

MINUTE ITEM
This Calendar Item No. C05
was approved as Minute Item
No. 05 by the State Lands
Commission by a vote of 3
to 0 at its 4/6/94
meeting.

CALENDAR ITEM

C05

A 10, 26

S 5, 7

04/06/94
W 23795
Burks
PRC 7754

GENERAL LEASE - PUBLIC AGENCY USE

APPLICANT:

Department of Energy
Western Area Power Administration
1825 Bell Street
Sacramento, California 95825

AREA, TYPE LAND AND LOCATION:

Four parcels of tide and submerged lands crossing the
Old River adjacent to Victoria Island, Woodward Island,
Union Island, Orwood Tract and Coney Island,
San Joaquin and Contra Costa Counties.

LAND USE:

Installation of 500-kv electrical overhead transmission
line crossings at four locations on Old River to
provide a facility for the exchange of electricity
between California and the Pacific Northwest.

TERMS OF PROPOSED PERMIT:

Initial period: 49 years beginning September 1, 1992.

CONSIDERATION:

The public use and benefit; with the State reserving
the right at any time to set a monetary rental if the
Commission finds such action to be in the State's best
interest.

BASIS FOR CONSIDERATION:

Pursuant to 2 Cal. Code Regs. 2003.

APPLICANT STATUS:

Applicant is permittee of upland.

PREREQUISITE CONDITIONS, FEES AND EXPENSES:

Filing fee and processing costs have been received.

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STATUTORY AND OTHER REFERENCES:

- A. P.R.C.: Div. 6, Parts 1 and 2; Div. 13.
- B. Cal. Code Regs.: Title 3, Div. 3; Title 14, Div. 6.

AB 884: N/A

OTHER PERTINENT INFORMATION:

1. An EIR, SCH# 85040914, was prepared and adopted for this project by the Transmission Agency of Northern California. The State Lands Commission's staff has reviewed such document. Findings relative to the significant environmental effects which involve the part of the project that the Commission will be considering for approval are contained in Exhibit "C".
2. Western Area Power Agency (WAPA), the Transmission Agency of Northern California, the U.S. Fish and Wildlife Service and the California Department of Fish and Game have executed an Interagency Agreement for the Waterfowl Mitigation Plan (Plan). That agreement is attached hereto and together with the Plan, on file in the Office of the Commission, are incorporated herein.
3. As part of the California-Oregon Transmission Project (COTP), WAPA is installing a 500-kv electrical overhead transmission line from Sherman Island to the Tracy Substation. The COTP is a 500-kv transmission line from the Oregon border to the Pacific Gas and Electric Company Tesla Substation in central California that was authorized by Congress in 1984. The purpose of the project is to provide a facility for the exchanges of electricity between California and the Pacific Northwest.

APPROVALS OBTAINED:

United States Corps of Engineers.

FURTHER APPROVALS REQUIRED:

State Lands Commission.

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EXHIBITS:

- A. Land Description
- B. Location Map
- C. CEQA Findings/Monitoring Program
- D. Interagency Agreement

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT AN EIR, SCH# 85040914, WAS PREPARED AND ADOPTED FOR THIS PROJECT BY THE TRANSMISSION AGENCY OF NORTHERN CALIFORNIA AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.
2. ADOPT THE FINDINGS MADE IN CONFORMANCE WITH SECTION 15096(h) OF THE STATE CEQA GUIDELINES AND THE MONITORING PROGRAM AS CONTAINED IN EXHIBIT "C", ATTACHED HERETO, FOR THE SIGNIFICANT ENVIRONMENTAL EFFECTS IDENTIFIED IN THE EIR WHICH INVOLVE THE PART OF THE PROJECT THAT THE COMMISSION IS CONSIDERING FOR APPROVAL.
3. FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED FOR THE LAND PURSUANT TO P.R.C. 6370, ET. SEQ.
4. AUTHORIZE ISSUANCE TO WESTERN AREA POWER AGENCY, DEPARTMENT OF ENERGY, OF A FORTY-NINE (49) YEAR GENERAL LEASE - PUBLIC AGENCY USE BEGINNING SEPTEMBER 1, 1992; IN CONSIDERATION OF THE PUBLIC USE AND BENEFIT, WITH THE STATE RESERVING THE RIGHT AT ANY TIME TO SET A MONETARY RENTAL IF THE COMMISSION FINDS SUCH ACTION TO BE IN THE STATE'S BEST INTEREST; FOR INSTALLATION, OPERATION, AND MAINTENANCE OF OVERHEAD 500-KV ELECTRICAL TRANSMISSION LINES ON THE LAND DESCRIBED ON EXHIBIT "A" ATTACHED AND BY REFERENCE MADE A PART HEREOF.

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EXHIBIT " A "

W. 23795

LAND DESCRIPTION

7 parcels of land lying in the beds of Old River, Dutch Slough, Werner Cut and Woodward Canal and North Victoria Canal located in San Joaquin and Contra Costa Counties, California, said parcels being more particularly described as follows:

PARCEL 1

A strip of land 200 feet wide, in the bed of Old River, lying 100 feet on each side of the following described center line.

Beginning at a point on the left bank of Old River, said point being in Contra Costa County and having California Coordinate System, of 1927, Zone 3, coordinates of X=1696211.87, Y=485394.17; thence from said point of beginning N78° 51' 47"E 348.73 feet to the end of the herein described centerline.

EXCEPTING THEREFROM any portion of the above described strip lying landward of the ordinary high water mark along both banks of Old River.

PARCEL 2

A strip of land 200 feet wide, in the bed of Old River, lying 100 feet on each side of the following described centerline.

Beginning at a point on the right bank of Old River, said point being in San Joaquin County and having California Coordinate System, of 1927, Zone 3, coordinates of X=1698399.36, Y=486703.57; thence from said point of beginning N 18° 19' 38" W 285.65 feet to the end of the herein described centerline.

EXCEPTING THEREFROM any portion of the above described strip lying landward of the ordinary high water mark along both banks of Old River.

PARCEL 3

A strip of land 200 feet wide, in the bed of Old River, lying 100 feet on each side of the following described centerline.

Beginning at a point on the left bank of Old River, said point being in Contra Costa County and having California Coordinate System, of 1927, Zone 3, coordinates of X=1695623.80, Y=496088.30; thence from said point of beginning N 0° 41' 00" E 393.82 feet to the end of the herein described centerline.

EXCEPTING THEREFROM any portion of the above described strip lying landward of the ordinary high water mark along both banks of Old River.

PARCEL 4

A strip of land 200 feet wide, in the bed of Old River, lying 100 feet on each side of the following described centerline.

Beginning at a point on the right bank of Old River, said point being in San Joaquin County and having California Coordinate System, of 1927, Zone 3, coordinates of X=1694792.32, Y=496088.30; thence from said point of beginning N 18° 19' 38" W 285.65 feet to the end of the herein described centerline.

and having California Coordinate System, of 1927, Zone 3, coordinates of X=1694792.32, Y=518520.41; thence from said point of beginning N 11° 35' 11" W 757.01 feet to the end of the herein described centerline. Containing 3.24 acres more or less.

EXCEPTING THEREFROM any portion of the above described strip lying landward of the ordinary high water mark along both banks of Old River.

PARCEL 5

A strip of former swamp and overflow land 200 feet wide, in the bed of Werner Cut, lying 100 feet on each side of the following described centerline.

Beginning at a point on the south bank of Warner Cut, said point being in Contra Costa County and having California Coordinate System, of 1927, Zone 3 coordinates of X=1683123.63 Y=534877.36; thence from said point of beginning N 23° 23' 43" W 447.91 feet to the end of the herein described centerline. Containing 1.83 acres more or less.

EXCEPTING THEREFROM any portion of the above described strip lying landward of the mean high tide line along both banks of Warner Cut.

PARCEL 6

A strip of former swamp and overflow land 200 feet wide, in the bed of Dutch Slough, lying 100 feet on each side of the following described centerline.

Beginning at a point on the south bank of Dutch Slough, said point being in Contra Costa County and having California Coordinate System, of 1927, Zone 3, coordinates of X=1669133.06 Y=552543.44; thence from said point of beginning N 24° 59' 39" W 705.82 feet to the end of the herein described centerline. Containing 3.01 acres more or less.

EXCEPTING THEREFROM any portion of the above described strip lying landward of the mean high tide line along both banks of Dutch Slough.

PARCEL 7

A strip of former swamp and overflow land 200 feet wide, in the bed of North Victoria Canal and Woodward Canal, lying 100 feet on each side of the following described centerline.

Beginning at a point on the south bank of North Victoria Canal, said point being in San Joaquin County and having California Coordinate System, of 1927, Zone 3, Coordinates of X=1695276.62, Y=516158.41; thence from said point of beginning N 11° 35' 22" W 484.05 feet to the end of the herein described centerline. Containing 1.99 acres more or less.

EXCEPTING THEREFROM any portion of the above described strip lying landward of the mean high tide line along the south bank of North Victoria Canal and along the north bank of Woodward Canal.

END OF DESCRIPTION

PREPARED AUGUST 26, 1992 BY DELTA TEAM

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EXHIBIT "C"

1. **IMPACT:** Avian mortality resulting from collisions with transmission lines.

FINDING: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the Final EIR.

FACTS SUPPORTING THE FINDING:

Impacts to waterfowl may be significant in the Sacramento-San Joaquin Delta areas. The visibility of overhead ground wires is a factor in bird collisions. Most collisions occur when the birds move to avoid the conductor and subsequently do not see the smaller ground wire. Collisions can also occur when visibility is obscured (e.g., night, inclement weather).

WAPA has consulted with the California Department of Fish and Game and the United States Fish and Wildlife Service which resulted in the development of a Waterfowl Mitigation Plan, on file in the offices of the State Lands Commission.

MITIGATION MEASURES:

1. The Waterfowl Mitigation Plan shall be implemented which in summary requires that:
 - a. Overhead ground wires will not be installed on the spans crossing the Sacramento and San Joaquin rivers and on the spans approaching either side of the two crossings.
 - b. Construction contract specifications call for air flow spoilers to be installed on the groundwires for Jersey Island, Victoria Island, Coney Island, and south of Coney Island to the Old River crossing.

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- c. Setting aside an appropriate tract of upland pasture not to exceed 145 acres dedicated to waterfowl nesting and brood rearing. The exact location of this tract will be determined in consultation with the U.S. Fish and Wildlife Service and California Department of Fish and Game. A maximum of fourteen, one-acre ponds, or the equivalent in surface area if not already present, will be constructed within the tract to provide water for rearing broods after hatching.

MONITORING/REPORTING PROGRAM:

WAPA will provide a listing to the State Lands Commission of those parcels proposed for acquisition and development in accordance with the Waterfowl Mitigation Plan, including formal letters of acceptance of the proposed parcels by the California Department of Fish and Game and the United States Fish and Wildlife Service concerning their suitability for such purposes.

EFFECTIVENESS:

State Lands Commission receipt and review of the identified listing and supporting documentation will ensure that this mitigation measure is properly implemented.

2. **IMPACT:** Scenic quality may be impaired through the placement of transmission towers within close proximity to the waterways.

FINDING: Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects as identified in the Final EIR.

FACTS SUPPORTING THE FINDING:

Consideration of visual impacts which may result from recreational uses of navigable waterways will be given when siting transmission towers near navigable waterways. Visual impacts will be minimized through reduction in quantity, color and finish of tower and conductor material.

The tower placements associated with the Old River crossings will occur in previously cultivated agricultural areas where riparian vegetation is available to provide screening from the waterway.

MITIGATION MEASURES:

1. Transmission towers proposed in the vicinity of the Old River crossings will be placed behind the riparian vegetation or outside of the riparian corridor adjacent to the waterways, where riparian areas exist, and away from ridglands and hilltops.
2. The finish on transmission towers will be dull and non-reflective.
3. Conductors will be constructed of non-specular material.

MONITORING/REPORTING:

Western Area Power Administration will implement the mitigation measures by providing mitigation plans to designated monitors, inspectors and construction contractors in the field, as well as documenting the results of monitoring and inspection activities. A copy of the results will be provided to the State Lands Commission upon completion of the project.

EFFECTIVENESS:

State Lands Commission receipt and review of the identified reporting documentation will ensure that this mitigation measure is properly implemented.

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EXHIBIT "D"

INTERAGENCY AGREEMENT

AMONG

UNITED STATES DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SACRAMENTO AREA OFFICE

AND

TRANSMISSION AGENCY OF NORTHERN CALIFORNIA

AND

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

AND

CALIFORNIA DEPARTMENT OF FISH AND GAME

FOR

IMPLEMENTATION OF CALIFORNIA-OREGON TRANSMISSION PROJECT
WATERFOWL MITIGATION PLAN

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INTERAGENCY AGREEMENT
AMONG
UNITED STATES DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SACRAMENTO AREA OFFICE
AND
TRANSMISSION AGENCY OF NORTHERN CALIFORNIA
AND
UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
AND
CALIFORNIA DEPARTMENT OF FISH AND GAME
FOR
IMPLEMENTATION OF CALIFORNIA-OREGON TRANSMISSION PROJECT
WATERFOWL MITIGATION PLAN

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EXHIBITS

- A: California-Oregon Transmission Project Waterfowl Mitigation Plan (February 1992)
- B: COTP Habitat Management Plan for Palm Tract "B" dated April 20, 1993
- C: Form of Proposed Grant of Conservation Easement

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**INTERAGENCY AGREEMENT
AMONG
UNITED STATES DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
SACRAMENTO AREA OFFICE
AND
TRANSMISSION AGENCY OF NORTHERN CALIFORNIA
AND
UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
AND
CALIFORNIA DEPARTMENT OF FISH AND GAME
FOR
IMPLEMENTATION OF CALIFORNIA-OREGON TRANSMISSION PROJECT
WATERFOWL MITIGATION PLAN**

1. PREAMBLE

THIS AGREEMENT is made this 20th day of April, 1993, by and among the United States Department of Energy, acting through the Western Area Power Administration, Sacramento Area Office ("Western"), the Transmission Agency of Northern California ("TANC"), the United States Department of the Interior, acting through the Fish and Wildlife Service (the "Service"), and the California Department of Fish and Game ("Fish and Game"). Western is the agency with responsibility for developing the waterfowl habitat mitigation for the California-Oregon Transmission Project (the "COTP") and is a party to this Agreement pursuant to its authorities and responsibilities under the Department of Energy Organization Act of 1977 (42 U.S.C. § 7101 et seq.); the Central Valley Project Act of 1937 (50 Stat. 844, 850), and Acts supplementary thereto and amendatory thereof; the Energy and Water Development Appropriations Act of 1984, Pub. L. 98-360, 98 Stat. 416; the Supplemental Appropriations Act of 1985, Pub. L. 99-88, 99 Stat. 321; Section 6 of the

Solar, Wind and Geothermal Power Production Incentives Act of 1990, Pub. L. 101-575, 104 Stat. 2834; and the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321 et seq., and federal regulations thereunder; TANC, a joint powers agency created pursuant to Cal. Gov. Code § 6502, is party to this Agreement pursuant to its authorities and responsibilities as Project Manager for the COTP under the Long-Term Participation Agreement ("LTPA") for the COTP, and pursuant to the California Environmental Quality Act ("CEQA"), Cal. Pub. Res. Code § 21000 et seq., and state regulations thereunder; the Service is participating as a party to this Agreement pursuant to its authorities and responsibilities under NEPA, and federal regulations thereunder; and the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq., and federal regulations thereunder; and Fish and Game is participating as a party to this Agreement pursuant to its authorities and responsibilities under Cal. Fish & Game Code §§ 355-356 and 1802, and state regulations thereunder; and CEQA, and state regulations thereunder.

2. PURPOSE

The purpose of this Agreement is to provide a formal framework for continuing cooperation among the parties in the implementation of Section 9.0 of the COTP Waterfowl Mitigation Plan (the "Plan"), attached to this Agreement as Exhibit A. Implementation of the Plan involves the acquisition and management of suitable waterfowl habitat to mitigate the potential for waterfowl collision mortalities and reductions in waterfowl habitat use identified in connection with the construction by Western of approximately 24 miles of transmission line facilities in the Sacramento/San Joaquin River delta as a part of the COTP.

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The parties to this Agreement participated in the development of the Plan and consider the cooperative implementation strategy set forth in this Agreement to provide a suitable framework for further actions to achieve the mitigation goals of the Plan.

3. TERM AND TERMINATION

This Agreement shall be effective as of the date first written above, which is the last signature date of the Agreement, and shall terminate upon the date on which the LTPA terminates without successors that include TANC and Western, or their successors, as parties; provided, that any party may terminate its participation in this Agreement by providing 30 days written notice of such termination to each of the other parties. Termination of participation in this Agreement by the Service or by Fish and Game shall not be considered relevant to any determination of compliance by TANC and Western with waterfowl habitat mitigation requirements for the COTP or with the Plan. The parties acknowledge that the mitigation commitments made by TANC and Western under the Plan shall not be affected by termination of this Agreement.

4. MITIGATION HABITAT ACQUISITION

4.1 Acquisition Target. The parties have identified the Palm Tract "B" parcel of agricultural land in Contra Costa County as a suitable parcel for acquisition for the purposes of the Plan. Palm Tract "B" contains approximately 1,200 acres, and is more particularly described in the Habitat Management Plan set forth as Exhibit "B" to this Agreement.

4.2 Acquisition Strategy. In its role as Project ~~Manager~~ for the COTP, TANC is engaged in negotiations to acquire fee title to Palm Tract "B" subject to reserved mineral interests, certain existing easement encumbrances, and new long-term lease agreement to be entered into between TANC and the existing tenant farmer. The parties agree that this habitat acquisition strategy is an economically responsible approach to implementation of the Plan and, therefore, that TANC should proceed to complete such acquisition if TANC, in its discretion, determines that the necessary transactions can be concluded under terms and conditions favorable to the COTP.

4.3 Alternative Acquisition. In the event that TANC determines that it is unable to acquire Palm Tract "B" under favorable terms and conditions, the parties will cooperate in identifying other property suitable for acquisition for the purposes of implementation of the Plan under a similar habitat acquisition strategy.

5. MITIGATION HABITAT MANAGEMENT

5.1 Habitat Management Plan. The parties have cooperated in the development of a specific Habitat Management Plan for Palm Tract "B," dated April 20, 1993, attached to this Agreement as Exhibit "B" (the "HMP"). The parties agree that, if TANC successfully concludes its negotiations to acquire Palm Tract "B" as described in Section 4 of this Agreement, TANC shall make the HMP an integral part of TANC's lease agreement with the tenant farmer and, thus, the habitat management requirements of the HMP shall be binding on the tenant farmer and any successor in interest to the tenant farmer. Certain provisions of the HMP, as appropriate, are also incorporated by reference as land use

restrictions in the form of the conservation easement to be granted to Fish and Game pursuant to this Agreement and, therefore, shall also be enforceable by Fish and Game upon its acceptance of such grant. TANC agrees to cooperate with Fish and Game with respect to any revision of the HMP made by TANC. In the event that TANC determines that it is unable to acquire Palm Tract "B" under favorable terms and conditions, the parties will cooperate in developing a suitable habitat management plan for such alternative property as may be acquired by TANC pursuant to this Agreement. Any such new plan shall be incorporated into this Agreement as a replacement for Exhibit "B".

5.2 Grant of Conservation Easement. The parties agree that Fish and Game can provide valuable, long-term assistance in the conservation and technical oversight of the habitat to be acquired for the implementation of the Plan by accepting from TANC a grant of conservation easement over the property to be acquired by TANC pursuant to this Agreement. Upon its acquisition of fee title to Palm Tract "B" or such alternative real property as may be acquired by TANC in accordance with this Agreement, TANC therefore shall offer to Fish and Game a grant of conservation easement identical to the form of the grant attached to this Agreement as Exhibit "C". As authorized by the California Fish and Game Commission at the Commission's meeting of March 5, 1993, Fish and Game shall accept such grant of conservation easement subject to the habitat management funding provisions below.

5.3 Habitat Management Funding. Western, TANC, and Fish and Game agree that the initial annual funding for costs incurred by Fish and Game in administering any conservation easement granted to Fish and Game pursuant to this Agreement ("Funding")

shall be NINE THOUSAND TWO HUNDRED DOLLARS (\$9,200), and agree that the Funding shall be adjusted annually. The annual Funding shall be payable by TANC for so long as the particular COTP facilities described in Section 2 of this Agreement remain installed. The initial annual payment shall be payable by TANC not later than thirty (30) days after the acceptance of the grant of easement by Fish and Game. The Funding shall be adjusted annually for inflation or deflation by application of the U.S. Bureau of Reclamation's published "Water Systems Operation and Maintenance Cost Trends" report index, and shall be payable by TANC not later than thirty (30) days after each anniversary of the date of acceptance of the grant of easement by Fish and Game.

6. HUNTING COMPATIBILITY AND REVIEW OF HABITAT MANAGEMENT ELEMENTS

The parties recognize that the HMP provides for restricted hunting rights to be granted pursuant to the long-term lease agreement to be entered into between TANC and the existing tenant farmer of Palm Tract "B," and acknowledge that the granting of such rights is consistent with the mitigation purposes of Palm Tract "B" and facilitates the acquisition of that property for the purpose of this Agreement. The parties carefully considered the farming and other habitat management elements of the HMP in relation to the federal baiting regulations for waterfowl hunting set forth in the Code of Federal Regulations, Title 50, Part 20, so that the farming and other habitat management elements of the HMP would not conflict with those regulations. Nothing in this Agreement, however, should in any way be construed to relieve the tenant farmer, or any successor in interest, or

hunters hunting Palm Tract "B" from the obligation to comply with all applicable federal and state laws and regulations pertaining to hunting of migratory game birds.

7. NOTICES

The respective agency contact persons and addresses for the purpose of notices required by this Agreement are:

For Western: James C. Feider
Area Manager, Sacramento Area Office
Western Area Power Administration
U.S. Department of Energy
1825 Bell Street, Suite 105
Sacramento, CA 95825

For TANC: Jay Abbott
Assistant Project Director
Land and Environment
P.O. Box 15140
Sacramento, CA 95851-5140

For the Service: Wayne S. White
Field Supervisor
Division of Ecological Services
U.S. Fish & Wildlife Service
2800 Cottage Way, Rm E-1803
Sacramento, CA 95825

For Fish and Game: Ryan Brodderick
Regional Manager, Region 2
California Department of Fish & Game
1701 Nimbus Road
Rancho Cordova, CA 95670

8. AUTHORIZED REPRESENTATIVES OF THE PARTIES

Each party, by written notice to each other party, shall designate the representative(s) who is (are) authorized to act on its behalf with respect to this Agreement. Each party may change the designation(s) of its authorized representative(s) upon oral notice to each other party, confirmed promptly by written notice.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

WESTERN AREA POWER ADMINISTRATION

By: James C. Feider Date: 4-23-93, 1993
James C. Feider
Its: Area Manager, Sacramento Area Office

TRANSMISSION AGENCY OF NORTHERN CALIFORNIA

By: Jay Abbott Date: 4-20, 1993
Jay Abbott
Its: Assistant Project Director (COTP)

U.S. FISH & WILDLIFE SERVICE

By: Wayne S. White Date: 4/23, 1993
Wayne S. White
Its: Field Supervisor
Division of Ecological Services

CALIFORNIA DEPARTMENT OF FISH & GAME

By: James D. Messersmith Date: 4-21, 1993
James D. Messersmith
Its: Acting for Regional Manager, Region 2

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