



United States Department of the Interior



FISH AND WILDLIFE SERVICE
San Francisco Bay-Delta Fish & Wildlife Office
650 Capitol Mall, Suite 8-300
Sacramento, California 95814-4700

In Reply Refer To:
FWS/LR8/IR08/IR10

By Electronic Mail

Holly Geneva Stout, Esq.
California Water Commission
P.O. Box 942836
Sacramento, CA 94236-0001
cwc@water.ca.gov

Subject: United States Fish and Wildlife Service
Submission of Comments for the November 16, 2022, Resolution of Necessity Hearing
California Water Commission

APNs 033-190-036 and 033-190-038 – DWR Parcel No. YBSH-149

Running W Land LLC
Pope Conservation Bank – FWS Third Party Beneficiary Interest – 391.31 acres

Dear Ms. Stout:

As provided in the October 25 2022, Notice of the Resolution of Necessity hearing, the United States Fish and Wildlife Service (“FWS” or “Service”) submits these written comments for consideration by the California Water Commission (“Commission”) and inclusion in the record for this proceeding concerning the above-referenced parcel in which the United States holds an interest.

Procedural Background

FWS Refuge and Refuge Realty staff began receiving letters in late 2021, concerning Refuge easement parcels that were included in the California Department of Water Resource’s (DWR) Batch A Resolution of Necessity hearing process. In connection with the Pope Ranch parcel, FWS received no direct notice from DWR, nor were we notified by the Wildlife Heritage Foundation or by Running W Land LLC. The July 20, 2022, letter, from DWR Right-of-Way Agent Nathan Myrhe informed the Wildlife Heritage Foundation that DWR intended to acquire a flowage easement on this conservation easement parcel. We note that FWS submitted a letter to Catherine McCalvin of DWR dated July 7, 2022, setting forth the federal interest in this parcel. We request that this referenced letter, and the Service’s February 14, 2022, letter, to Ms. McCalvin, be included in the record of this proceeding. DWR responded to the Service’s February letter on April 6, 2022.

DWR submitted written notice of the informational hearing for this parcel to Running W Land LLC on September 26, 2022, but notice was not provided to the Service. DWR noticed this matter for the Resolution of Necessity hearing on October 25, 2022. As required within 15 days of the date of the November 16, 2022 Notice of Hearing, FWS submitted its written request to be heard regarding this Parcel.

Federal Interest in DWR Parcel No. YBSH-149

Be advised that the United States, through the Service, holds a third-party beneficiary interest in the subject parcel. This property was the subject of the First Amended Pope Ranch Conservation Bank Agreement, entered July 19, 2002, between Wildlands, Inc (property owner), the State of California Department of Fish and Game and the Service to establish the terms and conditions for a Conservation Bank to be located on certain real property known as the Pope Ranch Conservation Bank. The Bank comprises approximately 391 acres and was intended to provide for the permanent protection of potential giant garter snake (*Thamnophis gigas*) (GGs) habitat, including open water, perennial and seasonal marsh and upland habitat, subject only to the impacts that may occur as a result of flood control management pursuant to California Water Code Section 8631 or the encroachment permit issued by the Reclamation Board. The GGS is federally listed as threatened under the Endangered Species Act. The property was established as a Conservation Bank to provide for mitigation for impacts to GGS habitat. Third party purchasers seeking to mitigate impacts of other projects to GGS purchased credits in the Pope Ranch Conservation Bank in order to preserve in perpetuity off-site habitat for the GGS at Pope Ranch.

The habitat is preserved in perpetuity under the terms of a Conservation Easement granted by Wildlands, Inc. to the Wildlife Heritage Foundation and recorded in 2005. Enclosed herein as Exhibit A is the Easement by which Wildlands, Inc. granted to the Wildlife Heritage Foundation by Grant of Easement a perpetual conservation easement over a total of approximately 391 acres for the purpose of retaining the property "forever in a natural condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property."

Notably, the easement in Paragraph 15 specifically provides that the Grantor "shall not grant any additional easements, rights-of-way, or other interests in the Property, other than a fee or leasehold interest, ... or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any waters associated with the Property without the prior written authorization of Grantee, the Service and CDFG. Such authorization will be given unless the Service and CDFG determine that the proposed interest or transfer will interfere with the use of the Property as habitat." Paragraph 3 of the Easement prohibits any activity or use of the Property inconsistent with the conservation purposes of the Easement. The Easement further recognizes the FWS as a third-party beneficiary with the right of access to the Easement Property and the right to enforce all of the provisions of the Easement. Accordingly, the Grantor cannot grant a further easement to DWR without the consent of the FWS.

Existing Purpose of Conservation Easement on Running W Land LLC Parcel

The Conservation Easement was granted to protect wildlife and native habitat values in perpetuity and to fulfill the purposes of the Pope Ranch Conservation Bank Agreement, which provided for the creation of the conservation bank on the property to provide protection in perpetuity for the GGS and its habitat. Wetlands on this property are sinuous open water channels and perennial and seasonal marshes configured to provide foraging areas for GGS while the upland areas of the bank provide basking and winter refugia for GGS and nesting cover for upland game birds and waterfowl. GGS forage for prey by swimming along the line where emergent aquatic vegetation meets open water (the edge) and the bank is

managed to maintain this "edge" habitat and to create conditions that promote freshwater wetland habitat food webs and the production of GGS prey. Water levels in the wetland areas are seasonally manipulated to promote vegetation species consistent with the habitat management goals and discourage growth of invasive species incompatible with the goals.

DWR's Proposed Flowage Easement

Under DWR's proposed flowage easement, the landowner would grant a perpetual right-of-way and easement in the real property, for the purposes of seasonal floodplain fisheries rearing habitat and fish passage in the Yolo Bypass. In addition, the proposed flowage easement would provide the Grantee (DWR) the right for the flowage of water over and upon the Property as may be required for the *present and future* permitted construction and operation of fish passage and floodplain restoration projects. It is not clear if the easement would allow alteration to riparian habitat. The proposed flowage easement would also include the right to flow water and materials and by said flow erode; or place or deposit earth, debris, sediment, or other material.

Standard for Resolution of Necessity

The lands covered by this Conservation Easement are already appropriated for a public use. As such, the Commission must follow certain procedures to make determinations as to whether the proposed new use is either compatible with or more necessary than the existing use.

California Code of Civil Procedure (CCP) 1240.510 requires that the proposed use will not unreasonably interfere with or impair the continuance of the public use as it then exists or may reasonably be expected to exist in the future. As noted, this easement was acquired for the purpose of GGS habitat protection and management.

Under CCP 1240.610, the Commission would need to find that use for which the property is sought to be taken is a more necessary public use than the use for which the property is appropriated.

This Conservation Easement was acquired in order to preserve in perpetuity habitat for GGS; it was used as a conservation bank to mitigate for the impacts of development on other areas of habitat. Increased flooding has the potential to interfere with bank management activities that employ seasonal water manipulation to maintain GGS habitat and potentially disturb GGS wintering in burrows on the bank, decrease landowner access, and increase infrastructure maintenance costs, all of which could be impediments to future management of the property as GGS habitat. In order to facilitate this Project, we would like to engage with DWR, the landowner, and the easement holder on this matter.

Conclusion

As stated in the Conservation Easement, the landowner cannot grant an additional easement without the prior written authorization of the Fish and Wildlife Service, which, in determining whether to grant such authorization, will be looking at whether the proposed interest interferes with the use of the Easement lands as habitat for the GGS. To that end, we request DWR continue to work with FWS and the landowner and easement holder to implement reasonable measures to help ensure this property continues to provide the GGS benefits for which it was acquired, regardless of a Resolution of Necessity determination for the property. As DWR moves forward, it needs to take appropriate steps to ensure that the Project will not unreasonably interfere with or impair the vital public use to provide suitable habitat for GGS and to mitigate for other project effects, which was the purpose for which this easement was acquired. We look forward to cooperating with DWR and the landowners on the Project, while ensuring the Conservation Easement parcel continues to provide benefits for GGS in perpetuity.

Sincerely,

**DONALD
RATCLIFF**

Digitally signed by
DONALD RATCLIFF
Date: 2022.11.08
13:05:19 -08'00'

Field Supervisor
United States Fish and Wildlife Service
San Francisco Bay-Delta Fish and Wildlife
Office
650 Capitol Mall, Suite 8-300
Sacramento, CA 95814-4700

Enclosure

cc: Catherine McCalvin, DWR
Elizabeth Vasquez, DWR
Rachel Taylor, DWR
Mario Manzo, BOR
Darla Guenzler, Wildlife Heritage Foundation

EXHIBIT A



RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

WILDLIFE HERITAGE FOUNDATION
725 Main Street, Suite 231
Woodland, CA 95695

YOLO Recorder's Office
Freddie Oakley, County Recorder
DOC- 2005-0023275-00

REQD BY WILDLIFE HERITAGE FOUNDATION
Wednesday, MAY 18, 2005 12:31:00

Ttl Pd \$40.00

Net-0000564793

FRT/R7/1-12

Space Above Line For Recorder's Use

CONSERVATION EASEMENT GRANT

THIS CONSERVATION EASEMENT GRANT is made this 30th day of March, 2005, by WILDLANDS, INC. ("Grantor"), in favor of the WILDLIFE HERITAGE FOUNDATION, a California Non-Profit corporation ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in the County of Yolo, State of California, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property possesses wildlife and native habitat values (collectively, "conservation values") of great importance to Grantor, Grantee and the people of the State of California; and

WHEREAS, the State of California, Department of Fish and Game ("CDFG"), has, pursuant to the Fish and Game Code section 1802, jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable population of those species; and

WHEREAS, the United States Fish and Wildlife Service ("Service") is the Service within the United States Department of the Interior, which is authorized by Federal law to administer the Federal Endangered Species Act, 16 U.S.C. §§1531, et seq. (ESA), the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-666c, and the Fish and Wildlife Act of 1956, 16 U.S.C. §§742(f), et seq.; and

WHEREAS, the Grantor, CDFG and the Service have executed the "Pope Ranch Conservation Bank Agreement" ("Bank Agreement"), which provides, among other things, for the creation of a conservation bank on the Property and the delivery of this Conservation Easement to provide protection, in perpetuity, for the federally listed - as "threatened" - Giant Garter Snake and its habitat with respect to the Property; and

WHEREAS, Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

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WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and to protect in perpetuity the conservation values of the Property in accordance with the terms of this Conservation Easement for the benefit of this generation and the generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and Civil Code sections 815, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in a natural condition and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities, including, without limitation, those involving the conservation and enhancement of native species and their habitat in a manner consistent with the habitat conservation purposes of this Easement and with the Pope Ranch Habitat Management Plan (the "Management Plan").

2. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee by this Easement:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Easement; provided that Grantee shall not unreasonably interfere with Grantor's use and enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the habitat conservation purposes of this easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

(d) Such mineral, air and water rights as may be required to preserve and protect and to sustain the biological resources of the easement lands. This Easement includes the transfer of Grantor's right, title and interest, if any, in and to any waters consisting of: (i) any riparian water rights appurtenant to the Property; (ii) any appropriative water rights held by Grantor to the extent those rights are appurtenant to the Property; (iii) any waters, the rights to which are secured under any contract between the Grantor and any irrigation or water district, to the extent such waters are customarily applied to the Property; and (iv) any water from wells that are in existence or may be constructed in the future on the Property or on those lands described as excepted from the Property in the legal description and that were historically used, by the Grantor, to maintain the Property in a flooded condition (collectively, "Easement Waters"). The Easement Waters are limited to the amount of Grantor's water reasonably required to preserve, protect and sustain the conservation values of the Property.

(e) Such present and future development rights as may be required to preserve and protect and to sustain the biological resources of the easement lands.

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3. **Prohibited Uses.** Subject to the provisions of paragraph 4 of this Easement, any activity on or use of the Property inconsistent with the conservation purposes of this Easement is prohibited. Without limiting the generality of the foregoing, Grantor, its personal representatives, heirs, assigns, agents and potential future lessees are expressly prohibited from doing any of the following on the Property except as stated in the Management Plan:

- (a) Erecting any building, billboard or sign;
- (b) Unseasonable watering, use of herbicides, rodenticides, mosquito abatement activities or weed abatement activities, incompatible fire protection activities and any and all other uses which may adversely affect the preservation purposes of this Easement;
- (c) Depositing of soil, trash, ashes, garbage, waste, bio-solids or any other material;
- (d) Excavating, dredging or removing of loam, gravel, soil, rock, sand or other material;
- (e) Otherwise altering the general topography of the Property;
- (f) Removing, destroying or cutting of trees, shrubs or other vegetation, except as required for: (i) fire breaks; (ii) maintenance of existing foot trails or roads; or (iii) prevention or treatment of disease;
- (g) Granting use of the land to any third party for off-road vehicle use;
- (h) Legally subdividing the Property, recording of a subdivision plan, partition or any other division of the Property into two or more parcels;
- (i) Paving or otherwise covering of the Property with concrete, asphalt or any other impervious paving material;
- (j) Transferring any appurtenant water right required to maintain and restore the biological resources of the Property; and
- (k) Granting surface entry for the exploration or extraction of minerals without approval by the Service.

4. **Grantor's Duties.** Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the biological values of the Property. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under paragraph 2 of this Easement, including, but not limited to, Grantee's water rights.

5. **Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and are not inconsistent with the purpose of this Easement.

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5.1. Grantee's Remedies. If Grantee, CDFG, the Service or other interested parties determine that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. In any instance, measures to cure the violation shall be reviewed and approved by the Service and CDFG. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a thirty (30)-day period, fail to begin curing such violation with the thirty (30)-day period, or fail to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances required immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of Civil Code sections 815, et seq., are incorporated herein by this reference and this grant is made subject to all of the rights and remedies set forth therein. If at any time in the future Grantor or any subsequent transferee uses or threatens to use such lands for purposes not in conformance with the stated conservation purposes contained herein, notwithstanding Civil Code sections 815, et seq., the California Attorney General, the Service, or third-party entities organized for conservation purposes have standing as interested parties in any proceeding affecting this Easement.

5.2. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation or negligence under the terms of this Easement shall be borne by Grantor.

5.3. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No

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delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

5.4. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, impacts resulting from flood control maintenance of the Yolo Bypass as described in the Pope Ranch Conservation Bank Agreement pursuant to which this Easement has been granted, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

6. Fence Installation and Maintenance. Grantor shall install and maintain a fence around the easement area to protect the conservation purposes contained in this Easement.

7. Access. This agreement does not convey a general right of access to the public.

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind, including transfer costs, costs of title and documentation review, expenses incurred from DFG reviews, and costs related to the ownership, operation, upkeep, and maintenance of the Property.

8.1. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

8.2. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively, "Indemnified Parties"), from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of the Indemnified Parties; (b) the obligations specified in paragraphs 8 and 8.1; and (c) the existence or administration of this Easement.

8.3. Condemnation. The habitat conservation purposes are presumed to be the best and most necessary public use as defined at CCP section 1240.680 notwithstanding CCP sections 1240.690 and 1240.700.

9. Assignment. This Easement cannot be assigned, transferred or extinguished without prior written approval of CDFG. This Easement is transferable, but Grantee shall give Grantor, CDFG and the Service at least thirty (30) days' prior written notice of the transfer. Grantee may assign its rights and obligations under this Easement only to an organization that is: (a) approved by the Service; (b) a public agency or a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1984, as amended (or any successor

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provision then applicable), and the applicable regulations promulgated thereunder; and, (c) authorized to acquire and hold conservation easements under Civil Code sections 815, et seq. (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out and notice of such restrictions shall be recorded in the county where the property is located.

10. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee, CDFG and Service of the intent to transfer of any interest at least fifteen (15) days prior to the date of such transfer. Grantee shall have the right to approve all subsequent transfers to insure that all subsequent claimants or transferees have notice of the included restrictions. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

11. Estoppel Certificates. Upon request by Grantor, Grantee shall, within fifteen (15) days, execute and deliver to Grantor any document, including estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

12. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first-class mail, postage prepaid, addressed as follows:

To Grantor: Wildlands, Inc.
3855 Atherton Road
Rocklin, CA. 95765
Mr. Steve Morgan
Telephone: (916) 435-3555
Fax No. (916) 435-3556

To Grantee: Wildlife Heritage Foundation
725 Main Street, Suite 231
Woodland, CA. 95695
Attn: Mr. Patrick Shea
Telephone: (530) 666-3200

with a copy to:
CDFG: Legal Office
State of California
Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814
Telephone: (916) 654-3821
Fax No. (916) 654-3805

and to:

State of California
Regional Manager
California Department of Fish and Game
1701 Nimbus Road
Rancho Cordova, CA. 95670
Telephone: (916) 358-2898
Attn: Ms. Tina Bartlett
Environmental Specialist
Fax No. (916) 358-2912

To Service:

United States Fish and Wildlife Service
Sacramento Fish and Wildlife Office
2800 Cottage Way, W2605
Sacramento, California 95825
Attn: Field Supervisor
Telephone: (916) 414-6600
Fax No. (916) 414-6712

or to such other address as either party from time to time shall designate by written notice to the other.

13. Recordation. Grantor shall submit an original, signed and notarized Conservation Easement Grant to Grantee and Grantee shall promptly record this instrument in the official records of Yolo County, California, and immediately notify the Grantor and the Service through the mailing of a confirmed copy of the recorded Easement. Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

14. Funding. Grantor will provide funding to Grantee for the perpetual maintenance of the Easement and long-term management of the Property in accordance with the Bank Agreement. Funding shall be transferred to the appropriate transferee or assignee if the Easement is assigned or transferred.

15. Additional Easements. Grantor shall not grant any additional easements, rights-of-way, or other interests in the Property, other than a fee or leasehold interest, undivided interest or security interest (mortgage or deed of trust), or grant or otherwise transfer to any other person or entity or to other lands or otherwise abandon or relinquish any waters associated with the Property without the prior written authorization of Grantee, the Service and CDFG. Such authorization will be given unless the Service and CDFG determine that the proposed interest or transfer will interfere with the use of the Property as habitat. This paragraph shall not prohibit the transfer of a fee title or leasehold interest in the Property that is subject to the terms of this Easement. This paragraph shall also not prohibit the granting of future compatible utility easements, as authorized by the Service and CDFG.

16. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California, the federal Endangered Species Act, and other applicable federal laws.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of Civil Code sections 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understanding, or agreements relating to the Easement, all of which are merged herein.

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

(f) Successors. The covenants, terms, conditions, and restrictions of this 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 continue as a servitude running in perpetuity with the Property.

(g) 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 construction or interpretation.

(h) Counterparts. The parties may execute this instrument in two (2) counterparts, which shall, in the aggregate, be signed by both 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.

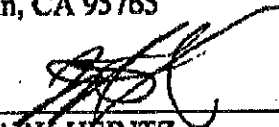
(i) Third-Party Beneficiary. Grantor and Grantee acknowledge that the Service and CDFG are third-party beneficiaries of this Easement with the right of access to the Easement Property and the right to enforce all of the provisions of this Easement.

(j) Amendment. This Easement may be amended by Grantor and Grantee only by mutual written agreement. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Alameda County, State of California.

IN WITNESS WHEREOF Grantor and Grantee have entered into this Easement the day and year first above written.

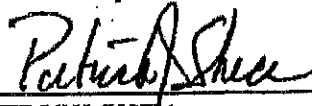
GRANTOR:

WILDLANDS, INC.
3855 Atherton Road
Rocklin, CA 95765

By: 
MARK HEINTZ
Asset Manager


GRANTEE:

WILDLIFE HERITAGE FOUNDATION,
a California nonprofit

By: 
PATRICK SHEA
President *CFD* / Board Secretary

Approved as to form.

DEPARTMENT OF FISH AND GAME

By: 
ANN S. MALCOLM,
Deputy General Counsel

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STATE OF CALIFORNIA)
COUNTY OF PLACER) ss

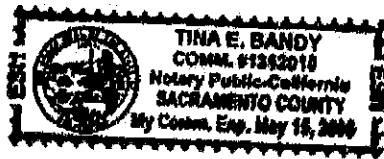
On April 11, 2005, before me the undersigned, a notary public, personally appeared **MARK HEINTZ**,

- personally known to me, or
- proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



STATE OF CALIFORNIA)
COUNTY OF Yolo) ss

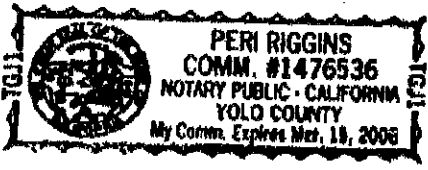
On April 18, 2005, before me the undersigned, a notary public, personally appeared **PATRICK SHEA**,

- personally known to me, or
- proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature [Handwritten Signature]



**Exhibit A
to
Conservation Easement Grant
(Pope Ranch)**

The Property subject to this Conservation Easement is described as follows:

Portions of the East one half of Section 32 and portions of the West half of Section 33, Township 7 North, Range 3 East, M.D.B.&M., Yolo County, California, being more particularly described as follows:

All of the Southeast one quarter of said Section 32, a portion of the Northeast one quarter of Section 32 and a portion of the West one half of Section 33, being more particularly described as follows:

BEGINNING at the Southwest corner of said Southeast one quarter of Section 32 and thence along the South line of Section 32, South 89°54'56" East, 2642.64 feet to the Southeast corner of said Section 32; thence along the South line of said Section 33, South 89°54'56" East 2642.64 feet to the Southeast corner of the said West half of Section 33, thence along the East line of said West half of Section 33, North 00°03'55" East 3523.97 feet; thence leaving said East line and following the centerline of the existing field ditches, North 89°47'17" West 1997.06 feet; thence South 00°01'41" East, 465.67 feet; thence South 89°39'48" West 3286.90 feet; said center extending into the Northeast one quarter of said Section 32 to a point on the West line of said Northeast one quarter; thence along the West line of said Northeast one quarter South 00°06'22" West 395.69 feet to the Southwest corner of said Northeast one quarter of Section 32; thence along the West line of said Southeast one quarter of Section 32, South 00°06'22" West 2637.28 feet to the point of beginning. Containing 391.31 acres.

EXCEPTING THEREFROM:

A 30-foot wide irrigation pipeline and access easement along the West side and South side of the Southeast one quarter of said Section 32, the West and South line of said 30-foot wide strip being more particularly described as follows:

BEGINNING at a point that bears North 00°06'22" East 50.00 feet from the Northwest corner of said Southeast one quarter of said Section 32, and thence from the true point of beginning, South 00°06'22" West 2687.28 feet to the Southwest corner of said Southeast one quarter; thence along the South line of said Southeast one quarter, South 89°54'56" East 120.00 feet to the terminus of said 30-foot wide easement.

ALSO EXCEPTING THEREFROM:

A 30-foot wide easement for drainage purposes across a portion of the East side of the West one half of said Section 33, the East line of said 30-foot wide easement being more particularly described as follows:

BEGINNING at a point on the said East line of the West one half of Section 33, said point bearing South 00°03'55" West 1762.68 feet from the Northeast corner of said West half of Section 33, and thence from the true point of beginning, South 00°03'55" West 3523.97 feet to the South terminus of said 30-foot wide easement.

Grantee shall have the right to access the Property over the following:

A 30-foot wide easement for ingress and egress, the West and South lines of said 30-foot wide easement being more particularly described as follows:

BEGINNING at the Northwest corner of above-said Section 32, Township 7 North, Range 3 East, M.D.B.&M., and thence along the West line of the said Northwest one quarter of Section 32, South 00°02'41" West 2634.06 feet to the Southwest corner of the Northwest corner of said Section 32, and thence along the South line of said Northwest one quarter, North 89°59'08" East 2645.72 feet to the terminus of said 30-foot wide easement.

ConsEasGrant-&Pope Ranch

END OF DOCUMENT

Exhibit A
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