In-Lieu Fee Program would provide benefit to riparian function and dependent species in this region.

### **Region: San Timoteo Creek**

San Timoteo Creek watershed represents 123.4 square miles of area on the east end of the Santa Ana River watershed, within which 206 linear miles of streams and ephemeral drainages are located. Land protection in this subwatershed is more pronounced due to the number of conservation-focused entities in the region, which has enabled the majority of San Timoteo Creek and tributaries to remain soft-bottomed and natural. Significant flood protection work was performed over Reach 3B of this Creek, from its intersection with San Timoteo Canyon Road upstream to its intersection with Alessandro Road; however, significant mitigation dollars were provided in exchange for these impacts, enabling elevated conservation, enhancement,

and restoration in the watershed since 2004. Currently, function of the watershed is addressed on individual properties controlled by various stakeholders, focusing on removing invasive species, returning native vegetation to these sites, and monitoring rehabilitated areas for evidence of wildlife presence and support.

However, despite these resource uplift efforts, San Timoteo Creek remains in need of project placement work, primarily due to habitat function challenges. Despite conservation activity within the region, much of the property remains unmanaged or undermanaged, resulting in significant presence of invasive species along riparian corridors, such as tree of heaven (*Ailanthus altissima*) and salt cedar (*Tamarix ramosissima*) and of historically grazed properties in need of active restoration to enable return to functional riparian and transitional habitat capable of native species' support. In addition to these problems, the subwatershed suffers impacts related to illegal use of off-highway vehicles, presence of illegally dumped trash, and illegal dumping into the Creek, resulting in sedimentation and quality issues, among other issues.

Data taken over a three-year period associated with Canyon restoration efforts has also revealed areas within this subwatershed incredibly well-suited for riparian restoration due to presence of a high water table and connectivity between actively managed properties characterized by mixed willow-cottonwood forest. The IERCD currently controls habitat over which successful riparian restoration is occurring with significant potential for additional acreage, and is in negotiations to acquire a property featuring a significantly degraded unnamed ephemeral tributary to San Timoteo Creek offering potential options for aquatic resource uplift and protection.

#### **Region: Santa Ana – Middle**

The total area of the middle Santa Ana River middle region is 292.5 square miles, with the area within the IERCD district boundary containing 81.6 miles of channelized waterway and 70 miles of vegetated stream. Much of this latter category is represented in montane drainages and in the Santa Ana River mainstem, with just four miles of non-mountain drainages containing soft-bottomed, non-concrete lined stream habitat. The collective stream and channel tributaries in this region are often dry, running only during receipt of storm flows, and altered along with the mainstem in this reach, by direct illegal dumping of large fill. This fundamentally alters hydrology and has also contributed to listing in the 2012 California Integrated Report (Clean Water Act Section 303(D) List/305 (B) Report, published June 2015) for pathogen contribution at a level exceeding TMDL. Habitat fragmentation from development has also contributed negatively to water quality and general habitat health, due to loss of protective buffers around more sensitive riparian habitat and impacts to dependent species (SAWPA 2010)

This vegetated linear riparian section of this region is characterized by a range of levels of functionality, including full infestation of stands of 100% *Arundo donax* to relatively functional mixed willow-riparian forest. Most of the vegetated sections of waterway in this region are at least partially infested by invasive woody species and herbaceous perennials such as poison hemlock (*Conium maculatum*) and perennial pepperweed (*Lepidium latifolium*). During discussions with the Riverside County Flood Control and Water Conservation District on plans for ongoing management of Day Creek, regulatory agencies noted the potential for uplift and

likely benefits to the Santa Ana River mainstem, particularly due to its status as one of the region's few remaining soft-bottomed channels.

The IERCD controls property in this region over which it facilitates mitigation on behalf of participants in California Department of Fish and Wildlife's 1600 program. Additional lands may be acquired with linkages to current IERCD properties, for the purposes of continuing both CDFW and ILF Program mitigation potential, depending upon resource inventory and level of Function at time of property interest conveyance.

***Region: Santa Ana - Upper***

The Upper Santa Ana Sub-watershed contains approximately 300 linear miles of vegetated natural stream and 72.3 linear miles of channelized stream. Again, omitting montane drainages and streams of National Forest lands, there are only 13.4 linear miles of unchannelized waterway that is totally contained in the Santa Ana River Wash from the seven oaks dam (Map 6). Major drainages in this subwatershed include Bear Creek, Siberia Creek, Forsee Creek and Mill Creek. Of these drainages, only Grout Creek is listed in the 2012 California Integrated Report (Clean Water Act Section 303(D) List/305 (B) Report, published June 2015) for nutrient contribution at a level exceeding TMDL. While required to be remediated by 2008 following a 1994 listing, they remain on the most current data for impaired streams. In this region, aging rural wastewater management systems are listed as contributors to water quality problems resulting in 303(d) listings. This subwatershed also contains the Seven Oaks dam, completed in 1999 for flood control, recharge and water quality benefits; however, its presence further lowers quality of aquatic resources of this subwatershed resulting from interruption of sediment transport and artificial structural changes to riparian vegetation communities from lack of scour-level flows.

Unlike the Middle Santa Ana River, the Upper Santa Ana River is mostly comprised of alluvial sage scrub and habitat types associated with ephemeral washes and hence contains significantly less "true" riparian habitat; however, there are exceptions where regular water discharge occurs and willow woodlands (*salix spp.*) have established or persisted. A total of approximately 109.5 acres of riparian woodland and 1,869 acres of open active wash vegetated with varying stages of alluvial fan sagescrub is contained within this subwatershed.

- e. Aquatic resource goals and objectives for the Program, including a description of the general amounts, types and locations of aquatic resources the program will seek to provide (33 C.F.R. § 332.8(c)(2)(v))**

The Service Area of the IERCD Program focuses on 2,650 square miles of the Santa Ana River Watershed (SAR Watershed). The SAR watershed is one of the most urbanized in California, due to presence of some of the highest populated and fastest growing counties including Los Angeles, Orange, Riverside, and San Bernardino. The SAR watershed is located within less urbanized watershed to the east (whitewater) and north (Mojave), and a similarly-growing watershed to the south (Santa Margarita). The cumulative impact of these growing populations and corresponding increases in development and improvements in infrastructure to support these residents, has been a series of expanding threats to watershed health including habitat loss and degradation, alteration of natural hydrology, and long-term agricultural uses. The magnitude of these threats varies depending upon location within the subregions of the watershed, and is further detailed in those individual sections.

The cumulative impact of these identified barriers to watershed health has resulted in historic and projected aquatic resource loss, further detailed in subwatershed sections, but overall contributing to the significant need for remediation of the compromised water quality, threatened groundwater recharge capacity, changing composition of native and invasive vegetation components, and the growing list of marginalized native fish and wildlife occurring within its significant boundary.

The Santa Ana River Watershed, despite its urban center, retains significant reaches of uninterrupted and conserved, otherwise undeveloped acreages, including the following estimated aquatic resources in varying degrees of functionality. Detailed information on these acreages can be found in individual subwatershed regional detail in this section, but the cumulative list of watershed-wide aquatic resources, including disturbed, heavily disturbed via concrete lining, and intact acreages consists of the following estimates:

- 1,312 acres of meadow/seasonal wetland, and 1,018 acres of which make up the intermittently filled Baldwin Lake
- 131.1-A of degraded riparian habitat over four drainages at the east end of the City of Chino Hills
- 273 miles of natural, vegetated streams of varying function and just 9.6 miles of concrete-lined channelized sections in and linking to Lytle Creek.
- 206 linear miles of streams and ephemeral drainages within the San Timoteo Creek subwatershed
- 81.6 miles of channelized waterway and 70 miles of vegetated stream within the region identified as middle Santa Ana River watershed
- 13.4 linear miles of unchannelized waterway that is totally contained in the Santa Ana River Wash from the seven oaks dam, in the upper Santa Ana River Watershed, in addition to 109.5 acres of riparian woodland and 1,869 acres of open active wash vegetated with varying stages of alluvial fan sagescrub

The degree to which the aforementioned aquatic acreage is functional has a significant impact upon water quality and quantity within the watershed, and as a result, on the individual function of its dependent environs. Uplift within such a large, environmentally and structurally diverse region can be difficult to achieve in the absence of cooperation among stakeholders able to identify issues and potential solutions. However, in the Santa Ana River watershed, there have been key stakeholders in the regulatory and water resources communities that have initiated the development of key plans that have set forth regional identification of functional challenges, alongside goals for remediating these resource issues with an eye to maximizing watershed health for the benefit of dependent species. Reviewing plans addressing watershed-wide challenges reveals commonalities in identified goal structure among documents including the Santa Ana Watershed Project Authority's Integrated Watershed Management Plan and successor One Water, One Watershed 1.0 and 2.0 plans, in addition to individual Riverside and San Bernardino County Regional Water Quality Control Board Watershed Action Plans and the recently completed Upper Santa Ana River Habitat Conservation Plan. These all identify the following watershed goals as key to recovery:

- *Regional Collaboration:* all referenced plans note the critical need to cooperate at a regional level to identify watershed deficiencies and to develop current and projected strategies to address these functional problems. Regional collaboration calls upon cooperating entities to prioritize commonalities as a method of maximizing agency resources in an effort to address the most pressing issues facing the watershed and its dependent species.

- IERCD Program Goal Consistency: the IERCD's ILF is consistent with this approach of regional collaboration cited in multiple watershed management and action plans, as evidenced in its approach to identification and acquisition of property appropriate for Program Credit placement within its Service Area. Candidate properties are identified as project-ready, all of which involve partners as a result of historical and ongoing District work in the Service Area. Beginning in the Big Bear Valley region, the IERCD works with partners including but not limited to the United States Forest Service, the County of San Bernardino, multiple cities, special districts, and non-profit entities, in regional identification of potential properties needing uplift and local and regional coordination in activities necessary for acquisition of those properties and development of work plans to enable resource improvement. Similar relationships among federal, local, and private entities continue through the District's Service Area, in each subregion of the watershed, and over each property and reach of the river and tributaries identified for potential ILF project placement.

This historic and ongoing collaboration with local and regional entities maximizes the effectiveness of ILF project site identification, acquisition, and eventual implementation, through collective determination of functional deficiencies and remedies. Existing and ongoing development of new relationships with federal, regional, and local entities is key to realization of this goal of regional collaboration and is one that is entirely consistent in the Program and throughout watershed management plans published throughout the last twenty years for the benefit of regional resource health.

- IERCD Program Goal Strategy: the realization of the ongoing goal of regional collaboration and approach to watershed management will be addressed through actions that include but are not limited to continued participation in local and regional conservation-focused collaborative groups in key subwatershed regions; continued acquisition of new partnerships and expansion of existing partnerships for the benefit of watershed resource planning and elevation of health; and elevating participation in in-progress and future watershed planning documents, such as the Upper Santa Ana River Watershed Habitat Conservation Plan, for which habitat uplift services from IERCD has recently been secured for future work.
- *Focus on open space preservation on a watershed scale*: all referenced plans also contain identification of preservation of key areas of aquatic resources and buffer zones on a regional level, including county-wide RWQCB watershed action plans (*goal*: Promote the preservation of wetlands, riparian corridors, and buffer zones; establish reasonable limits on the clearing of vegetation from the project site; *goal*: Protection of water resources, including groundwater recharge areas); OWOW 1.0 and 2.0 (*goal*: Preserve and enhance the environment); and is heavily referenced throughout the Upper Santa Ana River Habitat Conservation Plan and the Santa Ana River Basin Plan. The references to this overarching watershed-wide goal as included in these multiple management and action plan are focused on projected results; these include but are not limited to elevation of riparian health for benefits to linear water body quality and quantity, preservation of groundwater recharge capability, and establishment and maintenance of buffers to protect the sensitive interior aquatic resources, among others.
  - IERCD Program Goal Consistency: Preservation of habitat, defined as protection both legally and through completion of annual tasks on a long-term basis designed to

protect aquatic and buffer functionality of property, is identified as a goal in IERCD's Program Prospectus, identifying current target properties for acquisition and preservation. The IERCD already works on a regional basis with multiple partners and has recently provided for long-term preservation of aquatic habitat in support of listed species including the unarmored three-spine stickleback (*Gasterosteus aculeatus williamsoni*) and the bird-foot checkerbloom (*Sidalcea pedata*). This watershed-wide goal of preservation of open space is as critical as the performance of elevated functional uplift tasks such as removal of invasive vegetation and replacement of native species, as these spaces enable ongoing function of the above listed watershed processes and provide additional, elevated protection for functional but not legally or physically protected property at risk for degradation through a variety of anthropomorphic activity.

- IERCD Program Goal Strategy: long-term open space preservation will be achieved on an individual subwatershed scale via measures outlined in individual sections of above-referenced regional watershed management plans, and in the IERCD ILF Program Prospectus. On a watershed-wide scale, this goal will be met through performance of measures and objectives that include but are not limited to continued assessment via remote sensing of existing conserved properties and adjacent sites needing conservation and potential uplift; continued coordination with federal, regional, and local partners on specific sites available for preservation and steps necessary to acquire these properties for the Program; facilitation of steps outlined in Program relative to legal protection and associated tasks for perpetuity preservation including assessments, reporting, fund management, trash removal, and vandalism and illegal trespass prevention; and increasing IERCD land portfolio through active acquisition of easement and fee title interest.
- *Focus on habitat uplift on a watershed-wide scale*: all of the above-referenced plans also include uplift of degraded habitat central to achievement of plan goals and objectives on a regional level, including OWOW 1.0 and 2.0 (*goal*: Preserve and enhance the environment); SAR Basin Plan Updated 2016 (*goal*: A balanced community is one that is (1) diverse, (2) has the ability to sustain itself through cyclic seasonal changes, (3) includes necessary food chain species, and (4) is not dominated by pollution-tolerant species, unless that domination is caused by physical habitat limitations.); and the Upper Santa Ana River Habitat Conservation Plan which very specifically lists intention to focus on habitat uplift through multiple approaches for the benefit of target marginalized native species. Collectively, these watershed-wide goals focused on improvement of habitat function identify that regional planning has noted both the large-scale presence of habitat issues and strategies for addressing these problems within the Santa Ana River watershed. The plans recognize, through provision of input by multiple stakeholders, that the continuation of habitat connectivity is critical; however, even more critical is connection among functional wildlands with resources readily available for critical species support which requires ongoing habitat uplift throughout the watershed.
  - IERCD Program Goal Consistency: as with habitat Preservation, functional uplift of acreage within the Santa Ana River watershed has been identified throughout currently controlled and potentially controlled properties as potential credit placement. Throughout its 75-year history in the region, the IERCD has continually prioritized partnerships including current listing as a District strategic objective through 2020. A key element of these partnerships is ongoing identification of lands over which uplift is



needed locally and over which resource improvement is critical for regional and watershed-wide function. Lands listed in all documents associated with this Program have references to general need to uplift through invasive vegetation control, replacement of natives, and return of aquatic function to heavily degraded sites.

- **IERCD Program Goal Strategy:** the implementation of this goal within subwatershed regions of the Santa Ana River will be accomplished through tasks outlined in individual sections. On a watershed-wide approach, functional habitat uplift will be achieved using strategies including but not limited to development of local and regional site implementation plans based on conditions identified at site and using methods proven to be successful from prior and current IERCD restoration projects; continued retention of services of highly qualified restoration professionals where necessary to ensure development of plans with maximum effectiveness; ongoing remote and on-the-ground field verification of conditions identified as appropriate for facilitation of ILF mitigation projects; and strategic listed in prior two goals for continued partner development and land portfolio expansion.

The design of IERCD's ILF Program focuses heavily on a watershed and subwatershed approach to resource uplift based on factors focused on but not limited to existing threats to aquatic resource Function; potential for native species support; position of project in the watershed; and local and regional habitat connectivity potential. The following sections further describe individual subwatershed goals, listing each potential area of work including specific detail regarding site Function, size, and potential for improvement. Listed areas were primarily identified based on Function impairment resulting from identified Program Service Area threats as demonstrated in individual subwatersheds including population growth, habitat loss and degradation, alteration of natural hydrology, and long-term agricultural uses. Following identification based on Program threats, these possible areas for uplift were further identified based on potential benefit to the Program Service Area. Each of the following subwatershed sections further details aforementioned information in addition to benefits expected from facilitation of Program work.

The following subwatershed sections provide regional goals in greater detail as a function of the previous discussion focusing on watershed-wide goals, both in IERCD's Program and included in regional watershed planning, management, and action documents.

#### *Region: Big Bear Valley*

Of the four primary threats to resource health identified in the Program Service Area, the two most significant in the Big Bear Valley subwatershed are population growth and modification of natural hydrology. For this reason, four sites within the region were selected, prioritized due to impacts from lack of Function due to growing population and accompanying increase in runoff, increasing non-point source pollution and presence and spread of invasive vegetation which collectively lower water quality. The sites were further prioritized as a result presence due to altered hydrology that has incised banks, and increased erosion and sedimentation in the case of Rathbun Creek, as well as eliminating the majority of montane meadows present in the valley in the case of the two Metcalf properties and the Shay property. These meadows are also being prioritized due to historical and very active disturbances such as presence of grazing animals and physical movement of dirt resulting in displacement of natural hydrology which reduces uniformity of mesic properties and support for species on these sites.

Restoration of these four properties is designed primarily to increase function of the region identified as the headwaters of the Santa Ana River watershed. Lower water quality, presence of invasive vegetation, and compromised health of native species due to altered hydrology all combine to reduce support of this subwatershed for local and regional native species. Benefits of uplift of dysfunctional habitats at the very top of the watershed positively impact receiving drainages; in turn, improved water quality entering these systems results in elevated function. Improvements in these project areas predicted to result from uplift work will address threats to functionality including:

- Modification of hydrology: restoration of water movement to natural patterns is projected to provide improved soils and water resources for dependent species, enabling natives to thrive and reducing competition by invasives through active eradication. Return of natural hydrology is also predicted to provide additional opportunity for water to percolate at increasing rates, elevating quality and recharging groundwater to ensure ongoing availability for dependent species.
- Population Increase: the destructive patterns of increasing residents and corresponding elevated point and non-point source run-off scours streambanks, reducing vegetative cover and increasing water body sedimentation and pollution. Planned restoration is slated to address this threat through removal of invasives and reestablishment of native species capable of soil stabilization, in addition to implementation of water quality improvement measures such as trash removal and increased site presence and protection focused on reduction of illegal presence and activities on site.

#### *Region: Chino Creek*

Of the four primary threats to resource health identified in the full Program service area, the three most significant in the Chino Creek subwatershed are population increase, modification of hydrology, and historic and current agricultural operations. Primary historic losses of aquatic resources in this region can be traced back to impacts from these threats. As a result, project opportunities within this region were sought based on IERCD intention to locate and uplift sites degraded from impacts associated with these threats. The seven sites that were the result of this search were identified, including five creeks and drainages, and two floodplains. Linear perennial and ephemeral systems were identified based on ability to uplift to combat increased population and runoff, due to non-point source pollution and lower water quality. This compromised water quality has been further degraded by ongoing agricultural practices in the region replacing native communities with managed lands identified as the largest contributor of pollutants to the mainstem and major drainages of the subwatershed. The final indicator of need for uplift has been the status of identified channels as within the approximately 11% surviving the otherwise large-scale concrete lining that characterizes the majority of this region. Collectively, these impacts from identified regional and local threats are the primary purpose in site selection and identification as potential ILF Projects. Both floodplain properties have been selected due to artificial modification of hydrology and conversion of transitional and buffer zones for agricultural use, in addition to large-scale presence of invasive species and compromised environmental health stemming from runoff-based contamination.

Rehabilitation and Reestablishment of aquatic values to these seven sites is being proposed to uplift confirmed degraded habitats operating within a range of dysfunction. Lowered habitat quality enables less protection for dependent wildlife, and the position of this subwatershed is critical for multiple linkages between open space and other managed habitats such as Chino Hills State Park and the Prado wetlands. Function of waterways linking these larger sites capable of significant species support is critical for overall watershed health. Tasks proposed to occur within these sites are focused on return of

full range of functions through performance of removal of invasive species, either encouragement of reestablishment of natives or active reestablishment with natives; removal of major and minor trash; and increased protection and presence on site to combat impacts from watershed threats.

Improvements in these ILF Project areas predicted to result from uplift work will address threats to functionality including:

- Modification of hydrology: conservation and uplift of the remaining soft-bottomed channels in this watershed is critical for continued groundwater recharge, water quality improvement, and ability to sustain habitat established as part of this program for the benefit of dependent species. In addition to that concern, return of natural vegetated corridors transitioning out to buffers rather than enabling ongoing stark unvegetated channelization of identified project areas is critical for increased health and function of streams and the systems they support.
- Agricultural uses: properties such as the acreage along Cucamonga Creek are largely impacted by large-scale confined feeding operations that include a range of active and inactive farms. The return of agricultural land to natural riparian buffers and transitional areas closer to stream corridors increases habitat for dependent wildlife and ensures natural elevated protection for sensitive aquatic habitat. Work planned for drainages conveying water through areas of former and active agriculture will be uplifted primarily by transitioning vegetation from patchy non-natives to thick riparian cover, capable of capturing pollutants prior to stormwater and nuisance flows entering channels.
- Population increases: as the region continues to increase in population, the ability to engage in reestablishment and rehabilitation of aquatic resource value is critical to combat ongoing threats to health such as water quality impairment from large-scale runoff. Projects identified as 0, 1, and 2 are all important in returning function to drainages to the mainstem of this subwatershed.

#### *Region: Lytle Creek*

This subwatershed is primarily impacted by habitat loss and degradation, and ongoing increases in both permanent and visiting populations. Negative effects of these three threats to watershed health are seen in impaired water quality, fragmentation of aquatic and transitional habitat and impact on dependent species due to a variety of factors. ILF Project sites were selected based on observed impacts from threats, primarily focused on significant presence of invasive vegetation and illegal dumping; however, selection was also based on proximity to other managed areas to encourage protection of continuity of habitat for dependent species. The position in the upper Santa Ana River watershed makes protection and uplift of resources within these sites critical, both for improvement of resources downstream, and due to sensitive species supported in the subwatershed.

Improvements in these ILF Project areas predicted to result from uplift work will address threats to functionality including:

- Habitat Loss and Degradation: both identified project areas suffer impacts to water quality due to presence of invasive species and events such as fire which is increasing in intensity and frequency. Uplift planned to include removal of invasive vegetation and encouragement of reestablishment of natives is slated to increase function of sites, to be further improved through increased protection in the form of current trash removal and future illegal dumping remediation and prevention. Protection of otherwise unpreserved sections of land will provide additional permanent linkages to properties already under conservation such as those under the control of the United States Forest Service within the San Bernardino National Forest.

- **Population Increases:** In addition to habitat fragmentation and degradation, the relentless presence of day-users in the region impacts habitat health in a variety of ways. Working to discourage presence of day-users in sensitive aquatic corridors will enhance water quality, to be performed primarily through reestablishment of native riparian Buffers and increased protection on site.

*Region: San Timoteo Creek*

Major threats to the health of the San Timoteo Creek subwatershed stem primarily from increases in regional population and corresponding development; modification of hydrology through measures designed to improve structural holding capacity for infiltration and quality improvement purposes; and long-term agricultural use. The current condition of the subwatershed reflects historic resource loss connected with these threats, resulting in a subwatershed altered from its original composition as visible in bank incision and sedimentation of Creek mainstem and tributaries; increased presence of invasive vegetation impacting Creek mainstem, drainages, and buffer habitat; and large-scale conversion of buffer regions from native riparian and transitional scrub to current or disturbed agriculture. Lack of management funding and/or agency capacity hinders entities that control impacted properties from the level of active management required, which results in ongoing degradation from unaddressed resource function problems in the watershed. Identifying those areas with a combination of the most significant degradation relative to watershed position and connectivity to other open spaces/potential habitat linkages forms the core approach for resource uplift in this section of IERCD's Program Service Area that is not subject to large-scale concrete lining or even artificial trapezoidal channelization of water conveyance features.

- **Specific Acreage Proposal:** The IERCD is proposing to conduct work within multiple unnamed drainages to San Timoteo creek. Acreage identified for uplift is severely degraded by the presence of invasive vegetation consisting primarily of tree of heaven (*Ailanthus altissima*) in the drainage center transitioning out to infestations of tree tobacco (*Nicotiana glauca*), giant reed (*Arundo donax*), then noxious annuals such as mixed mustards (*Brassica ssp.*) and yellow starthistle (*Centaurea solstitialis*). In addition to presence of invasives, as is the case with many San Timoteo Creek subwatershed properties, this property sustains regular damage to aquatic and transitional habitats from illegal trespass, particularly that done for motorized recreation or for the discharge of firearms.
- **Reference Project Example:** The IERCD is very actively involved in resource uplift within this subwatershed, having partnered to conduct projects on preserved properties controlled by other federal, state, local and private conservation entities for over 20 years. One key example of mitigation facilitation in this region indicative of planned approach for project work in the proposed ILF program is the partnership with 501c3 Riverside Land Conservancy over their Cienega Canyon property. Located north of San Timoteo Canyon Road and west of Palmer Road on the Conservancy's approximately 350-A preserve, uplift work has included a suite of tasks designed to reduce invasive cover and increase native cover for aquatic and transitional species support. IERCD activities on the property began analysis of wildlife present as documented over a ten-year period by a partner non-profit, coupled with research into soil type and condition; groundwater availability and seasonality as demonstrated with piezometers; actual wildlife presence through array surveying; and structure and function of references sites. The District then identified several regions on the property capable of sustaining restoration as determined through data analysis, then selected a series of sites within which to begin work.

These sites were identified as appropriate due to the large concentration of noxious invasive vegetation populations, proximity to a major tributary to San Timoteo Creek, and potential to provide critical connectivity to facilitate beneficial wildlife movement through the region.

Project work was performed in a series of 2-A phases to enable lessons learned from each effort to be applied to future efforts for constant improvement in approach and execution of projects. Following site preparation including removal of invasives, soil loosening and where applicable installation of irrigation, the IERCD began active restoration via use of a combination of container stock and locally sourced 10' pole cuttings of mixed willows, cottonwoods, and mixed *Baccharis* noted as present and thriving in the subwatershed. In the second 2-A phase, container stock was eliminated due to inefficiency of operation of irrigation system in the canyon relative to benefits of increased diversity in planting palette, while in the third 2-A effort conferring with regulatory agencies responsible for original project permits led to inclusion of increased patchy habitat to elevate site diversity. Ultimately, 6-A of dysfunctional riparian habitat has been placed transitioned in an efficient, defensible manner with monitoring data reflecting across-the-board success with all but Phase I elderberry. After replanting deceased elderberry, it was determined that originally sourced stock health compromised initial success; however, the site is now thriving across all categories as evidenced in performance of transect and plot monitoring, regular wildlife surveying and analysis, and photo documentation from established point and from wildlife cameras.

#### *Region: Santa Ana River – Middle*

Threats to this subwatershed are primarily centered on population growth and modification of hydrology, in addition to rural community concentration of equestrian activity. The presence of increasing population in this region has elevated total impervious surface, particularly through the channelizing and concrete-lining of water conveyance features, reducing groundwater recharge and increase surface runoff and non-point source pollution. In addition to these threats, the widespread practice of equestrian activities further reduces water quality, increasing erosion along streamside trails and non-point source pollution from manure and movement of horses through the subwatershed.

ILF Project areas have been identified to address impacts from these threats such as increases invasive species presence, decreased concentration of natives with associated support for wildlife and soil health benefits, and elevated erosion and sedimentation of water. ILF Projects selected for performance within the Middle Santa Ana subwatershed are intended to address some of these issues through performance of the following tasks in response to regional threats to resource Functions:

- Population increases/Modification of hydrology: because population in this region will likely continue to grow, preservation of remaining soft-bottomed channels is critical for ongoing provision of habitat for dependent species and ability to establish native riparian habitat in place of fragmented, degraded invasive communities. Further protection for remaining natural channels will also provide ongoing improvement in water quality resulting from addressing aquatic corridor as well as riparian and transitional buffer, providing increased shelter and protection for the highest-value segments of these systems.
- Equestrian activities: the water pollution resulting from horse movement and resulting spread of pollutants is responsible for degradation of resources such as those identified in project areas 3, 7 and 8. Planned uplift is scheduled to take place through removal of invasive species, passive or active reestablishment of native species to improve water filtration prior to entering

water bodies, removal of trash, and increasing shelter and foraging opportunities for native wildlife.

*Region: Santa Ana River – Upper*

Significant impacts to health of this subwatershed include population increases and habitat loss and degradation due to aggregate mining and fire. ILF Projects are designed to address the most significant impacts resulting from population and habitat fragmentation and quality loss issues, including but not limited to increasing presence of invasive species, lowered function of aquatic systems as they narrow and become separated from associated flood plain due to runoff-related erosion, and compromised water quality from impact of fires that are increasing in intensity and incidence. Projects performed in this region are critical to health of several key vegetation communities and wildlife species, including Riversidean alluvial fan sage scrub, San Bernardino kangaroo rat, and the Santa Ana River woollystar, among others.

Objectives of uplift performed over the six sites identified as potential for Credit in the Program including performance of Restoration tasks addressing the following threats:

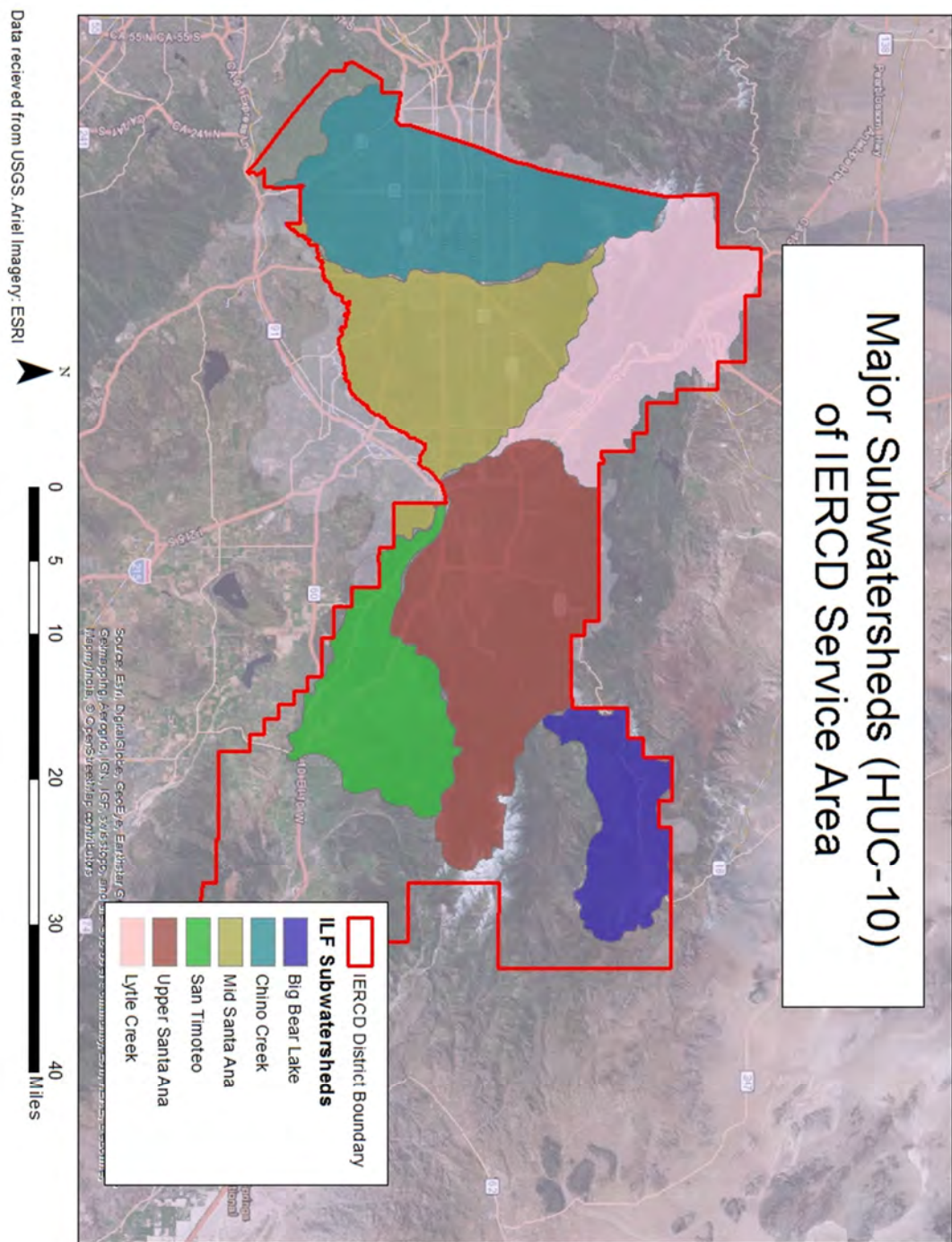
- Habitat loss and degradation, and population increases: the reduction in functional acreage within this subwatershed from the aforementioned impacts will be addressed primarily through removal of invasive vegetation and encouragement of reestablishment of native species to increase native buffer and protection for sensitive aquatic resources. Removal of fire-prone species such as Spanish broom and replacement with fire-resistant natives will provide increased protection for fire events to lessen overall intensity of heat and destruction of each event.

*Water Availability:* one of the final issues to be addressed in the outline of IERCD Program function is availability of water for projects associated with future Credit transfers. Currently, the entire state of California has been in various states of extreme drought stress from a prolonged period of stunted precipitation. Despite recent significant precipitation events, the consideration of future water availability is significant given the unknown impact on rain and snow from ongoing climate change, coupled with the ever-expanding regional population. The resulting question of water availability for long-term work associated with this Program is significant, and the IERCD believes can be addressed with the following notes:

- The IERCD maintains an active profiling system for properties being considered for Program inclusion, with steps including but not limited to historic and current soil analysis; reference site assessment; projections of site potential based on similar District and partner projects; and examination of potential to extend hydrological function. Sites determined to lack long-term ability to support Program objective are taken out of consideration.
- The IERCD has significant experience, both individually and as part of a multi-entity effort, in uplifting functions within a variety of aquatic habitats. This diversity in experience in a range of tasks from site design to implementation of plan to long-term maintenance and monitoring has provided additional elements for consideration during the process of determining site compatibility with Program objectives
- The IERCD works to coordinate soil properties with artificial irrigation approach, to encourage deep rooting, contact with groundwater, and retention of precipitation to the extent possible, for encouragement of long-term rather than just short-term site success

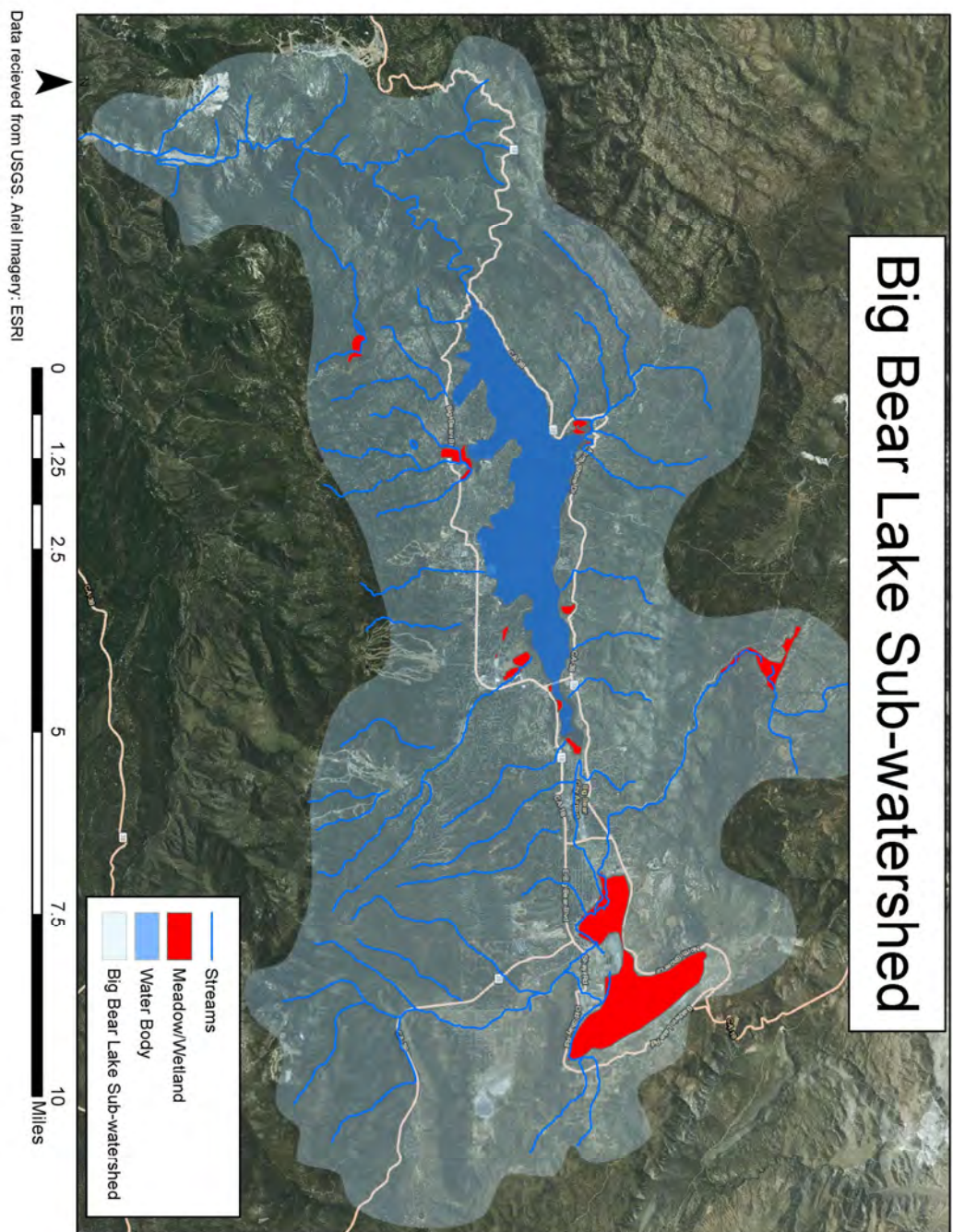
- The District maintains staff and relationships with area growers, gathering and propagating local seed of species best suited to thrive in the dry Inland Empire, for maximization of long-term success no matter the large-scale availability of water
- Before acquiring new ILF Project sites, IERCD commissions preliminary title reports to determine whether water rights have been severed from such sites and undertakes other analyses to analyze onsite aquatic conditions.
- Finally, the District works to identify and implement projects designed not just to take advantage of groundwater, but to enable long-term survival due to presence of soils capable of water retention and longer sustenance provision to restoration areas. The focus on development of restoration opportunities consistent with what currently thrives in the region covered by the Program remains a central objective of the IERCD.

#### **Map 1: Major Subwatersheds of IERCD Program Service Area**



Map 2: Big Bear Lake Subwatershed

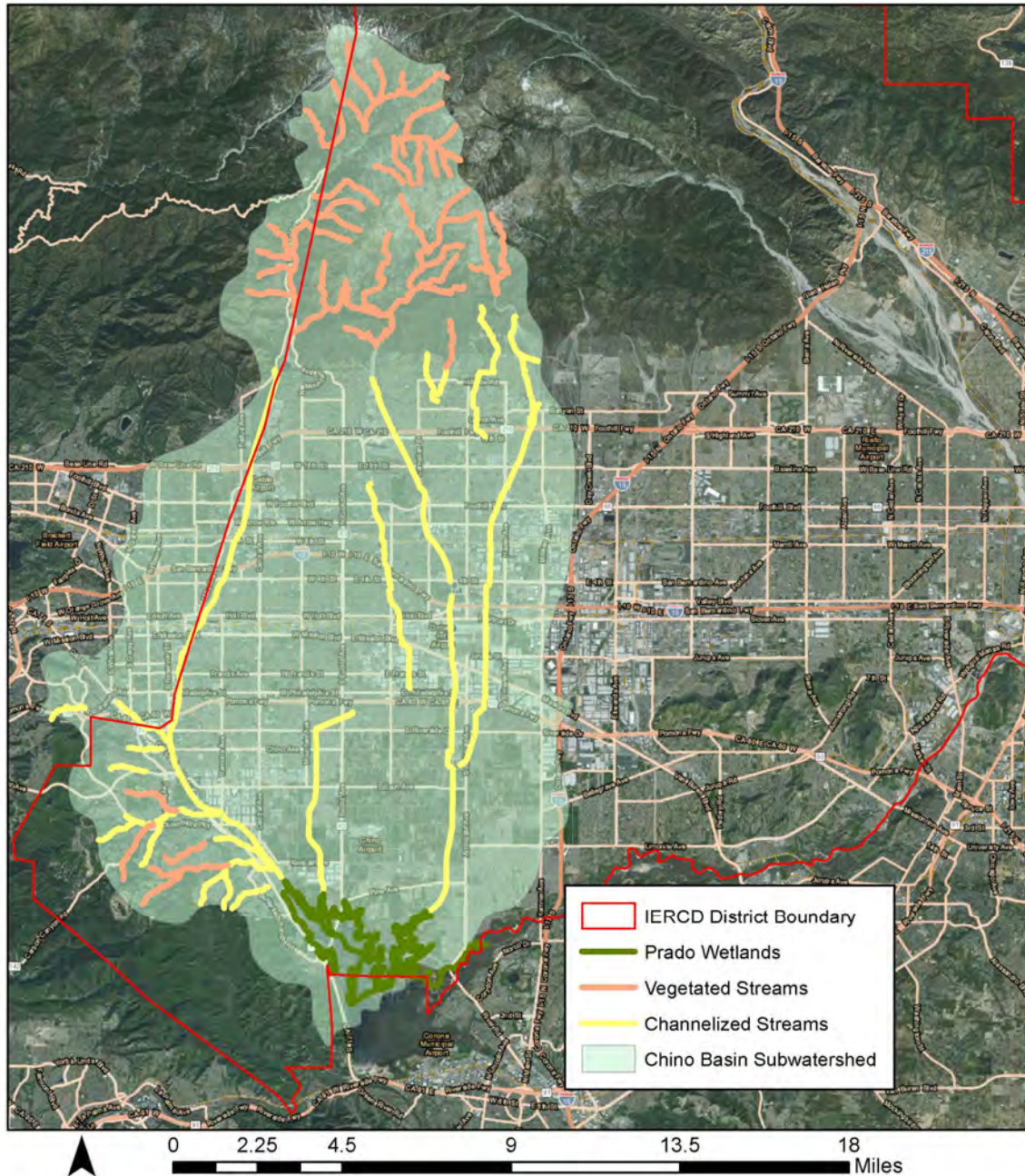






Map 3: Chino Basin Subwatershed

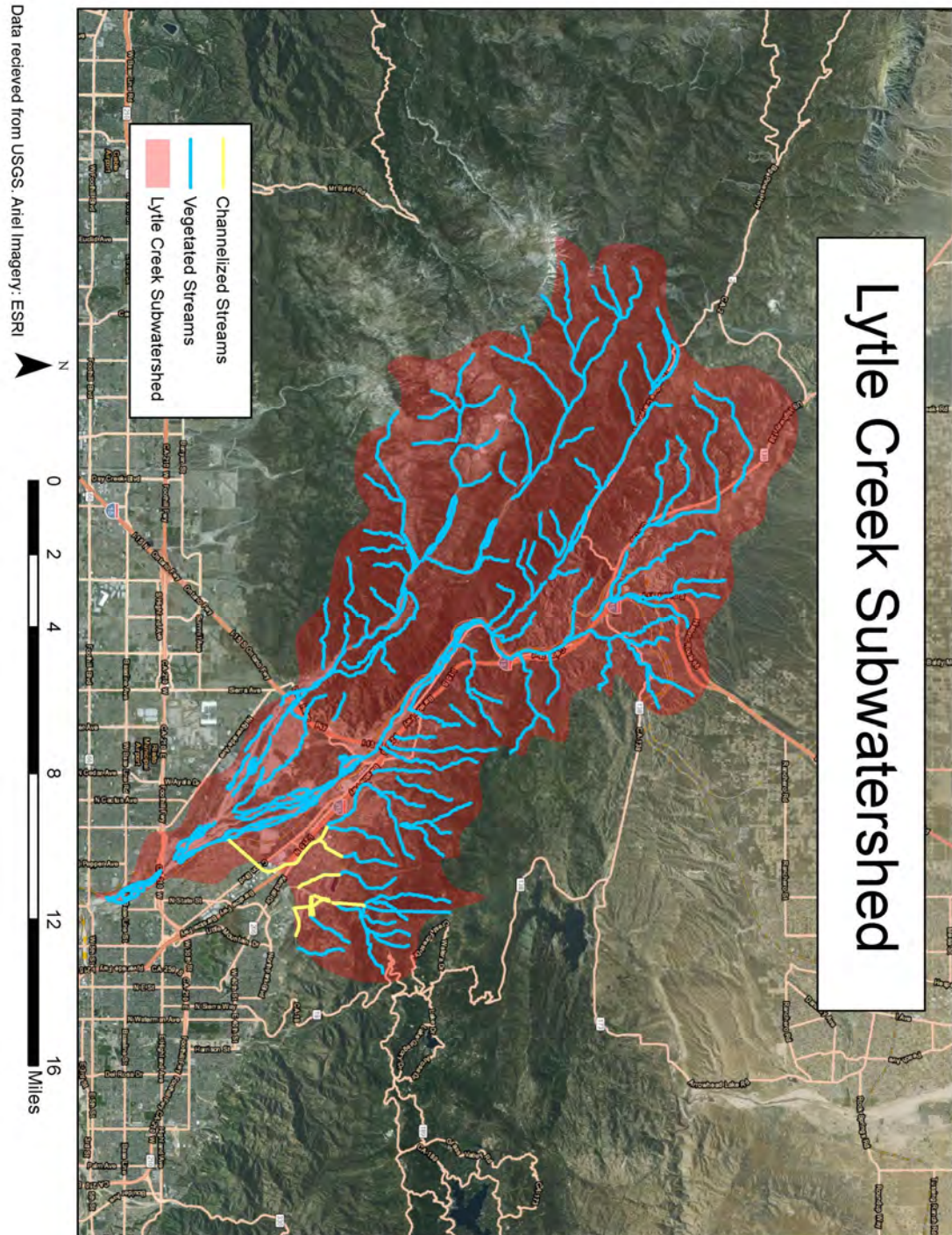
# Chino Basin Sub-watershed



Data recieved from USGS. Ariel Imagery: ESRI



Map 4: Lytle Creek Subwatershed





Map 5: San Timoteo Canyon Subwatershed

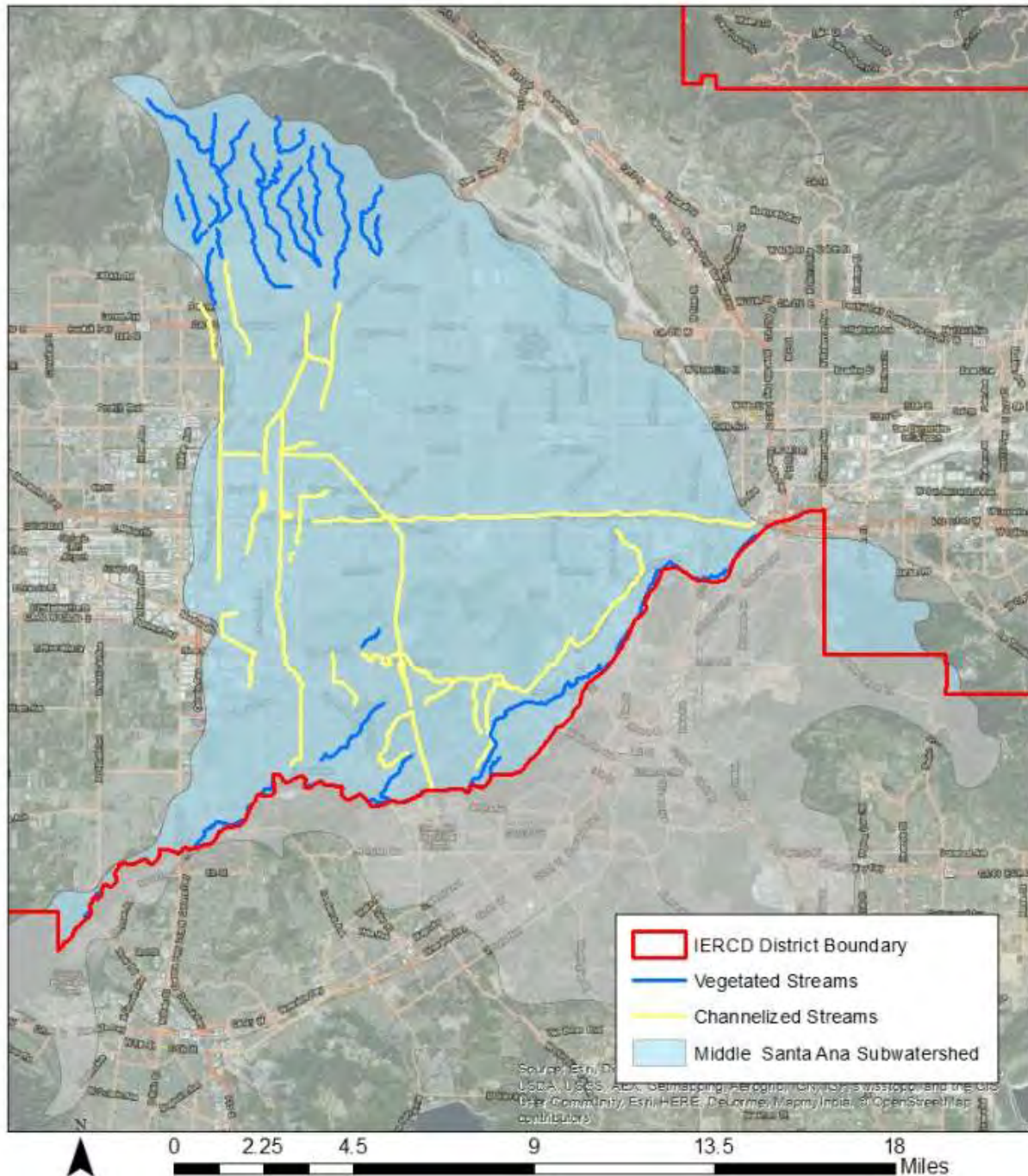
# San Timoteo Subwatershed





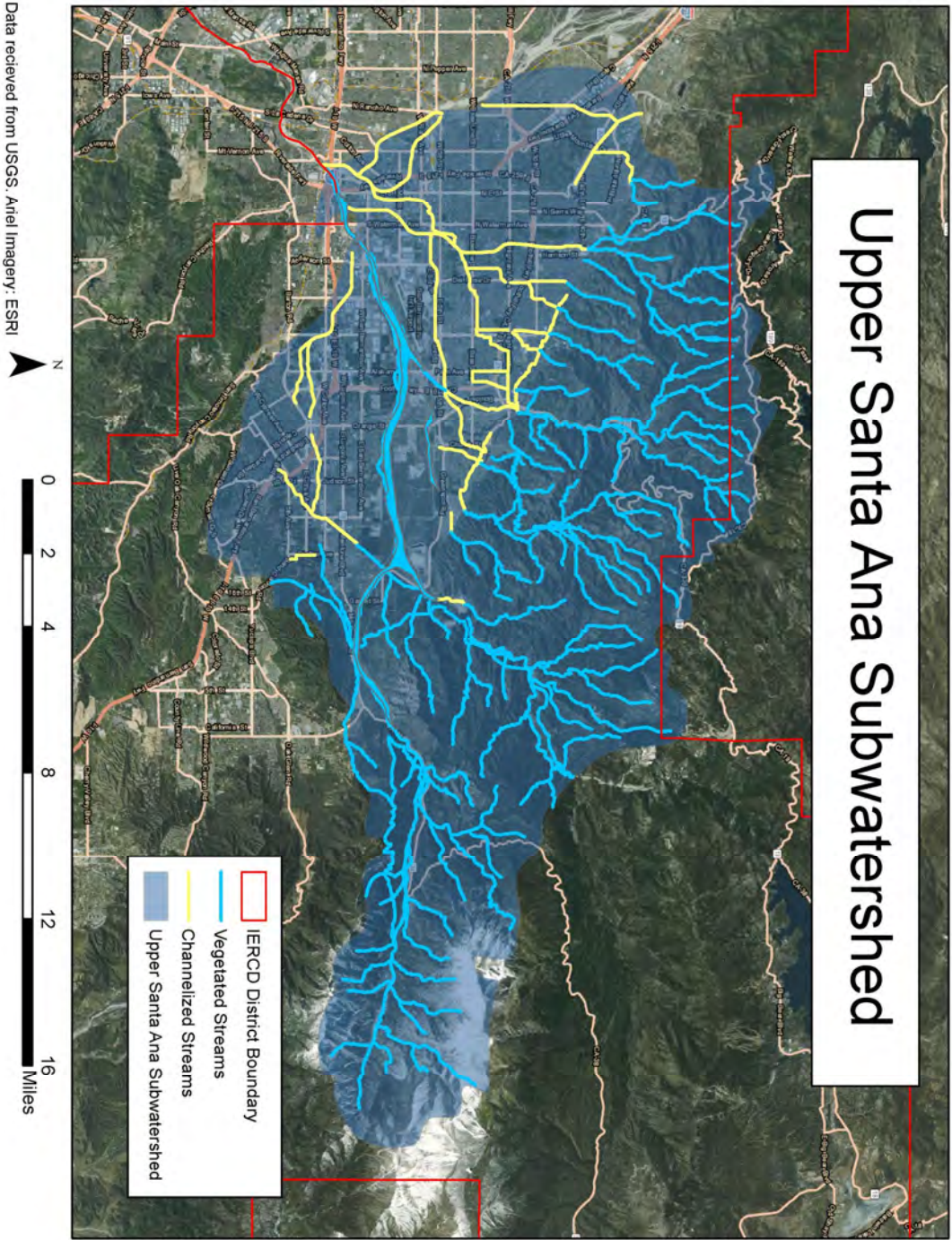
Map 6. Santa Ana- Middle Subwatershed

## Middle Santa Ana Subwatershed





Map 7. Santa Ana- Upper Subwatershed



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## PRIORITIZATION STRATEGY

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The broad geographic scope of the IERCD jurisdictional boundaries will provide a wide variety of mitigation opportunities within multiple watersheds. Prioritization of ILF Project sites will be evaluated on a number of factors that relate to ecological value, threats to existing aquatic resources, threat of development, and feasibility. Sites that have the highest potential for negative impacts will be preserved first. The prioritization strategy for the In-Lieu Fee Program will be to identify ILF Project sites within the IERCD's jurisdictional area that have the highest habitat value for conservation and active management. The goal will be to acquire either fee title or conservation easements in these areas, and to place into conservation and restore these riparian and ephemeral habitats. Specifically, the District intends to conduct its Program activities as follows:

1. **Waters of the United States:** the primary objective of IERCD's In-Lieu Fee Program will be uplift and long-term protection of Waters of the United States within IERCD jurisdictional boundaries. While the Program will contain a component addressing opportunities for uplift of riparian Buffers, it will retain focus on aquatic habitat for Acquisition, Rehabilitation, and Reestablishment, to minimize net loss of Waters of the US in and around the Program Service Area.
2. **Functional lift and Ecological Value:** Sites that present the greatest potential for functional lift will receive high priority. Re-establishment will receive the highest priority followed by Re-habilitation, Enhancement, Establishment, Buffer, and Preservation. Sites with significant populations of aggressive invasive exotic species will also be viewed as a high priority because of the future adverse modification these populations present for the proposed ILF mitigation site as well as the threat to surrounding aquatic resources.
3. **Feasibility:** ILF Projects that are assessed with a high degree of feasibility will rank high among potential mitigation projects. For Establishment and Re-establishment ILF projects, reliable surface hydrology and/or groundwater resources will be necessary for feasible compensatory mitigation. Appropriate soils will also be assessed to determine ILF Project feasibility. Extent and density of exotic vegetation will be assessed for Rehabilitation and Enhancement Projects. Other factors may include site access, security, surrounding land uses, proximity to wildlife habitat/corridors, and potential partners/stakeholders.
4. **Ability of Site to Address Threats Identified within the Service Area:** A functional assessment such as the California Rapid Assessment Methodology (CRAM) will be utilized to evaluate ILF mitigation sites to determine sites with the greatest potential to address threats and stressors within the overall watershed. CRAM evaluation factors will be weighted to emphasize mitigation of those threats and stressors to wetlands that are of greatest concern within each sub-watershed as identified in Section 3.5 (d) and specifically in Table 1. These factors may include exotic vegetation and direct and indirect land use effects including water quality, authorized fills, etc.

5. **ILF Project Site Ranking:** Using CRAM, IERCD will assess the Functions and Services of each mitigation opportunity and assign a numeric rank that is the sum of two values: 1) the potential functional lift that would occur on the ILF Project site, and 2) a numeric value assigned to each site that expresses the strategic value of the site to offset threats and stressors within the service area and sub-watershed in which the site is situated. Values from 1-5 will be assigned for each stressor, including strategic factors such as landscape position that enhances connectivity, and summed to arrive at a final value that informs the final rank for each site. The highest ranked projects within each sub-watershed will be the highest priority ILF Projects for the In-Lieu Fee Program.
6. **Teaming Opportunities:** Opportunities to team with various stakeholders will increase the priority of a potential ILF Program Property. Stakeholders through which IERCD may create cooperative agreements might include the USACE, USFWS, county government departments, municipalities, special districts (water and flood), and other conservation groups operating within the IERCD boundary.
7. **Threat of Development:** Threat of development is not anticipated to be a high priority for ILF Project sites; properties with residential, commercial or industrial value are not often owned by those willing to sell purely for conservation purposes.
8. **Willing Sellers and Donors:** Only properties with willing sellers or which will be donated will be considered for acquisition and mitigation.

**Use of Preservation:** The IERCD acknowledges that preservation of existing resources is a frequent component of any ILF Project. Moreover, situations may occur where land preservation is desirable from a strategic perspective to create connectivity between existing publicly-owned lands, including land owned by the IERCD. Preservation land acquisition under this In-Lieu Fee program must include a substantial and compelling federal jurisdictional area and buffer lands that, in aggregate, offsets threats and contributes to the enhancement of federal water and wetlands. Prioritization of Preservation vs. other forms of mitigation (i.e., Establishment, Restoration and Enhancement) will be determined in consultation with the IRT.

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## GENERAL NEED FOR IN-LIEU FEE PROGRAM

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### Trends in Demand for Mitigation Services

Current and historic demand for IERCD land management services has increased substantially since the initial development and implementation of the District's mitigation program. This trend is visible in comparison of baseline data of the District's mitigation and conservation program, from acceptance of first fee-title property in 2004 to its current status as operator of multiple conservation, enhancement, and restoration-focused termed and perpetuity mitigation projects through its service area. Since 2004, the IERCD's project list has grown to over 29 active conservation easement and mitigation facilitation projects, and also includes 39 projects that have progressed far enough past the inquiry stage that deposit funding has been remitted and project work has commenced. In addition to the total number of projects, the IERCD has received over \$385,000 in deposits alone since mitigation program inception, and over \$3.1 million in funds for mitigation and conservation easement projects that have



moved past the deposit stage and had facilitation terms memorialized in a variety of accompanying agreements. Supplementing these aforementioned total projects and associated funds are very regular written and verbal requests for information on IERCD mitigation program potential for project proponents seeking facilitation opportunities, likely in part the result of very regular outreach to local and regional governments and private parties on the District's increasing opportunities for mitigation performance.

In addition to historic and current trends, the IERCD also expects that the demand for mitigation in the Program Service Area will not only continue to be substantial but will likely increase in the coming years. According to the United States Conference of Mayors, the Inland Empire region is projected to be among the four fastest growing areas of the nation, and the fastest growing in California, through 2020. (<http://usmayors.org/metroeconomies/2014/06/report.pdf>) The Southern California Association of Governments projects that, by 2035, the County of San Bernardino will increase in population to more than 2.6 million people and 825,000 households. (<http://www.scag.ca.gov/Documents/SanBernardinoCounty.pdf>) Most of this population will be located within the IERCD service area.

The above increases in residents will be accompanied by corresponding uptick in residential, commercial, and industrial development, along with improvements in transportation, flood control and other public infrastructure required to match demand for services by a growing local and regional population. Many of these projects will impact federal and state jurisdictional waters, thus requiring the availability of mitigation projects in the area to meet USACE, Regional Board and other regulatory requirements.

In light of current and future credit demands, the IERCD believes there is ample place for a new ILF program to provide mitigation opportunities and Credits, particularly for ILF Projects in the upper watershed that require Credits for Establishment, Re-Establishment, Preservation and Rehabilitation of riparian systems. The IERCD also works closely in cooperation with RCDs in both the Whitewater and Mojave River watersheds, setting the stage for future ILF program expansion into an area where there is not one single operational ILF program.

#### **General Need for In-Lieu Fee Program – Other Regional ILF Programs and Banks**

Unlike other regions hosting multiple mitigation banks and in-lieu fee program options to meet mitigation needs, the IERCD's service area has few alternatives for mitigating parties seeking appropriate resource uplift opportunities to address project impacts. In fact, according to RIBITS, there is one other in-lieu fee program in the Inland Empire and that program conducts mitigation projects in an approximately 312 square mile area different from the IERCD Proposed ILF Program Service Area (RCRCD).

Historically, there was one other in-lieu fee program in the area, the Santa Ana Watershed Association *Arundo* Removal Trust Fund (SAWA) . SAWA's Program provided needed invasive species removal, but is no longer offering in-lieu fee credits for compensatory mitigation at this time.

The Soquel Mitigation Bank was opened in 2013 with a service area that encompasses a portion of the Santa Ana River Watershed. The service area also includes portions of the San Gabriel Watershed and secondary/tertiary service areas extend into the Los Angeles River and Santa Margarita Watersheds.

The Soquel Mitigation Bank offers a limited number of Riparian Buffer and Riverine Enhancement combination credits, as well as Upland Buffer Enhancement credits.

Other regional banks within IERCD's service area operate under the authority of lead agency the United States Fish and Wildlife Service and not the United States Army Corps of Engineers, and therefore are designed to address impacts to individual species rather than general resource enhancement or establishment. One example is the Cajon Creek Habitat Conservation Management Area, established in 1996 and comprised of 610 acres of property offering credit sales to offset impacts to species including but not limited to the coastal California gnatcatcher and the San Bernardino kangaroo rat. Banks such as this location do not offer credit types outlined in IERCD's In-Lieu Fee Program, and therefore do not duplicate mitigation facilitation efforts in the upper Santa Ana River watershed.

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## PRESERVATION OBJECTIVES SUMMARY

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### 4.1 EXPLANATION OF HOW PRESERVATION OBJECTIVES IDENTIFIED AND ADDRESSED IN THE PRIORITIZATION STRATEGY SATISFY THE CRITERIA FOR USE OF PRESERVATION (33 C.F.R. § 332.8(C)(2)(VII))

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Preservation is an acceptable form of mitigation under the Compensatory Mitigation Rule, but preservation alone is not sufficient to satisfy no net loss. Consequently, mitigation analyzed through the Standard Operating Procedures for Determination of Mitigation Ratios normally requires preservation in combination with re-establishment, establishment and/or rehabilitation. Although preservation will be the lowest priority for mitigation under the Program, preservation of existing, intact aquatic resources using a conservation easement or deed restriction in combination with long-term maintenance of the preserved land in perpetuity may be provided by the Program to provide Compensatory Mitigation Credits. The District will set aside endowment funds from ILF credit proceeds sufficient to cover the long-term maintenance requirements.

Section 332.8(c)(2)(vii) requests applicants to address the preservation criteria enumerated in Section 332.3(h). The following information describes the role and selection criteria for preservation to be included in the Program.

**i. The resources to be preserved provide important physical, chemical or biological functions for the watershed (33 C.F.R. § 332.3(h)(1)(i))**

Areas proposed for protection, or already protected by the District will have biological Functions considered essential for the continued health of the watershed in which the site occurs. Preserved resources may comprise waters and wetlands including mulefat scrub, alluvial scrub, southern willow scrub and other native riparian communities, and other aquatic resources such as open water within the Santa Ana Watershed. In addition, wetland and riparian resources will be protected that support least Bell's vireo, southwestern willow flycatcher, Santa Ana sucker, western pond turtle, arroyo chub, California tree frog, and other listed and sensitive species associated with Federal and State jurisdictional areas.

**ii. The resources to be preserved contribute significantly to the ecological sustainability of the watershed. In determining the contribution of those resources to the ecological**

**sustainability of the watershed, the District Engineer must use appropriate quantitative assessment tools, where available (33 C.F.R. § 332.3(h)(1)(ii))**

The mitigation objectives implemented through the prioritization strategy above will contribute significantly to the ecological sustainability of the watersheds. The District will use a wetland function assessment methodology, such as the California Rapid Assessment Method (CRAM), in each of the District's proposed ILF Project areas to determine habitat quality and quantity that directly relates to Federal and State jurisdictional areas. A Development Plan, Interim Management Plan, and Long-Term Management Plan will also be developed following an assessment of existing resources, threats to aquatic resources, and potential long-term stressors. The Development Plan, Interim Management Plan, and Long-Term Management Plan will define the management program that best addresses these management factors. A long-term analysis will be prepared to accurately estimate the management costs and amount to establish a non-wasting endowment. Credits will be priced to include the cost of acquisition and long term in-perpetuity management and reporting as defined in the approved Development Plan, Interim Management Plan, and Long-Term Management Plan.

**iii. Preservation is determined by the District Engineer to be appropriate and practicable (C.F.R. § 332.3(h)(1)(iii))**

An initial determination of potential preservation will occur in consultation with the USACE Engineer. Preservation lands acquired by the Program will be consistent with resource agency objectives within each watershed unit. Preservation may be used to further regional habitat and wildlife goals when the bulk of preservation benefits accrue to jurisdictional areas. Preservation in proximity to other proposed mitigation sites involving higher functional lift mitigation types such as Re-establishment, Rehabilitation, Enhancement, etc., may be viewed as a higher priority to increase habitat continuity, and wildlife connectivity.

**iv. The resources are under threat of destruction or adverse modifications. (33 C.F.R. § 332.3(h)(1)(iv))**

Preservation lands considered for the Program will generally be under threat of adverse modification and/or destruction from outside impacts. The extent and type of threats vary from property to property, and can be discussed in more detail as specific preservation lands are proposed for acquisition. Presence of sensitive or rare habitat may also be a considered factor in decision for preservation.

**v. The preserved sites will be permanently protected through an appropriate real estate or other legal instrument (33 C.F.R. § 332.3(h)(1)(v))**

The District will permanently protect all ILF Project sites regardless of mitigation type and/or location through appropriate real estate or other legal instruments, such as conservation easements and deed restrictions. In addition, the District will establish segregated, dedicated funding for each property to ensure compliance with standards for financial oversight, and to pay for long-term maintenance of all preserved lands in perpetuity. Land protection instruments will normally be completed in conjunction with preparation of Development Plans.

### **Public and Private Stakeholder Involvement (33 C.F.R. § 332.8(c)(2)(viii))**

IERCD has established relationships with area conservation entities for the purposes of increasing total area over which Restoration, Enhancement, and Conservation can be performed, beyond the suite of strictly District-held lands. Current agreements in place memorializing these relationships and corresponding ability to partner with these entities on placement and facilitation of conservation work include:

- Memorandum of Understanding with Regional Conservation Authority of Western Riverside County (RCA)
- Memorandum Of Understanding with Rivers and Lands Conservancy (RLC), an area land trust with no established boundaries, providing for the ability for IERCD to perform restoration, enhancement, and conservation work over otherwise under-funded or entirely un-funded properties in perpetuity conservation.
- Memorandum Of Understanding with the Big Bear Valley Education Trust and San Bernardino Mountains Land Trust, to cover in-progress and future property acquisition and associated resource uplift in the Big Bear Valley.

In-progress Memorandum Of Understanding agreements with the cities of Rancho Cucamonga and Yucaipa, both addressing current and future mitigation planning and implementation for maximum uplift of aquatic and Buffer resources.

The District will continue to pursue other strategic agreements with appropriate agencies with land holdings and mitigation needs to allow IERCD to direct and implement mitigation efforts on the agency's land, eliminating land acquisition costs.

### **Description of Long-Term Protection and Management Strategies for Activities Conducted by IERCD (33 C.F.R. § 332.8(c)(2)(ix))**

Long term protection will be provided through appropriate real estate or other legal instruments, such as conservation easements and deed restrictions. Management strategies will be devised for each ILF Project and documented in an Long-Term Management Plan. Credit sales proceeds will be used to fund long term management activities under IERCD oversight or performed by IERCD staff. Long term strategies will include appropriate monitoring frequency to identify potential threats to protected aquatic resource functions. Long-Term Management Plans will define Adaptive Management processes to provide a management response to factors contributing to identified stressors that threaten to degrade aquatic Functions and Services over time.

### **Periodic Progress Evaluations (§332.8 (c)(2)(x))**

The District will draft an annual report that briefly evaluates the current state of each ILF Project site and reports on the progress in achieving Program goals and objectives. ILF Project site status reports will identify the stage of mitigation (e.g., acquisition, design development, permitting, implementation, monitoring year, and management status) including status relative to performance standards during implementation, adaptive management actions needed and/or taken during long term management, status of mitigation credit sales, and remaining credits for sale. The annual report may contain photographs, as appropriate.

Development of this report will include annual analysis of the compensatory planning framework relative to current trends and projected changes in land use planning, regional water quality, local and regional surface and groundwater availability, and other elements with the ability to very critically influence outcome of ILF Projects. Where necessary, sections of the Compensatory Planning Framework will be adjusted to accommodate unforeseen and/or significant adjustments to otherwise observed trends included in but not limited to the above categories. Revisions will be proposed to the Program IRT with a focus on Program design for adaptation to specific changes in natural resource and land use actual and projected trends.

Reports will be provided to the USACE and any other regulatory agency, upon request.

Exhibit A-2

Inland Empire Resource Conservation District In-Lieu Fee Program

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## **Exhibit B**

### **Program Service Area Map**

## **Exhibit B-1**

### **Inland Empire Resource Conservation District In-Lieu Fee Program**

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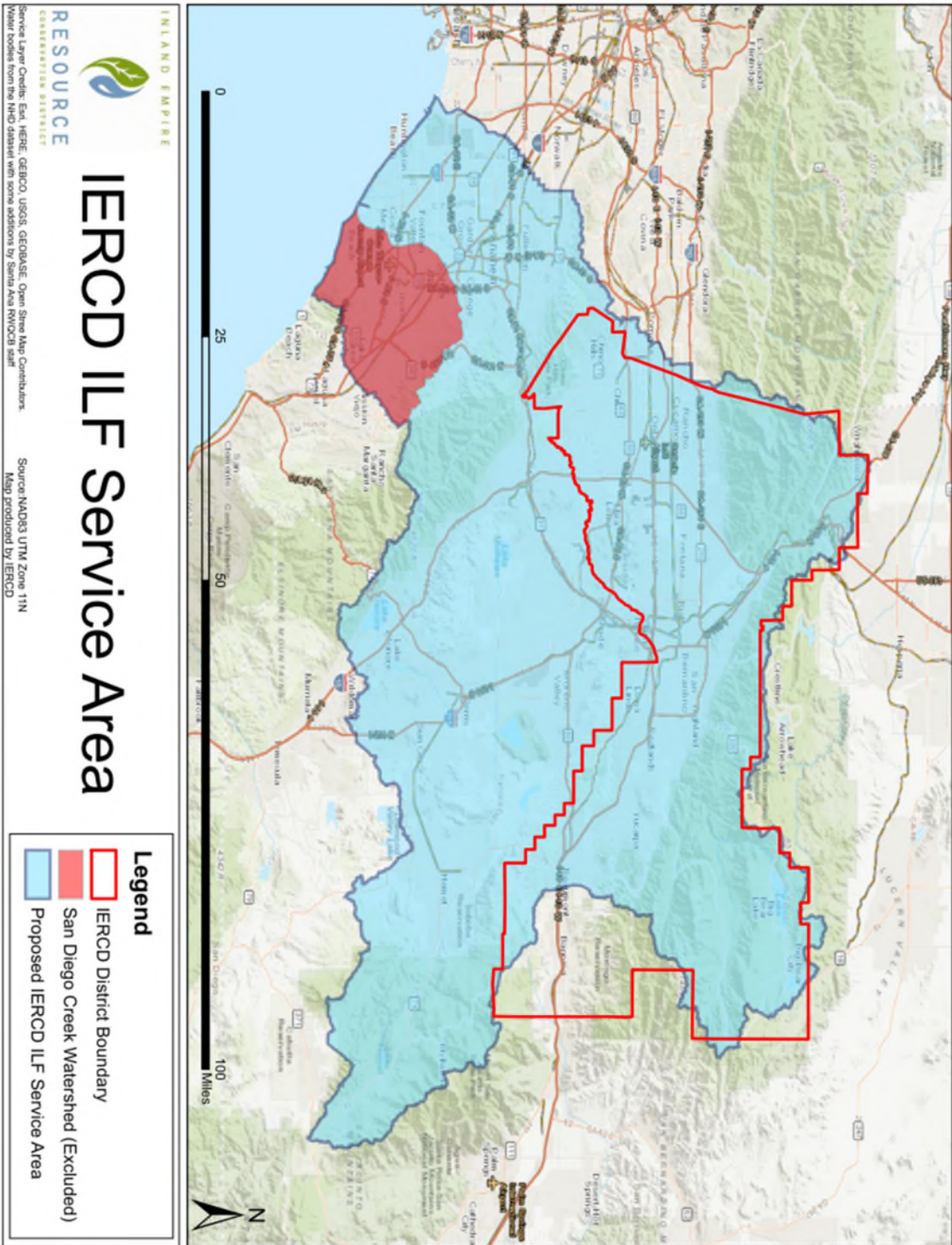


Exhibit B-2

Inland Empire Resource Conservation District In-Lieu Fee Program



## **Exhibit C**

### **Instrument Modifications**

#### **Instrument Modifications**

As ILF Projects are identified, Program Sponsor will submit a written request to the USACE to modify the Instrument according to the process outlined in this Exhibit (33 C.F.R. 332.8). Other forms of Instrument modifications, including expansion of approved ILF Projects, will also follow the process outlined herein.

Requests for Instrument modifications will be accompanied by the appropriate supporting documentation as determined by the District Engineer. The Parties expect that requests for addition of an ILF Project will include the following information:

- The river basin and watershed (hydrologic unit code) of the site
- The goals and objectives of the site related to the watershed compensation planning framework
- Proposed service area
- Site conditions and location
- Proposed preliminary concept plan and/or feasibility study (if complete/available)
- How the ILF Project meets the ILF Project selection criteria outlined in Exhibit A
- Estimate of proposed acreage/linear footage and type of mitigation
- Proposed protection and long-term management strategy
- Other information as needed

Program Sponsor may elect to ask for a preliminary review and consultation of a modification request. In this case, the USACE will provide copies of the draft request to the IRT and will provide comments back to Program Sponsor within 30 days. Within 30 days of receipt of Program Sponsor's formal request for an Instrument modification, the USACE will notify Program Sponsor whether the Instrument modification request is complete. Within 30 days of receipt of a complete modification request, the USACE will provide public notice of the request that summarizes the project documentation provided by Program Sponsor, and makes this information available to the public upon request. The comment period will be 30 days, unless otherwise determined and justified by the USACE. The USACE and IRT members may also provide comments to the Program Sponsor at this time. The USACE will provide copies of all comments to IRT members and Program Sponsor within 15 days of the close of the public comment period.

Program Sponsor will prepare a draft amendment and submit it to the USACE for a completeness review. The draft amendment will include the following information as required by 33 C.F.R. Part 332.4(c):

- Information included in the initial modification request.

#### **Exhibit C-1**

#### **Inland Empire Resource Conservation District In-Lieu Fee Program**

- Development Plan with a legend and scale
- Estimate of proposed acreage/linear footage and type of Compensatory Mitigation
- Description of existing functions and services and how they will be improved or enhanced through specific mitigation measures
- ILF Project budget
- Determination of Credits and the Credit Release schedule
- Interim and Long-term Management Plans
- Performance Standards
- Property Assessment
- Phase I Environmental Site Assessment of the ILF Project site
- Draft real estate instrument
- Other information as needed

The USACE will notify Program Sponsor within 30 days of receipt of the amendment whether it is complete, or will request additional information. Once any additional information is received and the amendment is complete, the USACE will notify Program Sponsor. Program Sponsor will provide copies of the amendment for the USACE to distribute to the IRT for a 30 day comment period. This comment period begins 5 days after the copies of the amendment are distributed. Following the comment period, the USACE will discuss any comments with the appropriate agencies and Program Sponsor to seek to resolve any issues using a consensus based approach, to the extent practicable. Within 90 days of receipt of the complete amendment, the USACE must indicate to Program Sponsor whether the amendment is generally acceptable and what changes, if any, are needed. Program Sponsor will submit a final amendment to the USACE for approval, with supporting documentation that explains how the final amendment addresses the comments provided by the IRT. Program Sponsor will also provide copies directly to IRT members. Within 30 days of receipt of the final amendment, the USACE will notify the IRT members whether or not it intends to approve the amendment. If no IRT members object by initiating the dispute resolution process within 45 days of receipt of the final amendment, the USACE will notify Program Sponsor of its final decision, and if approved, arrange for signing by the appropriate parties.

#### Streamlined Review Process

The USACE may use a streamlined modification review process for changes to the Program reflecting Adaptive Management of the Program, Credit releases, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant. In this event, the USACE will notify the IRT members and Program Sponsor of this determination and provide them with copies of the proposed modification. IRT members and Program Sponsor will have 30 days to notify the USACE if they have concerns with the proposed modification. If IRT members or Program Sponsor notify the USACE of such concerns, the USACE will attempt to resolve those concerns. The USACE will notify the IRT members and Program Sponsor of his intent regarding the proposed modification within 60 days of providing the notice to the IRT members. If no IRT member objects, by initiating the dispute resolution process (33 C.F.R.

#### Exhibit C-2

#### Inland Empire Resource Conservation District In-Lieu Fee Program

332.8) within 15 days of receipt of the notification, the USACE will notify the Program Sponsor of its final decision and, if approved, arrange for it to be signed by the appropriate parties.

Exhibit C-3

Inland Empire Resource Conservation District In-Lieu Fee Program

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## **Exhibit D**

### **Development Plans**

As individual ILF Projects are proposed and Development Plans approved by formal Instrument Modifications per Exhibit C, they will be incorporated into Exhibit D as subparts beginning with Exhibit D1 and continuing sequentially.

### **Exhibit D-1**

**Inland Empire Resource Conservation District In-Lieu Fee Program**

## **Exhibit E**

### **Interim Management Plans**

As individual ILF Projects are proposed and Interim Management Plans approved by formal Instrument Modifications per Exhibit C they will be incorporated into Exhibit E as subparts beginning with Exhibit E1 and continuing sequentially.

### **Exhibit E-1**

**Inland Empire Resource Conservation District In-Lieu Fee Program**

## **Exhibit F**

### **Long-term Management Plans**

As individual ILF Projects are proposed and Long-Term Management Plans approved by formal Instrument Modifications per Exhibit C they will be incorporated into Exhibit F as subparts beginning with Exhibit F1 and continuing sequentially.

### **Exhibit F-1**

**Inland Empire Resource Conservation District In-Lieu Fee Program**

## **Exhibit G**

### **Statement of Sale of Credit Form**

[Inland Empire Resource Conservation District letterhead]

[date]

U.S. Army Corps of Engineers  
Los Angeles District – Regulatory Division  
915 Wilshire Blvd.  
Los Angeles, CA 90017

Subject: Statement of Sale for [Number] Credits from the Inland Empire Resource Conservation District In-Lieu Fee Program to [Permittee Name] (permittee)

The Inland Empire Resource Conservation District has an agreement with the U.S. Army Corps of Engineers – Los Angeles District, Region IX of the U.S. Environmental Protection Agency, and the California Regional Water Quality Control Board, Region 8 to operate the Inland Empire Resource Conservation District In-Lieu-Fee Program. This letter confirms the sale of [Number of Credits] Credits of [Resource Type A], and [Number of Credits] Credits of [Resource Type B]. These Credits are being used as compensatory mitigation for [Number of Acres] acres of impact to [Resource Type A], and [Number of Acres] acres of impact to [Resource Type B] in the [Impact HUC] as authorized by Department of the Army (DA) permit [DA permit number] and/or Section 401 Water Quality Certification No. [insert number]. By Transferring Credits to the above permittee, the Inland Empire Resource Conservation District is the party responsible for fulfilling the compensatory mitigation aspect of Special Condition(s) \_\_\_\_\_ of the permit(s) listed above.

Signed

**Exhibit G-1**

**Inland Empire Resource Conservation District In-Lieu Fee Program**

## **Exhibit H**

### **Real Estate Instrument**

Attached is a template Conservation Easement. Long-term protection of an ILF Project pursuant to Section V.B.5 of this Instrument may also be secured through the recording of a restrictive covenant drafted substantially in the same form as the Conservation Easement attached and as approved for each ILF Project by the IRT pursuant to V.B.5.

### **Exhibit H-1**

**Inland Empire Resource Conservation District In-Lieu Fee Program**



## EXHIBIT H

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

)  
)  
)  
Inland Empire Resource Conservation )  
District )  
25864-K Business Center Drive )  
Redlands, California 92374 )  
Attn: District Manager )

)  
)  
)  
)  
)  
Exempt from Recording Fee (Gov. Code § 27383) )

)  
\_\_\_\_\_  
Space Above Line for Recorder's Use Only

## CONSERVATION EASEMENT

*THIS CONSERVATION EASEMENT* is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by [insert name], a \_\_\_\_\_ company, ("**Grantor**"), in favor of the Inland Empire Resource Conservation District, a governmental agency ("**Grantee**") with reference to the following facts:

## RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately \_\_\_\_ acres, located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of California, designated Assessor Parcel Number(s) \_\_\_\_\_ (the "Property"). The Property is legally described on **Exhibit "A"** attached hereto and incorporated by this reference. Grantor intends to grant a conservation easement over a \_\_\_\_-acre portion of the Property (the "**Easement Area**"). The Easement Area is legally described and depicted in **Exhibit "B"** attached hereto and incorporated herein by this reference.

B. The Easement Area possesses wildlife and habitat values of great importance to Grantee, the people of the State of California and the people of the United States. The Easement Area will provide high quality natural, restored and/or enhanced habitat for [***specify listed and sensitive plant and/or animal species***] and contain [***list habitats; native and/or non-native***], [***include the following phrase only if there are jurisdictional wetlands:*** and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the "**Conservation Values**" of the Easement Area.

C. Grantee is authorized to hold conservation easements pursuant to Civil

Code Section 815.3. Specifically, Grantee is an entity identified in Civil Code Section 815.3 and otherwise authorized to acquire and hold title to real property.

D. The United States Army Corps of Engineers (“**USACE**”) is the Federal agency charged with regulatory authority over discharges of dredged and fill material in waters of the United States pursuant to Section 404 of the Clean Water Act, and is a third party beneficiary of this Conservation Easement.

E. This Conservation Easement is granted pursuant to the In-Lieu Fee Enabling Instrument (the “**ILFEI**”) by and between Grantee, the Los Angeles District of USACE, Region IX of the United States Environmental Protection Agency (“**USEPA**”), and the Santa Ana Region of the California Regional Water Quality Control Board (“**RWQCB**”) dated \_\_\_\_\_, and the Development Plan (the “**Development Plan**”), and the Interim Management Plan and Long-Term Management Plan (as applicable, the “**Management Plan**”) created under the ILFEI. USACE, USEPA, and RWQCB are together referred to in this Conservation Easement as the “**Signatory Agencies**.” The ILFEI, the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

F. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

### **COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS**

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and State of California, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth (“**Conservation Easement**”). This Conservation Easement shall run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

#### **1. Purposes.**

(a) The purposes of this Conservation Easement are to ensure that the Easement Area will be retained in perpetuity in its natural, restored, or enhanced condition as contemplated by the ILFEI, the Development Plan, and the Management Plan, and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. Grantor intends that this Conservation Easement will confine the use of the Easement Area to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the ILFEI, the Development Plan and the Management Plan.

(b) The term “Natural Condition,” as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition

of the Easement Area, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Easement Area that occur directly as a result of the following activities:

(1) Compensatory mitigation activities, including implementation, maintenance and monitoring as described in the Development Plan and Management Plan; or

(2) Activities described in Sections 4 through 6 herein.

(c) Grantor represents and warrants that there are no structures or improvements existing on the Easement Area at the time this grant is executed. Grantor further represents and warrants that there are no other previously granted easements existing on the Easement Area that interfere or conflict with the Purposes of this Conservation Easement as evidenced by the Title Report attached at **Exhibit "C."** The present Natural Condition is evidenced in part by the depiction of the Easement Area attached on **Exhibit "D,"** showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States. Grantor has delivered further evidence of the present Natural Condition to Grantee and ACOE consisting of (1) a color aerial photograph of the Easement Area at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Easement Area boundaries on such aerial photograph; and (3) on-site color photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Easement Area.

(d) If a controversy arises with respect to the present Natural Condition of the Property, Grantor, Grantee or ACOE or any designees or agents of Grantor, Grantee, and ACOE shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

(e) The term "Biological Monitor" shall mean an independent third-party consultant or an employee of the Grantee with knowledge of aquatic resources in the Riverside and San Bernardino County area and expertise in the field of biology or related field.

2. Grantee's Rights. To accomplish the Purpose of this Conservation Easement, Grantor, its successor and assign hereby grants and conveys the following rights to Grantee. These rights are also granted to the ACOE or its designees as third party beneficiaries of this Conservation Easement:

(a) To preserve and protect the Conservation Values of the Easement Area; and

(b) To enter upon the Property and Easement Area at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement, the ILFEI, the Development Plan and the Management Plan,

to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Easement Area; and

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

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

(e) All present and future development rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Easement Area, nor any other property adjacent or otherwise; and

(f) The right to enforce by any means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement; and

(g) The right to enhance native plant communities, including the removal non-native species, the right to plant trees and shrubs of the same type as currently existing on the Easement Area, or other appropriate native species. Habitat enhancement activities shall not conflict with the preservation of the Natural Condition of the Easement Area or the Purposes of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

3. Prohibited Uses. Any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantee, and their respective agents, and third parties are expressly prohibited:

(a) Introduction of nuisance water, such as any drainage or overflow, including but not limited to water from pools, aquariums, waterbeds and fountains, and unseasonable and supplemental watering, except nuisance water associated with irrigation outside the Easement Area by adjacent homeowners or others and the natural drainage of rainfall and water related to Grantee's habitat enhancement activities as set forth in the Development Plan;

(b) Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except weed abatement activities necessary to control or remove invasive, exotic plant species except as set forth in the Development Plan or Management Plan;

(c) Use of off-road vehicles and use of any other motorized vehicles except in the execution of management duties;

(d) Grazing or other agricultural activity of any kind;

(e) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing;

(f) Residential, commercial, retail, institutional, or industrial uses;

(g) Any legal or de facto division, subdivision or partitioning of the Easement Area;

(h) Construction, reconstruction or placement of any building, road, wireless communication cell towers, billboard, sign, or any other structure or improvement of any kind except those signs specifically allowed under Section 5(e) or as specifically provided for in the Development Plan or Management Plan;

(i) Dumping soil, trash, ashes, refuse, waste, bio-solids, garbage or any other material;

(j) Planting, gardening, or introduction or dispersal of non-native plant or animal species;

(k) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Easement Area;

(l) Altering the surface or general topography of the Easement Area, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Easement Area with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan;

(m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials, (2) prevention or treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, (4) completing the Development Plan and Management Plan, or (5) activities described in Section 2;

(n) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except for as specifically provided for in the Development Plan or Management Plan;

(o) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low

combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones;

(p) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Area; 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, round water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (4) any water from wells that are in existence or may be constructed in the future on the Easement Area;

(q) 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 Grantor, the Easement Area, or the use or activity in question; and

(r) No use shall be made of the Easement Area, and no activity thereon shall be permitted, that is or is likely to become inconsistent with the Purposes of this Conservation Easement. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Conservation Easement. Grantee, therefore, in its sole discretion, may determine whether (1) proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement or (2) alterations in existing uses or structures, are consistent with the Purposes of this Conservation Easement.

4. Grantor's Duties. To accomplish the Purposes of this Conservation Easement as described in Section 1, Grantor, its successors and assigns shall:

(a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement;

(b) Cooperate with Grantee in the protection of the Conservation Values;

(c) Repair and restore damage to the Easement Area directly or indirectly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties within Grantor's control; provided, however, Grantor, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with the Grantee and USACE; and

(d) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

5. Grantee's Duties. To accomplish the Purposes of this Conservation Easement as described in Section 1, Grantee, its successors and assigns shall:

(a) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Easement Area; and

(b) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis; and

(c) Undertake construction, maintenance and monitoring of mitigated areas pursuant to the Development Plan and Interim Management Plan until issuance of final approval from the USACE confirming that Grantee has successfully completed construction, maintenance and monitoring of mitigated areas pursuant to said Plans ("Final Approval"). This duty is non-transferable;

(d) Upon receipt of Final Approval, perform long-term management of the Easement Area pursuant to the Long-term Management Plan;

(e) Within 120 days of recordation of this Conservation Easement, install signs and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions. Prior to erection of such signage, the Grantee shall submit plans showing the location and language of such signs to the USACE for review and approval;

(f) Repair and restore damage to the Easement Area directly or indirectly caused by Grantee, Grantee's guests, representatives, employees or agents, and third parties within Grantee's control provided, however, Grantee, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with USACE.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including the right to engage in or to permit or invite others to engage in all uses of the Easement Area that are not prohibited or limited by, and are consistent with, the Purposes of this Conservation Easement.

7. Enforcement.

(a) Right to Enforce. Grantor, its successors and assigns, grant to the USACE, the U.S. Department of Justice, and the State Attorney General a discretionary right to enforce this Conservation Easement in a judicial or administrative action against any person(s) or other entity(ies) violating or attempting to violate this Conservation

Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. The USACE, U.S. Department of Justice, and the State Attorney General shall have the same rights, remedies and limitations as Grantee under this Section 7. The rights under this Section are in addition to, and do not limit rights conferred in Section 2 above. The term "Party" means Grantor or Grantee, as the case may be. Grantor, Grantee, and any third party beneficiaries, when implementing any remedies under this easement, shall provide timely written notice to each other of any actions taken under this section, including, but not limited to copies of all notices of violation and related correspondence.

(b) Notice of Violation. In the event that either Party or its employees, agents, contractors or invitees is in violation of the terms of this Conservation Easement or that a violation is threatened, the non-violating Party and/or third party beneficiaries may demand the cure of such violation. In such a case, the non-violating Party and/or third party beneficiaries shall issue a written notice to the violating Party (hereinafter "**Notice of Violation**") informing the violating Party of the actual or threatened violations and demanding cure of such violations. The Notice of Violation shall be sent to the other Party and third party beneficiaries listed under Section 15 of this Conservation Easement.

(c) Time to Cure. The violating Party shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the violating Party shall, within the thirty (30) day period, submit to the non-violating Party and/or third party beneficiaries, as the case may be, for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan. If the violating Party disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter "**Notice of Dispute**") to the appropriate Party and/or third party beneficiary within thirty (30) days of receipt of written Notice of Violation.

(d) Failure to Cure. If the violating Party fails to cure the violation within the time period(s) described in Section 7(c), above, or Section 7(e)(2), below, the non-violating Party and/or third party beneficiaries may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the violating Party with the terms of this Conservation Easement. In such action, the non-violating Party and/or third party beneficiaries may:

(1) Recover any damages to which they may be entitled for violation by the violating Party of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area. The non-violating Party shall first apply any damages recovered to the cost of undertaking any corrective action on the Easement Area. Prior to implementation of any remedial or restorative actions pursuant to this paragraph, USACE shall be consulted.

(2) Enjoin the violation by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.



(3) Obtain other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury.

(e) Notice of Dispute.

(1) If the violating Party provides the non-violating Party and/or third party beneficiaries with a Notice of Dispute, as provided herein, the non-violating Party and/or third party beneficiaries shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating Party and/or third party beneficiaries receive the Notice of Dispute. The non-violating Party and/or third party beneficiaries shall consider all relevant information concerning the disputed violation provided by the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party and/or third party beneficiaries is appropriate in light of the violation.

(2) If, after reviewing the violating Party's Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the violation, the non-violating Party and/or third party beneficiaries determine that a violation has occurred, the non-violating Party and/or third party beneficiaries shall give the violating party notice of such determination in writing. Upon receipt of such determination, the violating Party shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the violating Party shall, within the fifteen (15) day period, submit to the non-violating Party and/or third party beneficiaries for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan.

(f) Conflicting Notices of Violation.

(1) If any Party receives a Notice of Violation that is in material conflict with one or more prior written Notices of Violation that have not yet been cured by the Party (hereinafter "**Active Notice(s) of Violation**") such that the conflict makes it impossible for the Party to carry out the cure consistent with all prior Active Notices of Violation, the Party shall give written notice (hereinafter "**Notice of Conflict**") to the non-violating Party and/or third party beneficiaries issuing the later, conflicting Notice(s) of Violation. The Party shall issue said Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries within fifteen (15) days of the receipt of each such conflicting Notice of Violation. A valid Notice of Conflict shall describe the conflict with specificity, including a description of how the conflict makes compliance with all Active Notices of Violation impossible.

(2) Upon issuing a valid Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries, as described above, the violating Party shall not be required to carry out the cure described in the conflicting Notice or Notices of Violation until such time as the non-violating Party responsible for said

conflicting Notice(s) of Violation issue(s) a revised Notice of Violation that is consistent with prior Active Notices of Violation. Upon receipt of a revised, consistent Notice of Violation, the violating Party shall carry out the cure recommended in such notice within the time period(s) described in Section 7(c) above. Notwithstanding Section 7(g), failure to cure within said time period(s) shall entitle the non-violating Party to the remedies described in Section 7(d) and Section 7(h).

(3) The failure of the violating Party to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall result in a waiver of the violating Party's ability to claim a conflict.

(g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Party and/or third party beneficiary seeking enforcement pursuant to Section 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Conservation Easement and state and federal law after giving the violating Party at least twenty four (24) hours' written notice before pursuing such remedies. So long as such twenty-four (24) hours' notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or Notice of Dispute as described in Section 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile and shall be copied to the other Party and/or third party beneficiaries listed in Section 15 of this Conservation Easement. The rights of the non-violating Party and/or third party beneficiaries under this paragraph apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party and third party beneficiaries shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 7(g) 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 Civil Code Section 815, *et seq.*, inclusive.

(h) Costs of Enforcement. All costs incurred by a Party, where that Party is the prevailing party, in enforcing the terms of this Conservation Easement against the other Party, 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 the non-prevailing Party.

(i) Enforcement Discretion. Enforcement of the terms of this Conservation Easement by a Party and/or third party beneficiary shall be at the discretion of the Party and/or third party beneficiary, and any forbearance by such Party and/or third party beneficiary to exercise its rights under this Conservation Easement in the event of any breach of any term of the Conservation Easement by a Party or any subsequent transferee shall not be deemed or construed to be a waiver by the non-

violating Party and third party beneficiary of such terms or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the rights of the non-violating Party and third party beneficiary under this Conservation Easement. No delay or omission by the non-violating Party and/or third party beneficiaries in the exercise of any right or remedy upon any breach by the violating Party shall impair such right or remedy or be construed as a waiver. Further, nothing in this Conservation Easement creates a non-discretionary duty upon the non-violating Party and/or third party beneficiaries to enforce its provisions, nor shall deviation from these terms and procedures, or failure to enforce its provisions give rise to a private right of action against the non-violating Party and/or third party beneficiaries by any third parties.

(j) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantor's control, including without limitation, fire not caused by Grantor, flood, storm, and earth movement;

(2) Any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes;

(3) Acts by Grantee, USACE, or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantor's control.

Notwithstanding the foregoing, Grantor must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

(k) Acts Beyond Grantee's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantor to bring any action against Grantee for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantee's control, including without limitation, fire not caused by Grantee, flood, storm, and earth movement;

(2) Any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes;

(3) Acts by Grantor, USACE or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantee's control.

Notwithstanding the foregoing, Grantee must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

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

9. Costs and Liabilities.

(a) Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance (except Long-Term Maintenance by Grantee) of the Easement Area. Grantor agrees Grantee and ACOE shall not have any duty or responsibility for the operation, upkeep, or maintenance (except Long-Term Maintenance by Grantee) of the Easement Area, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor, its successor or assign remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Grantee Indemnified Party**" and collectively, "**Grantee's 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 Easement Area, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations or rights specified in Sections 4, 6, 9(a), 10, and 19(l); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

(2) Grantor shall hold harmless, protect and indemnify USACE and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (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 Easement Area, regardless of cause and (ii) the obligations or rights specified in Sections 4, 5, 6, 9(a), 10, and 19(l), except that any indemnification under this Section 9(b) shall be inapplicable to Third-Party Beneficiary Indemnified Parties with respect to any Claim due to the negligence or intentional acts only of USACE or any of its employees.

10. Taxes, No Liens. Grantor, its successors and assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority, including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and USACE with satisfactory evidence of payment upon request. Grantor, its successors and assigns shall keep Grantee's interest in the Easement Area free from any liens.

11. Condemnation. The Purposes of the Conservation Easement is presumed to be the best and most necessary public use as defined in Civil Procedure Code Section 1240.680 notwithstanding of Civil Procedure Code Sections 1240.690 and 1240.700. Nevertheless, if the Easement Area is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation in accordance with applicable law.

12. Transfers of Conservation Easement or Easement Area.

(a) Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee 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 Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Easement Area is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 13.

(b) Easement Area. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the ILFEI, the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies 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). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 13.

13. Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies 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 Easement Area.

14. Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Easement Area (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a “**Transfer**”) any mineral, air, or water right or any water associated with the Easement Area, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the

Signatory Agencies 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 Easement Area. This Section 14 shall not limit the provisions of Section 2(d) or 3(p), nor prohibit transfer of a fee or leasehold interest in the Easement Area that is subject to this Conservation Easement and complies with Section 12. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

15. Notices. Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, 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 Grantor: [INSERT NAME AND ADDRESS]

To Grantee: Inland Empire Resource Conservation District  
25864-K Business Center Drive  
Redlands, CA 92374  
Attn: District Manager

With a Copy to: Best Best & Krieger LLP  
3390 University Avenue, 5th Floor  
Riverside, CA 92501  
Attn: General Counsel to the IERCD

*With a copy to:* District Counsel  
U.S. Army Corps of Engineers  
Los Angeles District  
915 Wilshire Boulevard, Room 1535  
Los Angeles, CA 90017-3401

U.S. Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, CA 94105  
Attn: Director, Water Division

California Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. 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.

The parties agree to accept facsimile signed documents and agree to rely upon

such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission of such a facsimile, the original documents that bear the original signatures.

16. Amendment. This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the USACE, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the Purposes of this Conservation Easement and California law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Easement Area is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

17. Recordation. Grantor shall promptly record this instrument in the official records of [RIVERSIDE OR SAN BERNARDINO] County, California and immediately notify the Grantee and USACE through the mailing of a conformed copy of the recorded easement. Grantee may re-record this Conservation Easement at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

18. Estoppel Certificate. Upon request, Grantee shall within fifteen (15) days execute and deliver to Grantor, its successors and assigns any document, including an estoppel certificate, which certifies compliance with any obligation of Grantor, its successors and assigns contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Grantor, its successors and assigns.

19. General Provisions.

(a) Controlling Law. The laws of the United States and the State of California, disregarding the conflicts of law principles of such state, shall govern the interpretation and performance of this Conservation Easement.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to effect the Purposes of this Conservation Easement and the policy and purpose set forth in California Civil Code Section 815, *et seq.* 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) Change of Conditions. If one or more of the Purposes of this Conservation Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Conservation Easement as long as any other purpose of the Conservation Easement may be accomplished. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. Grantor and Grantee agree that global warming and



climate change-caused effects shall not be a basis for termination of this Conservation Easement.

(d) 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 other persons or circumstances.

(e) Entire Agreement. This document (including its exhibits and ILFEI, the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies 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 accordance with Section 15.

(f) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(g) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area. The covenants hereunder benefiting Grantee shall also benefit the USACE as a third party beneficiary.

(h) Termination of Rights and Obligations. Except as otherwise expressly set forth in this Conservation Easement and provided the transfer was consistent with the terms of this Conservation Easement, a party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Property (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) 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.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(k) Exhibits. All Exhibits referred to in this Conservation Easement are attached and incorporated herein by reference.

(l) No Hazardous Materials Liability.

(1) Grantor represents and warrants that there has been no release or threatened release of 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 Easement Area, or transported to or from or affecting the Easement Area.

(2) Without limiting the obligations of Grantor under Section 9(b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties (defined in Section 9(b)(1)) from and against any and all Claims (defined in Section 9(b)(1)) 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 Easement Area at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) 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 any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

(3) Without limiting the obligations of Grantor under Section 9(b)(2) herein, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third Party Beneficiary Indemnified Parties (defined in Section 9(b)(2)) against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Easement Area at any time, except that this release and indemnification shall be inapplicable to the Third Party Beneficiary Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by third party beneficiaries, their employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).

(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 Grantee and ACOE any of the following:

(i) The obligations or liabilities 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. Section 9601 et seq.; hereinafter, "**CERCLA**"); or

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

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

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

(v) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Area.

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; Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Conservation Easement.

The term "**Environmental Laws**" includes, without limitation, any 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. Grantor represents, warrants and covenants to Grantee and USACE that Grantor's activities upon and use of the Easement Area will comply with all Environmental Laws.

(m) Extinguishment. If circumstances arise in the future that render the preservation of Conservation Values, [***include this phrase only if there are jurisdictional wetlands:*** including wetland functions and services,] 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.

(n) Warranty. Grantor represents and warrants that Grantor is the sole owner of the Easement Area. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Grantee and USACE pursuant to the Property Assessment signed by Grantor and attached as an exhibit to the ILFEI, [***choose applicable statement:*** there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement or the holder of any outstanding mortgage, lien, encumbrance or other

interest in the Easement Area (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the USACE].

(o) Third-Party Beneficiary. Grantor and Grantee acknowledge that the USACE (the “**Third-Party Beneficiary**”) is a third party beneficiary of this Conservation Easement with the right of access to the Easement Area and the right to enforce all of the obligations of Grantor and Grantee under this Conservation Easement.

(p) Funding. Funding for the perpetual management, maintenance and monitoring of the Easement Area is specified in and governed by the ILFEI and the Management Plan.

*IN WITNESS WHEREOF* Grantor and Grantee have executed this Conservation Easement the day and year first above written and have agreed to be bound by the terms and provisions hereof.

GRANTOR:

[insert name]

By:

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

[attach notary acknowledgment]

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement by \_\_\_\_\_, a \_\_\_\_\_ company, dated \_\_\_\_\_, 20\_\_\_\_, to the Inland Empire Resource Conservation District, is accepted by the undersigned officers on behalf of Grantee.

### GRANTEE:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

### Attest:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**

Legal Description of Property

[See attached]

**Exhibit B**

Legal Description and Depiction of Easement Area

[See Attached]



**Exhibit C**

Title Report

[See Attached]

**Exhibit D**

Map of the major, distinct natural features on the Easement Area

[See Attached]

**Exhibit E**

Annual Inspection Report Form

[See Attached]

Annual Review of the Easement Area

(All actions shall be undertaken at the discretion of the Inland Empire Resource Conservation District, as deemed necessary, a minimum of one time per year.)

**PART I – EASEMENT MANAGEMENT ACTIVITIES**  
***(To be modified based on approved Management Plan)***

Time period covering \_\_\_\_\_ to \_\_\_\_\_  
dd/mm/yy dd/mm/yy

☐ 1. REMOVAL OF TRASH OR MAN MADE DEBRIS

Date(s) Performed: \_\_\_\_\_

Corrective Action/Response Taken: \_\_\_\_\_

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☐ 2. MAINTENANCE OF ANY INFORMATIVE SIGNAGE

Date(s) Performed: \_\_\_\_\_

Corrective Action/Response Taken: \_\_\_\_\_

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- ☐ 3. MAINTENANCE AND REPAIR OF EXISTING FENCING FOR THE EASEMENT AREA AS NEEDED

Date(s) Performed: \_\_\_\_\_

Corrective Action/Response Taken: \_\_\_\_\_

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- ☐ 4. INVASIVE WEED CONTROL. (Includes removal of parasitic (as it relates to the health of the host plant) and non-native or exotic plants or animal species

Date(s) Performed: \_\_\_\_\_

Corrective Action/Response Taken: \_\_\_\_\_

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- ☐ 5. CHECK FOR USE OF EASEMENT AREA INCONSISTENT WITH THE TERMS OF THE CONSERVATION EASEMENT (See Part II):

Date(s) Performed: \_\_\_\_\_

Corrective Action/Response Taken: \_\_\_\_\_

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Additional Notes: \_\_\_\_\_

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**PART II**  
**PROHIBITED ACTIVITIES**

		(Circle One)	
1. Supplemental Watering	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

		(Circle One)	
2. Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals, except as vector control or to control invasive plant species	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

			(Circle One)	
		NOT OBSERVED	OBSERVED	N/A
3.	Fire Protection activities			
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(If observed, describe corrective action or response taken)

			(Circle One)	
		NOT OBSERVED	OBSERVED	N/A
4.	Off-Road Vehicle Use			
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(If observed, describe corrective action or response taken)

			(Circle One)	
5.	Grazing or agriculture	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

			(Circle One)	
6.	Horseback riding, bicycling, hunting or fishing	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)



			(Circle One)	
7.	Construction or placement of any building, billboard or sign	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

			(Circle One)	
8.	Dumping or accumulation of trash	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

			(Circle One)	
9.	Planting of non-native plants	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

			(Circle One)	
10.	Excavation or extraction of minerals/soil	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

			(Circle One)	
11.	Recent alterations of topography/grading	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

			(Circle One)	
12.	Recently removed or destroyed trees or shrubs	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

(Circle One)

13.	Activities detrimental to water quality	NOT OBSERVED	OBSERVED	N/A
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(If observed, describe corrective action or response taken)

Additional Notes: \_\_\_\_\_

[illegible]

## **Exhibit I**

### **Property Assessment Form**

## **Exhibit I-1**

### **Inland Empire Resource Conservation District In-Lieu Fee Program**

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## **PROPERTY ASSESSMENT**

for

### ***the IERCD In-Lieu Fee Program***

This Property Assessment (Property Assessment”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by ***[insert property owner full legal name(s)]*** (“Property Owner”), for the benefit of the Inland Empire Resource Conservation District (“IERCD”) and the Los Angeles District of the U.S. Army Corps of Engineers, Region IX of the U.S. Environmental Protection Agency, and the California Regional Water Quality Control Board, Santa Ana Region, which agencies are jointly referred to in this Property Assessment as the “Signatory Agencies.” Property Owner acknowledges that this Property Assessment and the statements in it may be conclusively relied upon by the Signatory Agencies in entering into a conservation easement or other appropriate real property conveyance document (“Conservation Easement”) for the IERCD In-Lieu Fee Program.

This Property Assessment provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the Property (as defined below), including, without limitation, each exception listed in the Preliminary Report issued by ***[insert title company name]***, ***[insert title report date]***, ***[insert title report number]*** (the “Preliminary Report”), covering the Property, as described in **Attachments 1 and 2** attached hereto and incorporated by this reference. Specifically, this Property Assessment includes a narrative explaining each lien, encumbrance or other exception to title and the manner in which it may affect the Conservation Easement to be recorded against the Property pursuant to the IERCD In-Lieu Fee Program.

Property Owner covenants, represents and warrants to each of the Signatory Agencies as follows:

1. Property Owner is the sole owner in fee simple of certain real property containing approximately \_\_\_\_\_ acres located in the City of \_\_\_\_\_ ***[insert city name]***, County of ***[insert county name]***, State of California, designated as Assessor’s Parcel Number(s) ***[insert parcel number(s)]*** (the “Property”), as legally described in the Preliminary Report. Property Owner has, and upon the recordation of the

Exhibit I-2

Inland Empire Resource Conservation District In-Lieu Fee Program

Conservation Easement Property Owner shall have, good, marketable and indefeasible fee simple title to the Property subject only to any exceptions approved in advance of recordation, in writing, by the Signatory Agencies.

2. The Property is available to be burdened by the Conservation Easement for the conservation purposes identified in the Conservation Easement, in accordance with the IERCD In-Lieu Fee Program Instrument.

3. The Property includes legal access to and from [*insert name of public street or road*]. [*If special access rights are required to reach the Property, those access rights must also be addressed in this Property Assessment.*]

4. A true, accurate and complete listing and explanation of each recorded or unrecorded lien or encumbrance on, or possessory or non-possessory interest in, the Property is set forth in **Attachment 3** attached to and incorporated by reference in this Property Assessment. Except as disclosed in **Attachment 3**, there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests). **Attachment 4**, attached hereto and incorporated by reference in this Property Assessment, depicts all relevant and plottable property lines, easements, dedications, etc. on the Property.

5. Prior to recordation of the Conservation Easement, Property Owner shall certify to the Signatory Agencies in writing that this Property Assessment remains true, accurate and complete in all respects.

6. Property Owner has no knowledge or notice of any legal or other restrictions upon the use of the Property for conservation purposes, or affecting its Conservation Values, as described in the Conservation Easement, or any other matters that may adversely affect title to the Property or interfere with the establishment and implementation of an In-Lieu Fee Program thereon.

7. Property Owner has not granted any options, or committed or obligated to sell the Property or any portion thereof, except as disclosed in writing to and agreed upon in writing by the Signatory Agencies.

8. The following Appendix and attachments are incorporated by reference in

Exhibit I-3

Inland Empire Resource Conservation District In-Lieu Fee Program

this Property Assessment:

- a) Attachment 1 – Preliminary Report;
- b) Attachment 2 - Encumbrance Documents;
- c) Attachment 3 – Summary and Explanation of Encumbrances; and
- d) Attachment 4 - Map(s).

**[Note: Attachment 2** shall include copies from the Official Records of the county recorder's office of all recorded exceptions to title (e.g., leases or easements).

**Attachment 4** shall include a map(s), preferably in GIS Format, illustrating the area of the Property affected by each exception to title.]

PROPERTY OWNER

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***[Insert property owner full legal name(s)]***

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Date

Exhibit I-4

Inland Empire Resource Conservation District In-Lieu Fee Program



**Attachment 1**  
**Preliminary Report**

[Attached]

Exhibit I-5

Inland Empire Resource Conservation District In-Lieu Fee Program

**Attachment 2**  
**Encumbrance Documents**

[Attached]

Exhibit I-6

Inland Empire Resource Conservation District In-Lieu Fee Program

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**Attachment 3**  
**Sample Format for: Summary and Explanation of Encumbrances**

**MONETARY LIENS**

Note: Any deeds of trust or other monetary lien(s) must be released or subordinated to the Conservation Easement by a recorded Subordination Agreement approved by the Signatory Agencies.

- Preliminary Report Exception or Exclusion #:
- Amount or Obligation secured:
- Term:
- Date:
- Trustor:
- Trustee:
- Beneficiary:
- Description:

\_\_\_\_\_ acres of Property subject to lien

\_\_\_\_\_ acres of Property *not* subject to lien

**EASEMENTS AND RIGHTS OF WAY**

- Preliminary Report Exception or Exclusion #:
- Date:
- Grantor:
- Grantee:
- Holder (if different from Grantee):
- Description:
- Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property*]

\_\_\_\_\_ acres of Property subject to easement

\_\_\_\_\_ acres of Property *not* subject to easement

**LEASES**

- Preliminary Report Exception or Exclusion #:
- Date:
- Landlord/Lessor:
- Tenant/Lessee:

Exhibit I-7

Inland Empire Resource Conservation District In-Lieu Fee Program

- Premises:
- Term:
- Description:
- Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property*]  
 \_\_\_\_\_ acres of Property subject to lease  
 \_\_\_\_\_ acres of Property *not* subject to lease

#### COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS

- Preliminary Report Exception or Exclusion #:
- Dated:
- Grantor or Declarant:
- Grantee (if applicable):
- Description:
- Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property*]  
 \_\_\_\_\_ acres of Property subject to exception/exclusion  
 \_\_\_\_\_ acres of Property *not* subject to exception/exclusion

#### OTHER INTERESTS (INCLUDING MINERAL OR OTHER SEVERED INTERESTS)

- Holder
- Description: [*must address whether or not the interest includes any surface rights and, if applicable, a description of those rights*]
- Analysis: [*whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property*]  
 \_\_\_\_\_ acres of Property subject to interest  
 \_\_\_\_\_ acres of Property *not* subject to interest

Exhibit I-8

Inland Empire Resource Conservation District In-Lieu Fee Program

**Attachment 4**  
**Map(s)**

[Attached]

Exhibit I-9

Inland Empire Resource Conservation District In-Lieu Fee Program

**Exhibit J**

Credit Ledger Report Form

**See attached**

Exhibit J-1

Inland Empire Resource Conservation District In-Lieu Fee Program

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ENTER CURRENT DATE OF LEDGER HERE

				Total Credits Awarded by ACOE for Project						Credits Released to ILF Program			
S o u r c e s o f	Project	Date		Project Total	Rehabilitation	Enhancement	Buffer	Establishment	Funding Event	Rehabilitation	Enhancement	Buffer	Establishment
	Implementation of IERCD ILF Program / Release of 50 Advanced Credits	Date		50.00									
	First Mitigation Project	Date		0.00	0.00	0.00	0.00	0.00					
									Approval of a Development Plan/Recordation of Real Estate Instrument	0.00	0.00	0.00	0.00
					Total Credits Awarded by ACOE for All Projects						Total Credits Released to ILF Program		
				Project Total	Rehabilitation	Enhancement	Buffer	Establishment		Rehabilitation	Enhancement	Buffer	Establishment
Grand Totals	Grand Total of Credits Awarded to ILF Program (Including Advanced Credits)			50.00	0.00	0.00	0.00	0.00		0.00	0.00	0.00	0.00
	Grand Total of Credits Released to ILF Program (Including Advanced Credits)			50.00									

ENTER CURRENT DATE OF LEDGER HERE

[illegible]



ENTER CURRENT DATE OF LEDGER HERE

		Date						
	Credit Purchaser							
			404 Permit or other	0.00	0.00	0.00	0.00	0.00
				Total Credits Sold by ILF Program				
				Project Total	Rehabilitation	Enhancement	Buffer	Establishment
Grand Totals	Grand Total of Credits Sold by ILF Program			0.00	0.00	0.00	0.00	0.00
	Grant Total of Credits Available for Sale in ILF Program as of [ENTER DATE OF LEDGER]			50.00				

ENTER CURRENT DATE OF LEDGER HERE