



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 033-220-060 and 033-220-067 - DWR Parcel No. YBSH-155

Rod Williams/Williams Revocable Living Trust - FWS Easement # 447C - 100.1 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-155 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 concerning this parcel, which was submitted on October 6, 2022.

Sincerely,

**CURTIS
MCCASLAND**

Digitally signed by CURTIS
MCCASLAND
Date: 2023.05.10 14:10:01 -0700'

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



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
ewc@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 033-220-060 and 033-220-067 -- DWR Parcel No. YBSH-155

Rod Williams/Williams Revocable Living Trust - FWS Easement # 447C -- 100.1 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 for inclusion in the record concerning the above-referenced easement in which the United States holds an interest.

Federal Interest in DWR Parcel No. YBSH-155

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 received a letter dated June 6, 2022, from DWR Right-of-Way Agent Fahmi Kassis, indicating that DWR intended to acquire a flowage easement on this conservation easement parcel. In response, the FWS submitted a letter to Catherine McCalvin of DWR dated July 7, 2022, setting forth the federal interest in the conservation easement. We request that this July letter be included in the record of this proceeding, along with the Service's February 14, 2022, letter to Ms. McCalvin. 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 submitted 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.

Rodney W. Williams Easement

Enclosed herein as Exhibit A is the Easement by which Rodney W. Williams granted to the United States by Grant of Easement recorded on January 10, 2006, a perpetual conservation easement over a total of 100.1 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 ten thousand dollars (\$110,000.00) 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 Williams Revocable Living Trust.

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 her 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 3 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 Williams 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 Williams Living Revocable Trust 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 manage 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 Williams Revocable Living Trust Parcel 033-220-060 an average of 7.1 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 4.6 additional days above 12" during the hunt period, with a range from 0 to 17 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 2.2 additional days above 18" during the hunt period, with a range from 0 to 8 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 Williams Revocable Living Trust Parcel 033-220-067 an average of 7.3 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 24 days. These days represent flood levels that could potentially impact waterfowl use and hunting quality. The parcel would flood an average of 7.5 additional days above 12" during the hunt period, with a range from 0 to 25 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 7.1 additional days above 18" during the hunt period, with a range from 0 to 20 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 Williams easement provides in Paragraph 5 that "[h]owever, in any year that Grantor does not flood the Easement Lands in the customary manner to their historical hunting season level, Grantee shall have, at its sole discretion, the nonexclusive right and option, but not the obligation, to flood the Easement Lands from October 15th through March first of the following year." However, flooding by the United States in the "customary manner to their hunting season level" 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 Williams easement.

Conclusion

The Fish and Wildlife Service has initiated discussions with various landowners 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. We have not yet discussed this matter with the landowners of this parcel.

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

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CURTIS MCCASLAND
Date: 2022.10.06
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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 Recorder's Office
Freddie Oakley, County Recorder
DOC- 2006-0001322-00

Acct 103-First American Title
Tuesday, JAN 10, 2006 14:15:00
Tel Pd \$25.00 Nbr-0000618003
VRB/R6/1-7

NCS-158619-SF

RECORDING REQUESTED BY AND WHEN RECORDED
MAIL TO: U.S. Fish and Wildlife Service
California/Nevada Realty Office (kb)
2800 Cottage Way, W-1832
Sacramento, California 95825-0509

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

GRANT OF EASEMENT

GRANT OF EASEMENT, made between Rodney W. Williams, a married man, as his sole and separate property, 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 Ten Thousand and 00/100 DOLLARS (\$110,000.00), 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 contains 100.1 acres, more or less, all being located in Yolo County, State of California, and more particularly described as follows:

TRACT (447 C):
Township Six (6) North, Range Three (3) East, MT. DIABLO BASE AND
MERIDIAN, APN: 33-220-67-1 and 33-220-60-1
PARCEL ONE: Parcel 1, Parcel Map 3146, Filed May 3, 1982 in Book 6 of Parcel
Maps, Page 59, Yolo County Records.

Excepting Therefrom all oil, gas and mineral rights in and to said property, but without any right in Grantor, his successors or assigns, to drill, or to erect structures or other improvements, or to

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install pipes, or to excavate upon any of the said property, except as such locations as shall be approved by Grantee and by the U.S. Corps of Engineers, so that any such operations will not interfere with the maintenance operation of the toe drain and/or the deep water channel to be constructed on said property, by deed recorded December 26, 1956, in Book 502 of Official Records, page 185.

AFFECTS A PORTION OF PREMISES

Also Excepting Therefrom all oil, gas and other hydrocarbons as reserved in the deed recorded April 9, 1958, in Book 569 of Official Records, page 240.

AFFECTS REMAINDER OF PREMISES

PARCEL TWO: A right of way for ingress or egress over the West 30 feet of the Northwest Quarter of Section 10 Township 6 North, Range 3 East, M.D.B.&M. as granted in the deed recorded April 9, 1958, in Book 569 of Official Records, page 240.

PARCEL THREE: A right of way for road, water ditch, utilities, ingress and egress over the West 50 feet of the North 965 of the Southwest Quarter of Section 10, Township 6 North, Range 3 East, M.D.B.&M., as reserved in the deed recorded April 23, 1963, Book 711 of Official Records, page 140.

Parcels Two and Three are for the benefit of and appurtenant to parcel One above.

PARCEL FOUR: The Southwest Quarter of the Southeast Quarter of Section 9, Township 6 North, Range 3 East, M.D.B.&M. Excepting and reserving all oil, gas, and other hydrocarbons in and under the above described property as excepted and reserved in the deeds from Fridolf Anderson to Yolo Basin Farms, Inc., a California Corporation, dated April 7, 1959, recorded April 20, 1959, in Book 571 of Official Records at page 170.

PARCEL FIVE: A non-exclusive easement for road purposes over the North 10 feet of the Northeast Quarter of Section 16, Township 6 North, Range 3 East, M.D.B.&M.

PARCEL SIX: A perpetual and non-exclusive easement for road purposes only along and across the surface of the easterly 10 feet of the Southwest Quarter of Section 9, Township 6 North, Range 3 East, M.D.B.&M.

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.

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. (a) Grantor shall not (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 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.

(b) Grantor and Grantee agree that the exploration, development, and production of reserved oil and gas deposits by 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.

4. 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 on the Fish and Wildlife Service List of Approved Wetland Vegetation described in Exhibit I 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.

5. Grantor is not obligated to take any action or to incur any expense related to the maintenance or restoration 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 Grantor does not flood the Easement Lands in the customary manner to their historical hunting season level, Grantee shall have, at its sole discretion, the nonexclusive right and option, but not the obligation, to flood the Easement Lands from October 15th through March first 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 use 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.

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

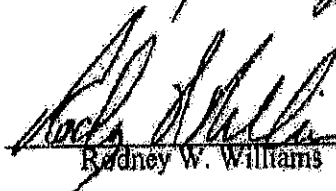
9. THIS GRANT IS MADE SUBJECT TO existing rights of way, of record or in use, for roads, pipelines, ditches, canals, conduits, telephone and electrical transmission lines, on, over and across said premises;

ALSO SUBJECT TO all covenants, terms and conditions, restrictions, drainage rights, agreements and permits of record or in use, and all outstanding mineral rights, including oil and gas leases of record, exceptions and reservations of record as of the date of recording herein.

10. This Grant of Easement imposes no other obligations or restrictions on the Grantor and neither he nor his 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. 95-512, 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 Grantor has hereunto set his hand as of this 4th day of January, 2006 as above written.


Rodney W. Williams L.S.

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ACKNOWLEDGMENT

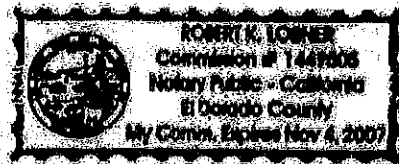
STATE OF CALIFORNIA) ss
COUNTY OF EL DORADO

On 1-4-06 2005 before me, Robert K. Loner, PERSONALLY appeared RODNEY W. WILLIAMS, Notary Public, personally known to me or proved to me on the basis of satisfactory evidence to be the persons whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his 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 Robert K. Loner
Notary Public

(SEAL)



CERTIFICATE OF ACCEPTANCE
State of California Government Code Section 27281

This is to certify that the Secretary of the Interior, acting by and through her authorized representative, the Realty Officer, U.S. Fish and Wildlife Service, hereby accepts on behalf of the UNITED STATES OF AMERICA, the real property described in the within Grant of Easement and consents of recordation thereof.

December 20, 2005
Date

[Signature]
Realty Officer
U.S. Fish and Wildlife Service

EXHIBIT I

**Plants Approved for Introduction onto U. S. Fish and Wildlife Service
Conservation Easement Lands in the Sacramento Valley**

The following list contains most of the plants considered desirable for waterfowl and other wildlife on U.S. Fish and Wildlife Service Conservation Easements in the Sacramento Valley. 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 U. S. Fish and Wildlife Service.

Common Name

Scientific Name

Aquatic-floating and submergent plants:

Dwarf Spikerush
Duckweed
Sago Pondweed
Horned Pondweed

Eleocharis parvula
Lemna minor
Potamogeton pectinatus
Zannichellia palustris

Aquatic-emergent plants:

Santa Barbara Sedge
Clustered Field Sedge
Tall Cyperus (umbrella sedge, nut sedge)
Burhead
Pale Spikerush
Engelmann's Spikerush
Hardstem Bulrush (tule)
Alkali Bulrush
Tuberous Bulrush
River Bulrush
Wapato, Duck Potato
Long-lobed Arrowhead
Montevideo Arrowhead
Broadleaf Cattail
Narrowleaf Cattail

Carex barbarae
Carex praegracilis
Cyperus eragrostis
Echinodoros berteroi
Eleocharis palustris
Eleocharis obtusa
Scirpus acutus
Scirpus robustus
Scirpus tuberosus
Scirpus fluviatilis
Sagittaria latifolia
Sagittaria longiloba
Sagittaria montevidensis
Typha latifolia
Typha angustifolia

Moist-soil Plants:

Valley Redstem (red berry)
Fathen
Prickle Grass
Bermuda Grass
Watergrass
Swamp Timothy
Sprangletop
Joint Grass

Ammannia coccinea
Atriplex patula
Crypsis niliaca
Cynodon dactylon
Echinochloa crusgalli
Heleochoa schoenoides
Leptochloa fascicularis
Paspalum distichum

Common Name

Moist Soil Plants Continued:

Nodding Smartweed
Lady's-thumb Smartweed

Upland Plants:

Tall Wheatgrass
Soft Chess Brome
Red Brome
Berber Orchardgrass
Salt Grass
Blue Wildrye
Slender Wheatgrass
Tall Fescue
Meadow Barley
Creeping Wildrye
Annual Ryegrass
Birdsfoot Trefoil
Purple Needlegrass
Annual Bluegrass
Harding Grass
Perla Grass
Salina Strawberry Clover
White Clover
Lana Vetch

Trees, Shrubs and Vines:

Box Elder
Coyote Brush
Mule's Fat
Buttonbush (buttonwillow)
Oregon Ash
Fremont Cottonwood
Western Sycamore
Valley Oak
California Wild Rose
California Blackberry
Black Willow
Sandbar Willow
Arroyo Willow
Blue Elderberry
California Wild Grape

Scientific Name

Polygonum lapathifolium
Polygonum persicaria

Agropyron elongatum
Bromus hordeaceus
Bromus madritensis
Dactylis glomerata
Distichlis picata
Elymus glaucus
Elymus trachycaulus
Fescue arundinacea
Hordeum brachyantherum
Leymus triticoides
Lolium multiflorum
Lotus corniculatus
Nassella pulchra
Poa annua
Phalaris tuberosa var. *stenoptera*
Phalaris tuberosa var. *heritigumus*
Trifolium fragiferum
Trifolium incarnatum
Vicia villosa

Acer negundo
Baccharis pilularis
Baccharis salicifolia
Cephalanthus occidentalis
Fraxinus latifolia
Populus fremontii
Platanus racemosa
Quercus lobata
Rosa californica
Rubus vitifolius
Salix gooddingii
Salix hindstiana
Salix lasiolepis
Sambucus caerulea
Vitis californica