United States Department of the Interior

FISH AND WILDLIFE SERVICE

2800 Cottage Way, Ste 2606
Sacramento, CA 95825

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

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

Subject: Notice of Intention of United States Fish and Wildlife Service to be Heard at May 17, 2023, Resolution of Necessity Hearing of the California Water Commission

APNs 033-220-052 and 033-220-054 - DWR Parcel No. YBSH-148

EIP California LLC - FWS Easement # 16C - 122.4 acres (DWR identifies two parcels – Unit E portion of 208 acres and Unit F portion of 276 acres)

Dear Ms. Stout:

Pursuant to California Code of Civil Procedure Section 1245.235(b)(3), the United States Fish and Wildlife Service submits this notice of intention to be heard concerning the above-referenced easement interest in DWR Parcel No. YBSH-148 during the May 17, 2023, Resolution of Necessity Hearing.

Please include in the administrative record for this proceeding the enclosed Fish and Wildlife Service comment letter for this parcel, which was submitted on October 6, 2022.

Sincerely,

CURTIS MCCASLAND Digitally signed by CURTIS MCCASLAND
Date: 2023.05.10 13:26:49 -07'00'

Curtis McCasland
Assistant Regional Director
Refuges Program
United States Fish and Wildlife Service
California Great Basin Region
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825

Enclosure

United States Department of the Interior

FISH AND WILDLIFE SERVICE

2800 Cottage Way, Ste 2606
Sacramento, CA 95825

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 October 19, 2022, Resolution of Necessity Hearing
California Water Commission

APNs 033-220-052 and 033-220-054 – DWR Parcel No. YBSH-148

EIP California LLC - FWS Easement # 16C – 122.4 acres

Dear Ms. Stout:

As provided in the September 26, 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 easement in which the United States holds an interest.

Federal Interest in DWR Parcel No. YBSH-148

First, the Commission must understand that the conservation easement held here is an interest in lands held by the United States. As such, absent a waiver of sovereign immunity, a federal interest in real property cannot be condemned. *United States v. Navajo Nation*, 556 U.S. 287, 289 (2009). ("A waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text, and will not be implied. Moreover, a waiver of the Government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign."); *Minnesota v. United States*, 305 U.S. 382, 386-87 (1939), *superseded on other grounds by statute as stated in Morda v. Klein*, 865 F.2d 782, 783 (6th Cir. 1989); *Utah Power & Light Co. v. United States*, 243 U.S. 389, 405 (1917). The sole extant statutory exception to this federal preemption relating to condemning real property owned by the United States is under the Quiet Title Act ("QTA"), 28 U.S.C. § 2410(a), and this is a limited waiver of sovereign immunity. *Id.* (the United States "may be made a party" in a case "to condemn . . . real or personal property on which the United States has or claims a mortgage or other lien."); *Block v. North Dakota*, 461

U.S. 273, 286 (1983) ("Congress intended the QTA to provide the exclusive means by which adverse claimants could challenge the United States' title to real property."). Moreover, this waiver as related to a mortgage or lien is narrowly construed. *See, e.g., Hussain v. Boston Old Colony Ins. Co.*, 311 F.3d 623, 629 (5th Cir. 2002) (Section 2410 "was specifically passed to waive the sovereign immunity of the United States so that private parties could get the government into court when necessary to quiet title or resolve priority of liens or mortgages"); *Village of Wheeling v. Fragassi*, No. 09 C 3124, 2010 WL 3087462, at *4 (N.D. Ill. Aug. 2, 2010) (lease not a mortgage or lien under § 2410); *Ansonia Nat'l Bank v. United States*, 147 F. Supp. 864, 865 (D. Conn. 1956) (easement not a "lien" under § 2410).

Likewise, the doctrine of prior public use ensures that the United States' interest, absent a contrary statutory provision enacted by Congress, triumphs over a state or local government's effort to condemn federal lands or real property interests. The doctrine is designed to prevent courts from becoming embroiled in competing claims by governmental entities to the same property. *See United States v. Acquisition of 0.3114 Cuerdas of Condemnation Land More or Less, Located on Calle*, 753 F. Supp. 50, 54 (D.P.R. 1990) ("Without the prior use doctrine, there could be a free for all of battling entities all equipped with eminent domain power, passing title back and forth."). Simply stated, even ignoring that the public interest of the United States may be supreme, our prior public interest reflected in the United States' ownership of the property suffices to block any condemnation by state or local governments.

Procedural Background

Our Realty Section, Refuge Staff, and the Department of Water Resources ("DWR") participated in a meeting concerning this Project and exchanged a few communications in February-April of 2021. FWS heard nothing further until our Realty Section began receiving letters in late 2021, concerning easement parcels that were included in DWR's Batch A Resolution of Necessity hearing process. In connection with this particular parcel, our Realty Section has not received any letters from DWR, specifically indicating the intent to acquire a flowage easement on this conservation easement parcel. The FWS submitted two general letters to Catherine McCalvin of DWR dated February 14, 2022, and July 7, 2022, which set forth the federal interest in the subject conservation easements. We request that these letters 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 on August 23, 2022, to which the Service submitted its notice of intent to be heard at that hearing on September 13, 2022, and provided oral comments at the September 21 hearing. DWR issued notice of the Resolution of Necessity Hearing on September 26, 2022. As required within 15 days of the date of the Notice of Hearing, FWS submitted its written request to be heard regarding this Parcel.

Laurel G Ranch Corporation Easement

Enclosed herein as Exhibit A is the Easement by which Laurel G Ranch Corporation granted to the United States by Grant of Easement recorded on August 30, 1996, a perpetual conservation easement over a total of 122.43 acres under authority of the Migratory Bird Conservation Act of February 18, 1929 (16 U.S.C. 715, et seq. as amended), which authorizes the Secretary of the Interior to acquire certain lands or interests therein for waterfowl habitat. The purpose of this easement is to maintain habitat for waterfowl. The United States expended one hundred twenty two thousand four hundred thirty dollars ($122,430.00) for the easement, which is a component part of the National Wildlife Refuge System and subject to pertinent National Wildlife Refuge system laws and regulations. The parcel is now in ownership to the EIP California LLC.

Notably, the easement in Paragraph 6 specifically provides that the Grantor "shall not grant any additional easements, rights-of-way, or other interests in the Easement Lands, 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 Easement Waters without the prior written authorization of Grantee given through the U.S. Fish and Wildlife Service. Such authorization will be given unless the Secretary or his designated representative determines that the proposed interest or transfer will interfere with the use of the Easement Lands as waterfowl habitat suitable for migratory birds or interfere with the availability of Easement Waters for the Easement Lands." Paragraph 4 of the Easement prohibits the Grantor from altering the existing topography, or from otherwise altering or using or permitting the use by third parties of the Easement Lands for any purpose without the prior written authorization of the Service. Such authorization will only be given if the Secretary of the Interior or her designated representative determines that the proposed activity will not change the character of the Easement Lands or adversely affect the use of the Easement Lands as waterfowl habitat suitable for migratory birds.

Similarly, 50 CFR 25.44 requires permits for use of easement areas administered by us where proposed activities may affect the property interest acquired by the United States. This includes instances where the third applicant is a governmental entity which has acquired a partial interest in the servient estate by subsequent condemnation. Regulations regarding rights-of-way in easement areas are found in 50 CFR part 29.21.

As required by the National Wildlife Refuge System Improvement Act of 1997, before authorizing a use that affects our easement interest, the Service must first make a compatibility determination (16 U.S. C. § 668dd(d)(3)(A)(i)). A compatibility determination is a written determination signed and dated by the Refuge Manager and Regional Chief, signifying that a proposed or existing use of a national wildlife refuge is a compatible use or is not a compatible use. Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, based on sound professional judgment, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose(s) of the national wildlife refuge (50 CFR 25.12(a)). In making the determination, the Refuge Manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use (603 FW 2.11B(3)). This federal compatibility determination is markedly different from the representations DWR has made that operation of the proposed Project is compatible with the existing conservation easements.

As stated in the USFWS easement, the landowner cannot grant an additional easement without the prior written authorization of the Fish and Wildlife Service. In order to facilitate this Project, we are reviewing hydrologic data provided by DWR, engaging with the landowner, and will work with DWR and the landowner to resolve identified issues. Upon receipt of an application, the Service will then engage in a compatibility determination for the Project, as required under federal refuge law and regulation. Note that the Service *cannot* make a compatibility determination on future permitted construction and operation of the fish passage and floodplain restoration projects amounting to a change in the Project not analyzed previously. Should they arise, any future changes to the Project would require additional environmental analyses. Such future projects would also require a federal compatibility determination, but this cannot occur until these projects have been sufficiently analyzed in future environmental analyses, which would allow us to ensure proposed future modifications do not impact our interest in the property.

Existing Purpose of USFWS Easement on EIP California LLC Parcel

The USFWS Easement was purchased to protect wetlands and easement waters in perpetuity for waterfowl and other migratory birds. Wetlands on this property are considered managed freshwater wetlands and consist of a complex of shallow wetland impoundments contained by levees that are delivered water through managed irrigation infrastructure. Landowners actively manage the water levels of these wetlands using water control structures to promote beneficial wetland vegetation and provide

foraging habitat for wintering and migrating waterfowl. Although water depth varies with wetland topography, landowners typically mange for an average depth of 8-10 inches that provides optimal foraging habitat for most waterfowl and a great diversity of migratory waterbirds.

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.

Anticipated Project Impacts from DWR data

According to DWR analysis, the Big Notch Project would flood the EIP California LLC Parcel 033-220-052 an average of 5.4 additional days above 6" within the November 1 through February 28 hunt period. The number of additional days the parcel would flood above 6" during the hunt period would range from 0 to 31 days. These days represent flood levels that could potentially impact waterfowl use and hunting quality. The parcel would flood an average of 6.8 additional days above 12" during the hunt period, with a range from 0 to 23 additional days flooded above 12". These days represent flood levels that could potentially impact landowner access in addition to waterfowl use and hunting quality. The parcel would flood an average of 7.8 additional days above 18" during the hunt period, with a range from 0 to 25 additional days flooded above 18". These days represent flood levels that could potentially impact wetland infrastructure (levees, water control structures) in addition to access, waterfowl use and hunting quality.

According to DWR analysis, the Big Notch Project would flood the EIP California LLC Parcel 033-220-054 an average of 5.8 additional days above 6" within the November 1 through February 28 hunt period. The number of additional days the parcel would flood above 6" during the hunt period would range from 0 to 23 days. These days represent flood levels that could potentially impact waterfowl use and hunting quality. The parcel would flood an average of 7.8 additional days above 12" during the hunt period, with a range from 0 to 24 additional days flooded above 12". These days represent flood levels that could potentially impact landowner access in addition to waterfowl use and hunting quality. The parcel would flood an average of 7.3 additional days above 18" during the hunt period, with a range from 0 to 22 additional days flooded above 18". These days represent flood levels that could potentially impact wetland infrastructure (levees, water control structures) in addition to access, waterfowl use and hunting quality.

Standard for Resolution of Necessity

The lands covered by this United States 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.

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 waterfowl habitat suitable for migratory birds.

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.

Increased flooding over 6" in depth on these wetlands would likely have a negative impact on migratory bird foraging habitat, potentially impacting waterfowl use and ultimately hunting quality. Increased flooding over 12" would further decrease migratory bird foraging habitat and would also impact landowner access by potentially flooding roads/ levees/hunting blinds and making it unsafe for hunters to wade the wetlands. Finally, increased flooding over 18" would not only impact migratory bird habitat and landowner access, but significantly overtop roads, levees and water control structures potentially causing costly damage to wetland infrastructure. The FWS purchased a conservation easement on this property with the understanding that landowners would continue to optimally manage their lands for migratory birds as long as they had the incentive to hunt and enjoy passive recreation on their properties. Increased flooding has the potential to decrease hunting quality, decrease landowner access, and increase infrastructure maintenance costs, all of which could be impediments to future management of the property as migratory bird habitat.

The April 6, 2022, letter from DWR states without explanation that operation of the Project is compatible with the existing conservation easements and will not unreasonably interfere with or impair the continuance of the Service's public use as it exists or may reasonably be expected to exist in the future. Citing to the Easement for the 'Upper Swanton[sic]' property, the DWR letter further indicates the Service's conservation easements specify that the "properties are subject to a nonexclusive right to flood the properties between October 15 and March 1, as an existing use.[footnote omitted]. Therefore, DWR does not anticipate the need to modify the existing Service conservation easements."

The Laurel G Ranch Corporation easement provides in Paragraph 3 that "[h]owever, in any year that the Grantor does not flood the Easement Lands to the determined elevation or the historical fall and winter seasonal levels, Grantee shall have, at its sole discretion, the nonexclusive right and option, but not the obligation, to flood the Easement Lands from September 1st through March 1st of the following year." However, flooding by the United States to the determined elevation or the historical fall and winter seasonal levels would be for the purpose of maintaining habitat for waterfowl, which is not the same as the prospective flooding under the proposed project to the levels shown in modeling, which in certain cases exceed the historic levels that were contemplated in the Laurel G Ranch Corporation easement.

Conclusion

The Fish and Wildlife Service has been in contact with the landowner for this property. We have initiated discussions to determine if reasonable measures can be implemented to ensure landowners have access to the property and to identify other reasonable improvements, such as modifications of levees and water control structures, to ensure these properties can continue to be managed and used as private wetlands.

As stated in the USFWS 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 waterfowl habitat suitable for migratory birds. To that end, we request DWR continue to work with FWS and the landowners to implement reasonable measures to help ensure this property continues to provide the migratory bird 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 migratory waterfowl. We look forward to cooperating with DWR and the landowners on the Project, while ensuring the US easement parcel continues to provide benefits for migratory waterfowl.

Sincerely,

CURTIS MCCASLAND Digitally signed by CURTIS MCCASLAND Date: 2022.10.06 16:12:22 -07'00'

Curtis McCasland
Assistant Regional Director, Refuges Program
United States Fish and Wildlife Service
California Great Basin Region
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825

Enclosure

cc: Catherine McCalvin, DWR
Elizabeth Vasquez, DWR
Rachel Taylor, DWR
Mario Manzo, BOR

EXHIBIT A

YOLO Co Recorder's Office
Tony Bernhard, County Recorder

DOC - 96-0021259-00
Acct 104-Placer Title
Friday, AUG 30, 1996 15:55:00
Ttl Pd $31.00 Nbr-0000028843
VRB/R6/9

RECORDING REQUESTED; WHEN RECORDED
MAIL TO: Attn: Stephen M. Dyer
U.S. Fish and Wildlife Service
Sacramento Realty Field Office
2233 Watt Avenue, Suite 375
Sacramento, California 95825-0509

UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

GRANT OF EASEMENT

THIS GRANT OF EASEMENT, Made this 29th day of August, 1996 between Laurel G Ranch Corporation, a California corporation, its successors and assigns, hereinafter referred to as Grantor, and the UNITED STATES OF AMERICA and its assigns, hereinafter referred to as Grantee,

WHEREAS the Migratory Bird Conservation Act of February 18, 1929, (16 U.S.C. 715 et seq), as amended, and since August 1, 1958, authorizes the Secretary of the Interior to acquire certain lands or interests therein for waterfowl habitat;

AND ALSO WHEREAS, the easement interest rights in the following described lands are being acquired for administration by the Secretary of the Interior (Secretary) through the United States Fish and Wildlife Service, and the use, occupation and operation of the reservations retained herein shall be subordinate to and subject to such rules and regulations as may be prescribed by the Secretary governing the use, occupation, protection and administration of units of the National Wildlife Refuge System under and in compliance with provisions of Section 6 of the Migratory Bird Conservation Act of February 18, 1929 (45 Stat. 1222), as amended by Section 301 of the Refuge Revenue Sharing Act of June 15, 1935, (49 Stat. 381).

NOW THEREFORE, For and in consideration of ONE HUNDRED TWENTY-TWO THOUSAND FOUR HUNDRED THIRTY AND 00/100 DOLLARS ($122,430.00), the Grantor hereby grants to the UNITED STATES OF AMERICA, Grantee, a perpetual conservation easement for the maintenance and use of the land and waters described below (hereinafter referred to as "Easement Lands" and "Easement Waters") for the management of migratory birds on the terms and conditions stated herein. There is included in this Grant of Easement a right of access by designated representatives of the U.S. Fish and Wildlife Service over any and all Easement Lands and those lands described as excluded from the Easement Lands described below, as reasonably necessary for the limited purposes of entering the Easement Lands to verify compliance by the Grantor with the terms and conditions of this easement and exercising Grantee's rights under this Grant of Easement. Said lands contain 122.43 acres, more or less, all being located in Yolo County, State of California described as follows:

TRACT 16C:

Parcel One: All that portion of Section 3, T. 6N., R. 3E, M.D.B. & M., that lies West of the following described line:

9

BEGINNING at a point on the North line of said Section 3, which point bears North 88° 40' 26" West 518.32 feet from the Northeast corner of said Section 3; thence from said point of beginning South 19° 47' 18" West 5610.39 feet to a point on the South line of said Section 3.

EXCEPTING THEREFROM an undivided 1/4 interest in and to all oil, gas, hydrocarbon substances, minerals and other gaseous materials, in and under the above described property as reserved by James Iriart and Jean Iriart, his wife, in Deed to Woodland Title Guaranty Company dated January 13, 1962, Recorded February 1, 1962 in Book 663 of Official Records at page 404 and in Deed to Y.C. Soda and Helen C. Soda, his wife, dated January 13, 1962, Recorded February 1, 1962 in Book 663 of Official Records at page 406.

Parcel Two: A portion of Section 3, T. 6N., R. 3E, M.D.B. & M., and being also a portion of Swamp Land Survey 793, Yolo County Surveys, and being more particularly described as follows: (basis and bearings and coordinates is California State Coordinate System for Zone II):

BEGINNING at a point on the North line of said Section 3, which point bears North 88° 40' 26" West 291.65 feet from the Northeast corner of said Section 3, coordinates of said point of beginning being North 267,626.73 East 2,108,932.33; thence from said point of beginning South 19° 47' 18" West 5609.54 feet to a point on the South line of said Section 3; thence along said South line North 88° 52' 14" West 226.93 feet; thence leaving said South line North 19° 47" 18" East 5610.39 feet to a point on the North line South 88° 40" 26" East 226.67 feet to the point of beginning.

EXCEPTING THEREFROM an undivided 1/2 interest in all oil, gas and mineral rights in and to said property as reserved by James Iriart and Jean Iriart, his wife, in Deed to Sacramento-Yolo Port District, a California river port district, dated January 13, 1958, Recorded March 24, 1958 in Book 537 of Official Records at page 548.

Assessors Parcels No. 033-220-52 and 033-220-54

EXCEPTING THEREFROM the above described parcels all that portion of Section 3, T. 6N., R. 3E, M.D.B. & M.; beginning at a point in said Section 3, from which point of beginning the Northeast corner of said Section 3 bears the following two courses: (1) North 70° 21' 24" East 33.14 feet and (2) South 88° 40' 26" East 518.32 feet; thence from said point of beginning South 19° 53' 36" West 5447.85 feet; thence North 89° 56' 04" West 1373.79 feet; thence North 00° 06" 35" East 2521.95 feet; thence North 89° 51' 01" West 1460.62 feet; thence North 00° 05' 49" East 2676.16 feet; thence South 89° 00' 42" East 4679.48 feet to the point of beginning; containing 361.4 acres more or less, and leaving a residual acreage of 124.43 acres, more or less, for this conveyance.

Excluding except for the purpose of access to and over the Easement Lands the following lands:

2

TRACT (16Cz-1):

The following described tract of land is located in Yolo County, California, situate approximately 8 miles South of the City of Davis, California, and being a part of the land described in the Grant Deed from Laurel G Ranch, a partnership, to Laurel G Ranch Corporation, recorded in the Official Records of Yolo County, California, December 6, 1990 in Book 2184, Page 372, said tract being more particularly described as follows;

All bearings and distances are based on the Lambert State Plane Coordinate System, NAD 83/91, California Zone 2; divide distance by 0.99998 for ground distance.

Township 6 North, Range 3 East, Mount Diablo Meridian:

A portion of the Southwest 1/4 of the Southwest 1/4 of section 3, above said Township and Range, more particularly described as follows:

BEGINNING at a 3 1/4" U.S. Fish and Wildlife Service aluminum monument marked "100, 1996", said point marking the Southwest corner of this tract, and which point bears North 78° 13' 59" East, 31.23 feet from the section corner common to sections 3, 4, 9, 10 of T. 6 N., R. 3 E., said section corner's position determined from ties per that certain Record of Survey recorded on May 3, 1963, in Drawer 1, Book 1 at Page 45, in the Official Records of Yolo County; thence, North 0° 01' 10" West, 350.00 feet to a 3 1/4" U.S. Fish and Wildlife Service aluminum monument marked "101, 1996"; thence, North 89° 58' 50" East, 248.91 feet to a 3 1/4" U.S. Fish and Wildlife Service aluminum monument marked "102, 1996"; thence, South 0° 01' 10" East, 350.00 feet to a 3 1/4" U.S. Fish and Wildlife Service aluminum monument marked "103, 1996"; thence, South 89° 58' 50" West, 248.91 feet to the point of BEGINNING, containing 2.00 acres, more or less, leaving a balance of 122.43 acres, more or less, for the purpose of this conveyance.

The above-described tract of land, containing 2.00 acres, more or less, is delineated on a map tracing designated LAUREL G. RANCH TRACT (16Cz-1) bearing the date of April 5, 1996, of record in the files of the Department of the Interior.

1. There are excepted and reserved from this Grant of Easement all minerals, including gas, oil, and other hydrocarbon substances, underlying the Easement Lands, and this Grant of Easement is subject to all existing easements and rights-of-way of record held by third parties, and to all outstanding mineral rights, including all oil and gas leases of record, held by third parties.

2. The Easement Waters consist of (i) any riparian water rights appurtenant to the Easement Lands, (ii) any appropriative water rights to the extent those rights are appurtenant to the Easement Lands, (iii) any waters, the rights to which are secured under contract between the Grantor and any irrigation or water district, to the extent such waters are customarily applied to the Easement Lands, and (iv) any water from wells that are in existence or may be constructed in the future on the Easement Lands or on

those lands described as excepted from the Easement Lands in the legal description and that are capable of being used by the Grantor to maintain the Easement Lands in a flooded condition. The Easement Waters are limited to the amount of Grantor's water reasonably required to maintain the Easement Lands in a flooded condition to the elevation not to exceed the historical fall and winter seasonal level.

3. Grantor is not obligated to take any action or to incur any expense related to the maintenance of the Easement Lands as waterfowl habitat. Nor is Grantor obligated to apply water to the Easement Lands or to maintain, repair, or construct any water distribution facilities to serve the Easement Lands. However, in any year that the Grantor does not flood the Easement Lands to the determined elevation or the historical fall and winter seasonal levels, Grantee shall have, at its sole discretion, the nonexclusive right and option, but not the obligation, to flood the Easement Lands from September 1st through March 1st of the following year. In this connection, Grantee shall have, at its sole discretion, the right and option, but not the obligation, to use any and all of the Easement Waters that Grantee deems suitable for waterfowl habitat purposes and to place on the Easement Lands and convey through Grantor's water distribution facilities any other waters Grantee may acquire or have available to it.

In connection with any flooding done by Grantee pursuant to this paragraph, (i) Grantee shall have the right to make full use of Grantor's water distribution facilities, including both existing facilities and any facilities constructed in the future and including all water wells and pumps, to the extent those facilities are capable of serving the Easement Lands, on the condition that Grantee shall pay the expenses of operating Grantor's pumps, exclusive of maintenance costs, during any period of such uses by Grantee, and (ii) Grantor shall pay any taxes, assessments, or other charges, excluding actual water costs, due to any water or irrigation district on account of the use by Grantee of Easement Water supplied by such district.

4. (a) Grantor shall not, except as provided in 5(c) below, (i) alter the existing topography of or cultivate agricultural crops on the Easement Lands, (ii) otherwise alter or use or permit the use by third parties of the Easement Lands for any purpose, including the exploration or development of any reserved minerals, or (iii) place any structures on the Easement Lands other than hunting blinds without the prior written authorization of Grantee given through the Fish and Wildlife Service. Such authorization will only be given if the Secretary or his designated representative determines that the proposed activity will not change the character of the Easement Lands or adversely affect the use of the Easement Lands as habitat suitable for migratory birds.

(b) Grantor and Grantee agree that the exploration, development, and production of reserved oil and gas deposits by the Grantor or authorized third parties shall be considered compatible with maintenance and use of the Easement Lands and Waters for the management of migratory birds and shall be authorized by the Fish and Wildlife Service provided (i) all exploration and development operations and, in particular, all drilling and workover activities, are conducted after June 1st and prior to September 1st of each

year and (ii) Grantee, through the Fish and Wildlife Service shall have the right to approve the locations and methods of all proposed exploration, development and production operations to insure such operations are carried out in a manner that is compatible with protection of Grantee's easement interest.

5. The provisions of Paragraph 3 hereof shall not prohibit hunting or operation of a hunting club on the Easement Lands and such use shall be deemed to be consistent with maintenance of the Easement Lands as waterfowl habitat so long as such use is in accordance with all applicable state and federal laws and regulations regulating hunting on privately owned lands. In this connection, Grantor may take such actions as they may deem appropriate to improve the Easement Lands as waterfowl habitat and to facilitate the operation of any hunting club on the Easement Lands, including building or relocating blinds, excavating channels to blinds, irrigating vegetation, fertilizing, planting native trees and wetland vegetation, provided that such trees and vegetation are included in Exhibit 1 attached to and incorporated herein by reference, removing trees and vegetation to the extent they encroach on the open marsh and interfere with the use of the Easement Lands as waterfowl habitat, and removing brush to the extent it encroaches on dikes and impedes access thereto for hunting and maintenance purposes.

6. Grantor shall not grant any additional easements, rights-of-way, or other interests in the Easement Lands, 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 Easement Waters without the prior written authorization of Grantee given through the U.S. Fish and Wildlife Service. Such authorization will be given unless the Secretary or his designated representative determines that the proposed interest or transfer will interfere with the use of the Easement Lands as waterfowl habitat suitable for migratory birds or interfere with the availability of Easement Waters for the Easement Lands. This paragraph shall not prohibit the transfer of a fee title or leasehold interest in the Easement Lands that is subject to the terms of this Grant of Easement.

7. Upon acceptance of this Grant, the easement interest acquired by the United States shall become a component part of the National Wildlife Refuge System and shall be subject to those laws and regulations pertaining to the National Wildlife Refuge System that are applicable to the easement interests being acquired. Violation of those applicable laws and regulations may subject the violator to civil and/or criminal penalties. Laws and regulations that regulate conduct that does not affect the property interests conveyed to the United States through this Grant of Easement are not applicable. For example, regulations controlling hunting and fishing or any public use are not applicable since these rights have not been conveyed.

8. The Grantee acknowledges that adoption of laws or regulations that prohibit hunting of all migratory waterfowl on the property for a continuous period of thirty-six (36) months shall deprive the Grantor of the primary economic beneficial use of the fee estate in the property. Therefore, the Grantee, and its assigns, reserves the first right of refusal to acquire the remaining fee interest in the Grantor's property in the event that waterfowl

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hunting seasons in the State of California are stopped for a period of three consecutive years without the likelihood of reinstatement. The acquisition of these remaining rights is contingent upon Congressional, State, and County approvals where applicable, and the appropriation of sufficient funds. This right of first refusal is contingent upon the receipt of a written offer to sell this remaining interest from the individual landowner, and the value for this remaining interest will be based upon an approved fair market value appraisal at the time of purchase.

9. This Grant of Easement shall be binding upon, and shall inure to the benefit of, the Grantor, its successors and assigns and Grantee and its assigns.

10. This Grant of Easement imposes no other obligations or restrictions on the Grantor and neither them nor their successors, nor any other person or entity claiming under them, shall be in any way restricted from using all of the subject lands in the customary manner except as provided herein.

11. This Grant is made in compliance with Yolo County Resolution No. 95-185, passed November 21, 1995, and shall not otherwise limit the control and management over resident wildlife species vested under law in the California Fish and Game Commission and the Department of Fish and Game.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands as of the day and year above written.

LAUREL-G RANCH CORPORATION, a California corporation

Steve Gidaro, Secretary

John D. Reynen, President

ACKNOWLEDGMENT

STATE OF California }
} ss
COUNTY OF Sacramento }

On 8-29-96, before me, the undersigned, personally appeared John D. Reynen, President and Steve Gidaro, Secretary for the Laurel G Ranch, a California corporation, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Notarial Seal)

JENNIFER L. REIFSNIDER
COMM. #996716
Notary Public-California
SACRAMENTO COUNTY
My Comm. Exp. July 14, 1997

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CERTIFICATE OF ACCEPTANCE
State of California Code Section 27281

This is to certify that the Secretary of the Interior, acting by and through his authorized representative, the Senior Realty Officer, U.S. Fish and Wildlife Service, hereby accepts on behalf of the United States of America, the real property described within the Grant of Easement and consents to recordation thereof.

August 28, 1996
Date

Senior Realty Officer
U.S. Fish and Wildlife Service

EXHIBIT A

The following list contains most of the plants considered desirable for waterfowl and other wildlife in the North Central Valley Wildlife Management Area. This list is not intended to be all-inclusive, and other species may be desirable under some circumstances. Plants not on this list may not be introduced on the Easement Land without written permission from the Grantee.

Scientific Name	Common Name
Trees, shrubs, and vines:	
Salix gooddingii	Black willow
Salix hindsiana	Sandbar willow
Populus fremontii	Fremont cottonwood
Alnus rhombifolia	White alder
Elaeagnus angustifolia	Russian olive
Aquatic-floating and submerged:	
Lemna minor	Duckweed
Potamogeton pectinatus	Sego pondweed
Potamogeton species	Other pondweeds
Zannichellia palustris	Horned pondweed
Najas guadalupensis	Southern naiad
Chara species	Muskgrass
Aquatic-emergent:	
Scirpus acutus	Hardstem bulrush (tule)
Scirpus robustus	Alkali bulrush
Scirpus fluviatilis	River bulrush
Carex species	Sedges
Heleocharis palustis	Spike rush
Cyperus species	Flat sedges (nutgrass)
Echinodorus berteroi	Burhead
Sagittaria latifolia	Wapato, duck potato
Sagittaria species	Arrowhead
Typha species	Cattails

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Moist soil:

Echinochloa crusgalli	Watergrass
Leptochloa fascicularis	Sprangletop
Heleochloa schoenoides	Swamp timothy
Crypsis niliaca	Prickle grass
Polygonum species	Smartweeds
Ammannia coccinea	Redstem
Paspalum distichum	Joint grass
Cynodon dactylon	Bermuda grass

Uplands:

Phalaris tuberosa var. stenoptera	Harding grass
Phalaris tuberosa var. hirtiglumis	Perla grass
Phalaris arundinacea	Reed canary grass
Sorghum halepense	Johnson grass
Setaria species	Bristle grass
Distichlis spicata	Saltgrass
Agropyron elongatum	Tall wheatgrass
Melilotus species	Sweetclovers
Astragalus cicer	Cicer milkvetch
Lotus corniculatus	Birdsfoot trefoil

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