

SETTLEMENT AND GENERAL RELEASE AGREEMENT

This Settlement and General Release Agreement (“Agreement”) is made on January ____, 2002 and is between petitioner San Bernardino Valley Audubon Society (“Audubon”), and The Metropolitan Water District of Southern California (“Metropolitan”) and the California Department of Fish and Game (“DFG”), and real-party-in-interest the Riverside County Habitat Conservation Agency (“RCHCA”). Metropolitan, DFG and RCHCA may be collectively referred to as “Respondents.” The parties may be collectively referred to as the “Parties.”

RECITALS

A. On December 13, 1995, Audubon commenced legal action against Respondents in San Bernardino Valley Audubon Society v. Metropolitan Water District et al., Riverside County Superior Court Case No. RIC 274844 (the “Action”).

B. In the Action, Audubon contested Metropolitan’s approval of a mitigated negative declaration/environmental assessment (“MND/EA”), pursuant to the California Environmental Quality Act (“CEQA,” Public Resources Code, §§ 21000 et seq.), for the Lake Mathews Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (“Plan”). Audubon alleged that Metropolitan’s environmental review of the Plan was inadequate pursuant to CEQA and Metropolitan should have prepared an environmental impact report (“EIR”) for the Plan, and that DFG did not have authority to issue an “incidental take” permit pursuant to the California Endangered Species Act (“CESA,” Fish and Game Code, §§ 2050 et seq.). In the first trial court hearing of this matter, the

court found that, on the first cause of action, the MND/EA prepared for the Plan complied with CEQA, but on the second cause of action, DFG did not have authority under CESA to issue an “incidental take” permit. Audubon appealed the decision on the first cause of action, and Respondents appealed the decision on the second cause of action.

C. In the first published opinion on the consolidated appeals, San Bernardino Valley Audubon Society v. Metropolitan Water Dist. (1999) 71 Cal.App.4th 382, the Appellate Court reversed the trial court’s holding on the first cause of action that the MND/EA was legally adequate and required the preparation of an EIR. Regarding the second cause of action, due to a subsequent statutory change to CESA, the Appellate Court reversed the trial court’s holding on the CESA cause of action and remanded it to the trial court with directions to dismiss it as moot. On remand, the trial court ordered Metropolitan to set aside the resolution adopting the MND/EA, and ordered Metropolitan and DFG to cease issuance of any mitigation credits from the Mitigation Bank established by the Plan and void any credits already issued for the take of any state-listed candidate, threatened, or endangered species unless and until an EIR has been completed. However, Audubon believed the trial court failed to address several other agreements underlying the Plan, and therefore Audubon appealed the scope of that judgment. In the second published opinion in this matter, San Bernardino Valley Audubon Society v. Metropolitan Water Dist. (2001) 89 Cal.App.4th 1097, the Appellate Court reaffirmed its prior holding that an EIR should have been prepared for the Plan. The Appellate Court remanded the matter to the trial court specifically to allow the Parties to present argument, and the trial court to make findings, regarding the severability of portions of the Plan pursuant to Public Resources Code section 21168.9. The Parties have filed briefs on that issue, and the matter is set for hearing in early 2002.

D. Audubon has also filed a Motion for Attorneys Fees, and a Motion to Compel Payment of Attorneys Fees (together, "Fee Motions"), which are also set for hearing in early 2002.

E. The Parties participated in a mediation of all of their disputes in the Action and the Fee Motions on December 4 and 11, 2001. The Parties have reached agreement regarding all of their disputes in the Action and the Fee Motions.

F. The purpose of this Agreement is to settle and release fully and completely all claims that Audubon had, has, or may have against Respondents regarding: (i) the Action, (ii) the Fee Motions, and (iii) any other claims involving the Plan, Plan Area Projects, MND/EA and documents referenced in the MND/EA.

G. The Parties acknowledge that the United States Fish and Wildlife Service was not a party to the Action, Fee Motions, and mediation, is not a party to this Agreement and cannot be bound hereto.

DEFINITIONS

1. "Western Riverside County" as used in this Agreement shall mean all unincorporated county land west of the crest of the San Jacinto Mountains to the Orange County line, as well as the jurisdictional areas of the cities of Temecula, Murrieta, Lake Elsinore, Canyon Lake, Norco, Corona, Riverside, Moreno Valley, Banning, Beaumont, Calimesa, Perris, Hemet and San Jacinto, as depicted in Exhibit A, attached hereto.

2. "Reserve Lands" as used in this Agreement shall mean the area depicted in Exhibit B, attached hereto, which is made up of the existing State Ecological Reserve and Metropolitan's land set aside in the Mitigation Bank. The State Ecological Reserve is the area established and managed pursuant to agreements between DFG, Metropolitan and the California Department of Water Resources, and are the green areas on Exhibit B.

3. "Operations Area" as used in this Agreement shall mean the approximately 728.6 acres in the Plan designated for construction, operation and maintenance activities at the Lake Mathews facility, and are the brown areas on Exhibit B. The Operations Area is not part of the Reserve Lands.

4. "Plan Area Projects" as used in this Agreement shall mean lands within the Plan Area designated for water facility and related projects, including Metropolitan's Cajalco Creek Dam and Detention Basin Project and Lake Mathews Sediment Basins Project; portions of Metropolitan's Central Pool Augmentation Project; improvements to Western Municipal Water District facilities; and the Lake Mathews Bypass Project.

5. "Outside Projects" as used in this Agreement shall mean any project proposed by Metropolitan within Western Riverside County and outside of the Reserve Lands.

6. "Service" as used in this Agreement shall mean the United States Fish and Wildlife Service.

7. "Mitigation Bank" as used in this Agreement shall mean the approximately 2,544.9 acres owned by Metropolitan that are being conserved under the Mitigation Bank Agreement, and are the lavender areas on Exhibit B. Over time, the Mitigation Bank may include other lands acquired by Metropolitan and added to the Mitigation Bank.

AGREEMENT AND RELEASE

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein, Audubon and Respondents agree as follows:

8. Each recital set forth above and each exhibit attached hereto is incorporated herein by reference and made a part of this Agreement.

9. This Agreement shall control the interpretation and implementation of the Plan and the agreements underlying the Plan solely as set forth herein, namely the Mitigation Banking Agreement ("MBA"), the Cooperative Management Agreement ("CMA"), the California Fish and Game Code Sections 2081 and 2835 Memorandum of Understanding ("State MOU"), and the federal Memorandum of Understanding and Implementation Agreement ("Federal MOU") (collectively, the "Plan Agreements"). Except as provided in paragraphs 10(b) and 11(e) below, in the event of a conflict between this Agreement and the Plan or the Plan Agreements, the provisions of this Agreement shall control. However, all Parties acknowledge that the Service is a party to the MBA, the CMA and the Federal MOU, and none of the Parties can control any interpretation or action of the Service with regard to the Plan Agreements or the Plan.

10. The CMA created a Reserve Management Committee, composed of one representative each from Metropolitan, RCHCA, DFG and the Service. The purpose of the Reserve Management Committee is to manage the Reserve Lands. To address Audubon's concerns regarding public access to Reserve Management Committee meetings, the Parties agree as follows:

- a. The Reserve Management Committee shall, at its first meeting following dismissal of the Action and Fee Actions, adopt the Reserve Management Committee Meeting Guidelines, attached hereto as Exhibit C ("Meeting Guidelines").
- b. All subsequent Reserve Management Committee meetings shall be open to the public as provided in the Meeting Guidelines. In the event of a conflict between the Meeting Guidelines and the meeting procedures and requirements set forth in the CMA, the terms shall be harmonized if possible. If harmonization is not possible, the terms of the Meeting Guidelines shall control.

11. The public shall be allowed access to the Reserve Lands as provided in this paragraph and as provided in the CMA. The following procedure shall be used when determining whether to grant public access:

- a. A party seeking access must submit an application to the Reserve Management Committee two weeks prior to its next regularly-scheduled

meeting. The application shall state the name, address, phone number and affiliation of the applicant, the purpose for the access, and all activities to be carried out while on the Reserve Lands.

- b. On the date of access, the names, addresses and phone numbers of all people who participate in such activities shall be provided on a sign-in sheet.
- c. The Reserve Management Committee shall approve applications for access to the Reserve Lands submitted in conformance with this paragraph, and only for environmental, scientific and/or educational purposes, except that the Reserve Management Committee or Metropolitan may deny access to the Reserve Lands due to an emergency, to protect the conservation values of the Reserve Lands, to protect the security and water supply integrity of Metropolitan's facilities, and to protect the health and safety of the public and/or the Reserve Lands as a watershed.
- d. All activities to be carried out while on the Reserve Lands may be supervised, at the Reserve Manager's or Metropolitan's discretion.
- e. In the event of any inconsistency between this paragraph and the CMA regarding access to the Reserve Lands, this paragraph shall control. Regarding access to the State Ecological Reserve, in the event of any

inconsistency between this paragraph and 14 California Code of Regulations § 630, the regulations shall control.

12. a. Prior to its approval of any new development or new construction on the Reserve Lands, Metropolitan will prepare, at a minimum, a negative declaration pursuant to CEQA.

- b. Metropolitan will comply with CEQA with respect to any operational or maintenance activity it undertakes on the Reserve Lands regarding existing facilities at Lake Mathews. Metropolitan acknowledges that the exceptions contained in State CEQA Guidelines section 15300.2 regarding categorical exemptions set forth therein may apply to its operational and maintenance activities at Lake Mathews. Should the exceptions in State CEQA Guidelines section 15300.2 apply, and if no other CEQA exemptions apply, Metropolitan will prepare, at a minimum, a negative declaration.

- c. Any project may be carried out immediately without CEQA review in the event of an emergency, as provided by CEQA, Public Resources Code sections 21060.3, 21080(b), and 21172; and State CEQA Guidelines section 15269.

- d. If land is added to the Mitigation Bank or species are added to the list of Target Species (as defined in the Plan), or any other material changes are made to the mitigation methodology employed by the Plan, all Parties acknowledge they will

comply with all relevant CEQA requirements, including but not limited to Public Resources Code section 21166, if applicable.

13. The Parties acknowledge that the core of Audubon's concerns regarding the Plan is the methodology for mitigation of impacts to protected species. To clarify the Plan, and to avoid any potential misinterpretation, the Parties agree to substitute the mitigation methodology set forth below for the Habitat Value Unit ("HVU") calculation methodology in the Plan. Accordingly, the Plan and all of the Plan Agreements may be implemented, except as provided in this Agreement.

a. Geographic boundaries: The geographic boundaries of the area that may utilize credits in the Mitigation Bank are limited to Western Riverside County as defined in paragraph 1 above.

b. Use of the Mitigation Bank by third parties: No credits in the Mitigation Bank will be utilized by third parties, DFG, or RCHCA. Only Metropolitan may utilize credits in the Mitigation Bank to offset the take of Target Species, except that Western Municipal Water District can utilize credits in the Mitigation Bank to offset the take of Target Species for Plan Area Projects as provided in the Plan.

c. Use of mitigation credits: It is the intention of the Parties that once an acre is credited for mitigation for any reason (species or habitat), it cannot be used again for any reason. Metropolitan shall use each acre in the Mitigation Bank only once, regardless of the number of species existent on that acre. Metropolitan shall use each

acre in the Mitigation Bank only once, regardless of the type of habitat existent on that acre. At the time it is being used, one acre may be used to offset the impacts to more than one species or habitat type. For example, if a Metropolitan project impacted an acre of land containing two Target Species, it could use an acre in the Mitigation Bank containing those two species; if an acre containing both species was not available in the Mitigation Bank, Metropolitan would be required to use, if available, an acre in the Mitigation Bank containing one of the Target Species and another acre in the Mitigation Bank containing the other Target Species.

d. Mitigation on the existing State Ecological Reserve: Enhancement of the State Ecological Reserve shall not be utilized by Metropolitan as mitigation for Metropolitan projects.

e. Credits already issued from the Mitigation Bank: As identified in the Plan, the Mitigation Bank lands total approximately 2545 acres. Mitigation for Operations Area and Plan Area Projects was done through advance commitment of mitigation credits on a 1:1 ratio and on an acre-for-acre basis for every acre of habitat within the Operations Area and Plan Area Projects area. Because of this advance commitment, the HVU calculation methodology is not relevant.

f. Credits not yet issued from the Mitigation Bank: Of the approximately 657 acres remaining and available for utilization from the Mitigation Bank, Metropolitan will utilize this acreage and any acreage added to the Mitigation Bank as follows:

(i) For Outside Projects as defined in paragraph 5 above, Metropolitan shall mitigate on a 1:1 ratio, exchanging habitat taken for in-kind habitat in the Mitigation Bank, and occupied habitat taken shall be exchanged on a 1:1 ratio for occupied habitat in the Mitigation Bank. When habitat is mitigated in-kind, and occupied habitat is exchanged for occupied habitat, the HVU calculation methodology set forth in the Mitigation Banking Agreement shall not be utilized and will not be relevant. At the time it is being used, one acre may be used to offset the impacts to more than one species or habitat type. For example, if a Metropolitan project impacted an acre of land containing two Target Species, it could use an acre in the Mitigation Bank containing those two species; if an acre containing both species was not available in the Mitigation Bank, Metropolitan would be required to use, if available, an acre in the Mitigation Bank containing one of the Target Species and another acre in the Mitigation Bank containing the other Target Species.

(ii) If the Outside Projects cannot utilize in-kind mitigation, and occupied habitat cannot be exchanged for occupied habitat, Metropolitan shall not utilize the HVU calculation methodology. Instead, when Metropolitan desires to mitigate an Outside Project through use of out-of-kind credits in the Mitigation Bank, each such project shall be submitted to DFG and the Service, as appropriate, for approval on a case-by-case basis. Any dispute between Metropolitan and either DFG or the Service concerning mitigation shall be resolved pursuant to applicable law and agency policy and procedure.

The language in paragraph 2 on pages 9-10 of the Mitigation Banking Agreement concerning default approval if DFG and/or the Service fail to respond within 60 days shall be considered stricken.

g. Protection in perpetuity: Once utilized as mitigation for any project, the acreage within the Mitigation Bank is to be protected in perpetuity, through transfer via conservation easement or other appropriate instrument approved by DFG and the Service to RCHCA as set forth in the CMA, or any other appropriate public or non-profit entity subject to the approval of RCHCA, DFG and the Service.

14. The MND/EA shall not constitute project-level CEQA clearance for any subsequent project that will rely upon take authorization or mitigation credits through the Plan.

15. DFG agrees that it will review the Lake Mathews Fire Management Plan, Riverside County, California, March 1994 ("FMP") contained in the administrative record of the Action. DFG will make recommendations, if it has any, regarding the FMP to the California Department of Forestry within 12 months of executing this Agreement, and will forward any recommendations it may have to the Parties. The Parties agree that DFG's review of the FMP and any resulting recommendations are not and will not be subject to CEQA.

16. In exchange for the agreements herein, and in full settlement of the Fee Motions and any other claim for attorneys' fees or costs in the Action, Fee Motions or the mediation, Respondents

will pay Audubon \$45,000.00 in full satisfaction of its attorneys' fees and costs, in equal shares, within 60 days of the filing of the request for dismissal as set forth in paragraph 18, below.

17. The Parties agree that execution of this Agreement does not trigger further environmental review pursuant to CEQA or any other state or federal environmental statute because:

- a. Approval of this Agreement and its interpretations of the Plan and Plan Agreements do not constitute a "project" under CEQA, as defined in Public Resources Code section 21065;
- b. The interpretations herein were ways the Plan could have been interpreted, as drafted; and
- c. This Agreement settles on one interpretation of the methodology for calculating mitigation that was possible under the Plan as originally drafted.

18. Within ten (10) business days of receipt of a final version of the Agreement, Audubon shall execute this Agreement and direct and cause their attorney of record to fully execute a request for dismissal with prejudice of the Action and the Fee Motions in their entirety with respect to all of the Respondents, and return these fully executed documents to Respondents. As soon after receipt of the executed Agreement and request for dismissal as possible, Respondents shall execute the Agreement and file the request for dismissal.

19. Nothing in this Agreement shall be interpreted to operate as a release, reformation or satisfaction of the obligations of Metropolitan, RCHCA or DFG to the Plan Agreements.

20. Except as provided in paragraph 16 above, the Parties shall bear their own respective costs and attorneys' fees in the mediation and as agreed to with the mediator.

21. In exchange for the commitments set forth herein, Audubon and its officers, directors and members and any person claiming by or through any of them hereby release and forever discharge all of the Respondents and their respective directors, predecessors, successors, assigns, officers, shareholders, members, employees, designated agents, designated representatives, attorneys, and any person claiming by or through any of them ("Released Parties") from any and all of Audubon's claims, demands, liabilities, obligations, causes of action, damages, judgments, payments, attorneys' fees and costs, both known and unknown, which Audubon had or may have had, may now have or might hereinafter have against the Released Parties involving the Plan, Plan Agreements, MND/EA, FMP, Plan Area Projects and projects within the Operations Area which arose out of in any way or manner, relate to or are the subject of the Action or the Fee Motions, or which were asserted or which could have been asserted in the Action or the Fee Motions. In return, all of the Respondents and their respective directors, predecessors, successors, assigns, officers, shareholders, members, employees, designated agents, designated representatives, attorneys and any person claiming by or through any of them do hereby fully, finally, and forever release and discharge Audubon and its predecessors, successors, assigns, officers, directors, shareholders, employees, designated agents, designated representatives, attorneys, members and any person claiming by or through any of them

from any and all of Respondents' claims arising from the facts, actions, omissions or events which arose out of or relate to the Action or the Fee Motions.

22. Audubon, on behalf of its predecessors, successors, assigns, officers, directors, shareholders, employees, designated agents, designated representatives, attorneys, members and any person claiming by or through any of them agree and covenant that it will not institute or participate in any way in any new lawsuit which is based on or related to any of Audubon's claims, demands, causes of action, attorneys' fees and costs, both known and unknown, in the Action, Fee Motions or mediation, or which arise from the facts, actions, omissions or events which arose out of or relate to the Action or Fee Motions. Respondents, and their respective boards of directors, predecessors, successors, assigns, officers, shareholders, members, employees, designated agents, designated representatives, attorneys, and any person claiming by or through any of them do hereby fully, finally, and forever release and discharge Audubon and its predecessors, successors, assigns, officers, directors, shareholders, employees, designated agents, designated representatives, attorneys, members and any person claiming by or through any of them from any and all of Respondents' claims arising from the facts, actions, omissions or events which arose out of or relate to the Action or the Fee Motions.

23. The Parties acknowledge that nothing in this Agreement is intended to or shall operate as a restriction on the Respondents' ability to address emergencies on the Reserve Lands, to implement the provisions of the agreement for the establishment of an ecological reserve at Lake Matthews, attached as Exhibit 3 to the CMA, or to protect the health and safety of the watershed on and the conservation values of, the Reserve Lands.

24. The Parties represent and warrant that they have not assigned or transferred, or purported to assign or transfer, and shall not hereafter assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions, and causes of action released pursuant to this Agreement. The Parties, excluding DFG, also agree to indemnify and hold one another harmless against any obligation, liability, demand, claim, cost, expense (including but not limited to attorneys' fees incurred), debt, controversy, damage, action or cause of action based on, arising out of or in connection with any such transfer or assignment or purported transfer or assignment.

25. With regard to the matters being released herein, the Parties waive the provisions of Section 1542 of the California Civil Code, and any other similar statute, rule or case law. Section 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or expect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

This paragraph shall not prevent any future CEQA actions based on violations of the commitments in this Agreement, nor any future actions based on claims arising from matters outside this Agreement.

26. Nothing in the Agreement shall be construed as an admission of any type by any Party.

27. This Agreement shall be binding upon and for the benefit of the Parties and their respective successors, devisees, affiliates, representatives, assigns, officers, directors, members, agents and employees wherever the context requires or admits.

28. Each of the Parties affirmatively represents that it has been represented throughout this matter by attorneys of its own choosing. Each Party has read this Agreement and has had the terms used herein and the consequences thereof explained by its attorneys of choice. This Agreement is freely and voluntarily executed and given by each Party after having been apprised of all relevant information and data furnished by its attorneys of choice. Each party in executing this Agreement does not rely upon any inducements, promises or representations made by any other Party except as set forth herein.

29. With respect to the Action and Fee Motions, this Agreement constitutes the entire settlement agreement between the Parties and supersedes all prior or contemporaneous agreements and understandings between them or among any one or more of them. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by writing duly executed by authorized representatives of the Parties.

30. This Agreement shall in all respects be interpreted and enforced by and under the laws of the State of California.

31. Should any term of this Agreement be deemed unlawful, that provision shall be severed and the remaining terms shall continue to be valid and fully enforceable.

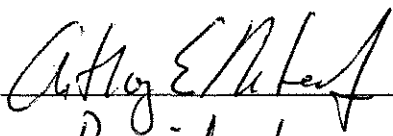
32. Each Party has cooperated in the drafting and preparation of this Agreement. This Agreement shall not be construed against any Party on the basis that such Party drafted this Agreement or any provision thereof.

33. Each of the undersigned signing on the behalf of a party warrants that he or she is authorized to sign for and by such party.

34. The Parties may execute duplicate originals of this Agreement or any documents they are required to sign or furnish pursuant to this Agreement.

DATED: January 24, 2002

THE SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: 
Title: President

DATED: January __, 2002

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By: _____
Ronald R. Gastelum
Title: Chief Executive Officer

By: _____
Roderick E. Walston
Title: General Counsel

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DATED: January __, 2002

THE SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: _____

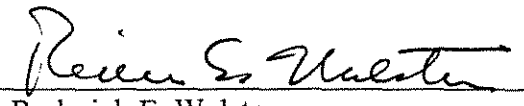
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DATED: January 31, 2002

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

By:  _____
Ronald R. Gastelum

Title: Chief Executive Officer

By:  _____
Roderick E. Walston

Title: General Counsel

DATED: January __, 2002

THE CALIFORNIA DEPARTMENT OF FISH AND GAME

DATED: January 28, 2002

THE CALIFORNIA DEPARTMENT OF FISH
AND GAME

By: _____

Robert C. Hight
Robert C. Hight

Title: Director

DATED: January __, 2002

THE RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY

By: _____

Robin Reeser-Lowe

Title: Chairperson

APPROVED AS TO FORM:

DATED: January __, 2002

COUNSEL FOR THE SAN BERNARDINO
VALLEY AUDUBON SOCIETY

By: _____

Kate M. Neiswender

DATED: January __, 2002

COUNSEL FOR THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
Roderick E. Walston
General Counsel

By: _____

Norman N. Flette
Deputy General Counsel

DATED: ~~January~~ ^{Feb. 4} __, 2002

COUNSEL FOR THE CALIFORNIA
DEPARTMENT OF FISH AND GAME
Bill Lockyer
Attorney General

By: _____

William S. Abbey
William S. Abbey

Title: Deputy Attorney General

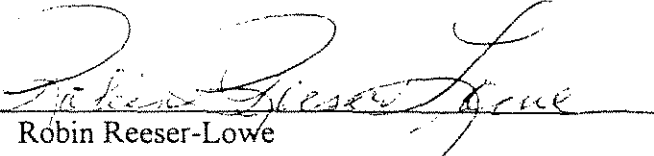
DATED: January __, 2002

THE CALIFORNIA DEPARTMENT OF FISH
AND GAME

By: _____
Robert C. Hight
Title: Director

DATED: January __, 2002

THE RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY

By: 
Robin Reeser-Lowe
Title: Chairperson

APPROVED AS TO FORM:

DATED: January __, 2002

COUNSEL FOR THE SAN BERNARDINO
VALLEY AUDUBON SOCIETY

By: _____
Kate M. Neiswender

DATED: January __, 2002

COUNSEL FOR THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
Roderick E. Walston
General Counsel

By: _____
Norman N. Flette
Deputy General Counsel

DATED: January __, 2002

COUNSEL FOR THE CALIFORNIA
DEPARTMENT OF FISH AND GAME
Bill Lockyer
Attorney General

By: _____
William S. Abbey
Title: Deputy Attorney General

DATED: January __, 2002

THE CALIFORNIA DEPARTMENT OF FISH
AND GAME

By: _____
Robert C. Hight
Title: Director

DATED: January __, 2002

THE RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY

By: _____
Robin Reeser-Lowe
Title: Chairperson

APPROVED AS TO FORM:

DATED: January 18, 2002

COUNSEL FOR THE SAN BERNARDINO
VALLEY AUDUBON SOCIETY

By:  _____
Kate M. Neiswender

DATED: January __, 2002

COUNSEL FOR THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
Roderick E. Walston
General Counsel

By: _____
Norman N. Flette
Deputy General Counsel

DATED: January __, 2002

COUNSEL FOR THE CALIFORNIA
DEPARTMENT OF FISH AND GAME
Bill Lockyer
Attorney General

By: _____
William S. Abbey
Title: Deputy Attorney General

By: _____
Robert C. Hight
Title: Director

DATED: January __, 2002

THE RIVERSIDE COUNTY HABITAT
CONSERVATION AGENCY

By: _____
Robin Reeser-Lowe
Title: Chairperson

APPROVED AS TO FORM:

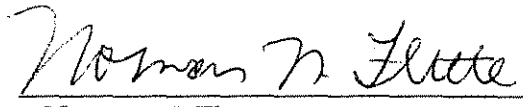
DATED: January __, 2002

COUNSEL FOR THE SAN BERNARDINO
VALLEY AUDUBON SOCIETY

By: _____
Kate M. Neiswender

DATED: January ~~__~~²⁸, 2002

COUNSEL FOR THE METROPOLITAN WATER
DISTRICT OF SOUTHERN CALIFORNIA
Roderick E. Walston
General Counsel

By: 
Norman N. Flette
Deputy General Counsel

DATED: January __, 2002

COUNSEL FOR THE CALIFORNIA
DEPARTMENT OF FISH AND GAME
Bill Lockyer
Attorney General

By: _____
William S. Abbey
Title: Deputy Attorney General

DATED: January __, 2002

COUNSEL FOR THE RIVERSIDE COUNTY
HABITAT CONSERVATION AGENCY

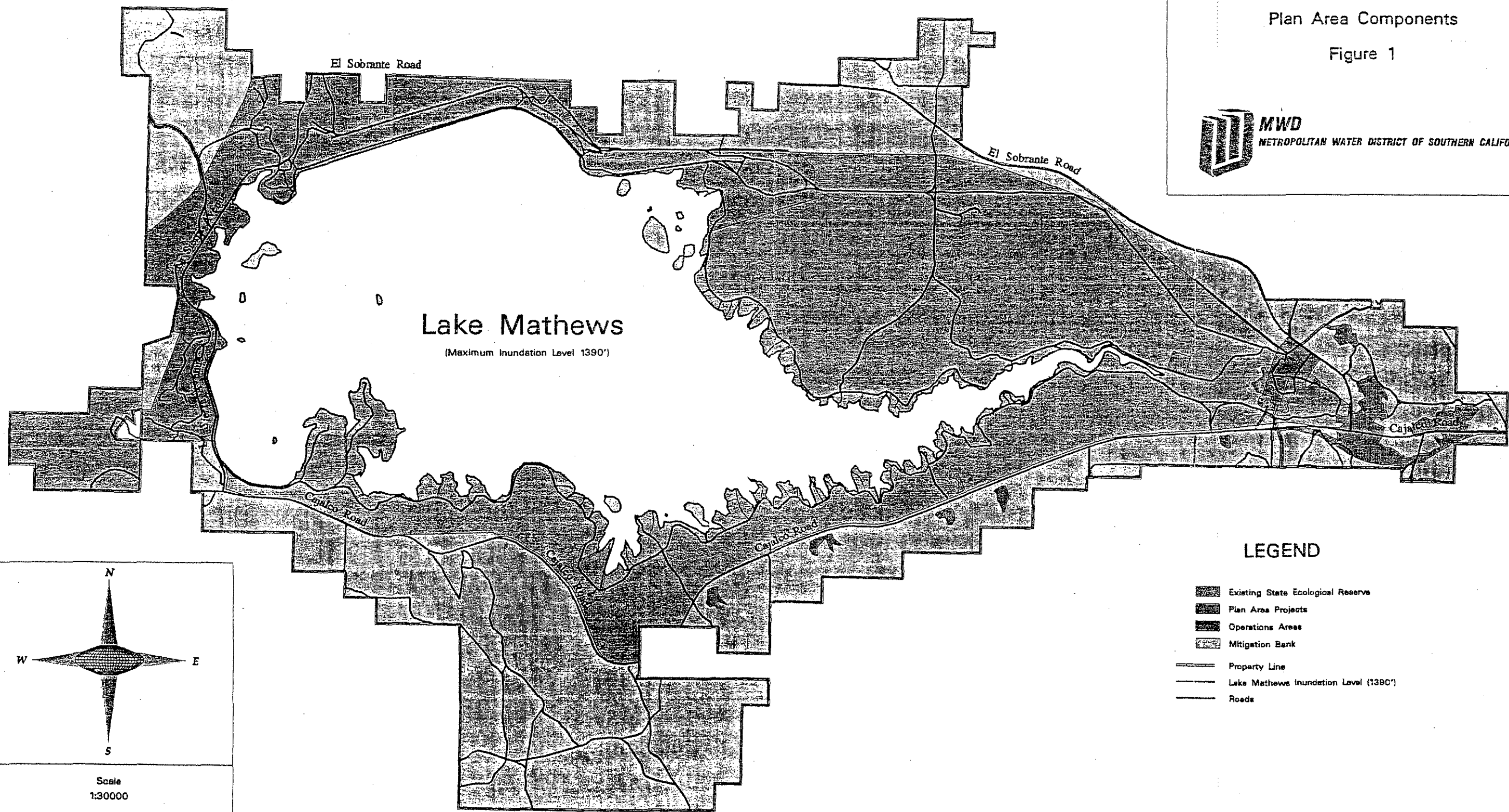
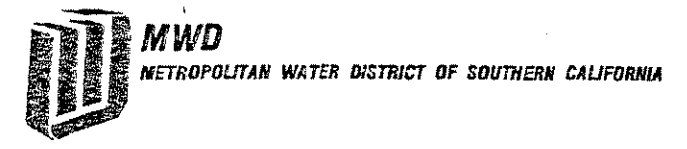
DATED: January 22 2002

COUNSEL FOR THE RIVERSIDE COUNTY
HABITAT CONSERVATION AGENCY

By: Karin Watts-Bazan
Karin Watts-Bazan
General Counsel

Plan Area Components

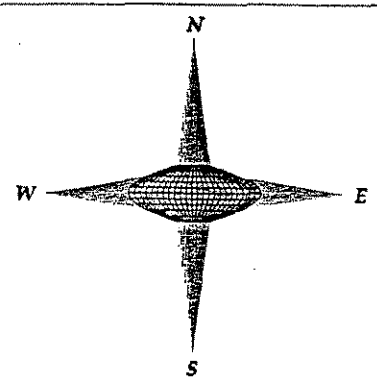
Figure 1



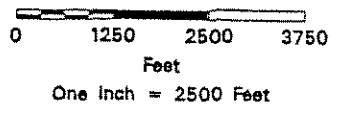
Lake Mathews
(Maximum Inundation Level 1390')

LEGEND

- Existing State Ecological Reserve
- Plan Area Projects
- Operations Areas
- Mitigation Bank
- Property Line
- Lake Mathews Inundation Level (1390')
- Roads



Scale
1:30000



December 22, 1994

EXHIBIT A

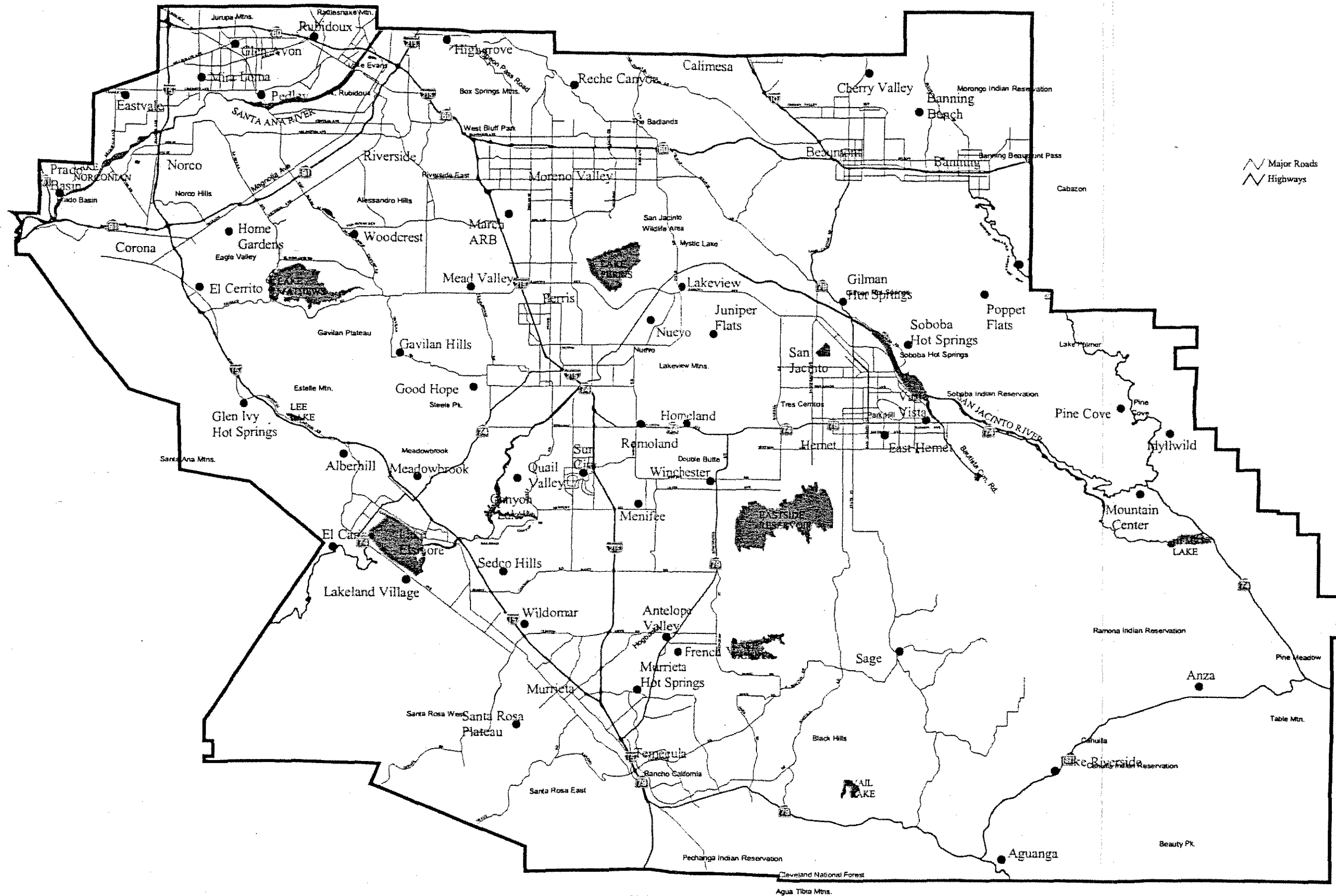


EXHIBIT B

Reserve Management Committee Meeting Guidelines

(Exhibit C to the Settlement and General Release Agreement)

1. These Guidelines are part of the Settlement and General Release Agreement ("Agreement") between The San Bernardino Valley Audubon Society, The Metropolitan Water District of Southern California, The California Department of Fish and Game, and The Riverside County Habitat Conservation Agency entered into as of January ____, 2002. The United States Fish and Wildlife Service ("Service") was not a party to that Agreement, and it is acknowledged that the Service is not bound to the Agreement or its requirements.

2. In the event of a conflict between these Guidelines and the meeting procedures and requirements set forth in the Cooperative Management Agreement ("CMA") by which the Reserve Management Committee ("RMC") was formed, the terms shall be harmonized if possible. If harmonization is not possible, the terms of these Guidelines shall control.

3. It is the intent of the RMC that its actions and deliberations concerning the Lake Mathews Mitigation Bank and the Reserve Lands be taken and conducted openly. As used in these Guidelines, "Reserve Lands" shall mean the area specified in Exhibit B to the Agreement.

4. As used in these Guidelines, "action taken" means a decision made unanimously by a quorum of the members of the RMC as defined in the CMA, sitting as a committee, upon a motion, proposal, or action.

5. (a) All meetings of the RMC shall be open and public, and all persons shall be permitted to attend any meeting of the RMC.

(b) (1) Notwithstanding any other provision of law, at its discretion the RMC may use teleconferencing for the benefit of the public and the RMC in connection with any meeting. The teleconferenced meeting or proceeding shall comply with all requirements of these Guidelines.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the RMC. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) For the purposes of this paragraph, "teleconference" means a meeting of the RMC, the members of which are in different locations, connected by electronic means. Nothing in this section shall prohibit the RMC at its discretion from providing the public with additional teleconference locations.

(c) The RMC shall not take action by secret ballot.

6. A member of the public shall not be required, as a condition of attendance at a meeting of the RMC, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance. If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

7. (a) The meetings of the RMC do not have to be audio-taped. However, any audio tape recording of an RMC meeting made by or at the direction of the RMC shall be subject to inspection pursuant to the California Public Records Act, Government Code §§ 6250 et seq., but, notwithstanding Government Code § 34090, may be erased or destroyed 30 days after the recording. Any inspection of a tape recording shall be provided without charge on a tape player made available by the RMC. Any person who wants a copy of a tape must reimburse the RMC for the cost of copying the tape.

(b) Any person attending an RMC meeting shall have the right to record the proceedings with an audio tape recorder in the absence of a

reasonable finding by the RMC that the recording cannot continue without noise or obstruction of view that constitutes, or would constitute, a persistent disruption of the meeting. Any person who intends to audio tape a meeting of the RMC shall identify themselves and notify the RMC that they intend to record the meeting prior to commencement of recording.

8. (a) The RMC shall, through its minutes, provide the time and place for holding regular meetings.

(b) Regular and special meetings of the RMC shall be held within the boundaries of the Reserve Lands, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial, legislative or administrative proceeding in which the RMC has an interest.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the Reserve Lands provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of the Reserve Lands. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the RMC member agencies and be noticed as provided for in these Guidelines.

(c) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the RMC in a notice to the local media that have requested such notice in writing, by the most rapid means of communication available at the time.

9. Any person may request that a copy of the agenda, or a copy of all the documents constituting the agenda packet, of any RMC meeting be mailed to that person. Upon receipt of the written request, the Reserve Manager or his/her designee shall cause the requested materials to be mailed at the time the agenda is posted pursuant to these Guidelines or upon distribution to all, or a majority of all, of the members of the RMC, whichever occurs first. Any request for mailed copies of agendas or agenda packets shall be valid for the calendar year in which it is filed, and must be renewed following January 1 of each year. The RMC may establish a fee for mailing the agenda or agenda packet, which fee shall not exceed the cost of providing the service.

10. (a) At least 72 hours before a regular meeting, the Reserve Manager or his/her designee shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting. A brief general description of an item generally need not exceed 20 words. The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public. No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of the RMC may briefly respond to statements made or questions posed by persons at the RMC meeting. In addition, on their own initiative or in response to questions posed by the public, a member of the RMC may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of the RMC, or the RMC itself, may request an RMC member to report back to the RMC at a subsequent meeting concerning any matter, or take action to place a matter of business on a future agenda.

(b) Notwithstanding subdivision (a), the RMC may take action on items of business not appearing on the posted agenda under any of the conditions stated below. Prior to discussing any item pursuant to this subdivision, the RMC shall publicly identify the item.

(1) Upon a determination by a vote of a quorum of the RMC that an emergency situation exists.

(2) Upon a vote by a quorum of the RMC that there is a need to take immediate action and that the need for action came to the attention of the RMC subsequent to the agenda being posted as specified in these guidelines.

(3) The item was posted pursuant to subdivision (a) for a prior meeting of the RMC occurring not more than 5 calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

11. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the RMC on any item of interest to the public, before or during the RMC's consideration of an agenda item, that is within the subject matter jurisdiction of the RMC, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by these Guidelines. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the RMC concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) Each member of the public who wishes to address the RMC shall be allotted five minutes of time to do so, and any member of the RMC may request additional time so that the speaker may complete his or her remarks.

(c) The RMC shall not prohibit public comment on the procedures, programs or services of the RMC, or on the acts or omissions of the RMC. Nothing in this section shall confer any privilege or protection for expression beyond that otherwise provided by law.

12. The RMC shall not hold closed sessions for any reason.

13. A special meeting may be called by any member of the RMC as provided in the CMA, and by delivering written notice to each local newspaper of general circulation and radio or television station that has requested notice in writing. The notice shall be delivered by mail or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted or discussed. No other business shall be considered at these meetings by the RMC. The notice shall be posted at least 24 hours prior to the special meeting in a location that is freely accessible to members of the public.

14. In the case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, the RMC may hold an emergency meeting without complying with the 24-hour notice requirement and/or the 24-hour posting requirement. However, each local newspaper of general circulation and radio or television station which has requested notice of special meetings in writing shall be notified by the RMC, one hour prior to the emergency meeting by telephone using the telephone number provided in the most recent request of such newspaper or station for notification of special meetings. In the event that telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the RMC shall notify those newspapers, radio stations, or television stations of the fact of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible. All special meeting requirements shall be applicable to a meeting called pursuant to this section with the exception of the 24-hour notice requirement. The minutes of a meeting called pursuant to this section, a list of persons who the RMC notified or attempted to notify, a copy of the rollcall vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.