

State of California  
The Resources Agency  
Department of Fish and Game  
WILDLIFE CONSERVATION BOARD



Official Records - Colusa County, Ca  
Kathleen Moran - County Recorder

Recording Requested By:  
WILDLIFE CONSERVATION BOARD  
1807 13th Street  
Sacramento, California 95814

**2003-3106**

Requested By  
STATE OF  
CALIFORNIA

Date: 06/10/2003  
Time: 04:03 PM  
Rec. Fee: \$0.00  
Page Count: 39

When Recorded Mail To:  
State of California  
WILDLIFE CONSERVATION BOARD  
1807 13th Street  
Sacramento, California 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### AMENDMENT TO AGREEMENT AND GRANT OF CONSERVATION EASEMENT

THIS AMENDMENT TO AGREEMENT AND GRANT, is made and entered into this 14 day of May, 2003, by and between the State of California, Department of Fish and Game, acting by and through the Wildlife Conservation Board, hereinafter called STATE, and Leroy V. Traynham III, hereinafter called GRANTOR.

WHEREAS, the parties hereto entered into an Agreement and Grant of Conservation Easement dated December 28, 2001; and

WHEREAS, Paragraph 28 of said Agreement provides that the terms and conditions herein set forth may be amended at any time by mutual agreement of undersigned parties; and

WHEREAS, the parties desire to allow for commercial grazing of livestock on the subject property as an appropriate agricultural use and land management tool.

NOW THEREFORE, the parties agree as follows:

1) Paragraph 2 is amended as follows:

Grantor reserves all rights of surface entry and the right to continue the use of the property for those purposes deemed by STATE in its reasonable judgment as not inconsistent with the purposes, intent and specifications of this Agreement. In general, uses of and activities upon the Easement Lands that shall be deemed by STATE as inconsistent with this Agreement, unless specifically provided for in the Management Plan (Exhibit B), are those uses and activities that in any way result in a material diminution in the quality of wetland and waterfowl habitat or the use thereof by wildlife. Such inconsistent uses and activities shall include, but shall not be limited to, the following: (i) the cultivation of agricultural crops for commercial gain on the Easement Lands; (ii) the alteration of the existing topography of, or other alterations or uses, or permitted alterations or uses by third parties of the Easement Lands for any purpose, including the exploration or development of any reserved minerals, in a manner that would change the topographic or vegetative character of the Easement Lands or adversely affect the waterfowl habitat value or waterfowl use of the Easement Lands; (iii) the placement of any new structures on the Easement Lands other than hunting blinds and those water control structures required to achieve the waterfowl habitat conditions described in Exhibit B; (iv) the killing, removal, alteration or replacement of any existing wetland vegetation; (v) the removal

of living or dead standing trees six inches or greater in diameter, excepting any trees that have been planted solely at the expense of Grantor for windbreak, shade, firewood, or aesthetic value(s); (vi) the application of herbicides, pesticides or other toxic chemicals; (vii) the dumping, burning and/or burying of rubbish, garbage, non-biodegradable materials or any other waste or fill materials.

- 2) The Grazing Paragraph of Exhibit B, Management Plan is hereby amended as follows:

**Commercial Grazing of Livestock**

Commercial grazing of livestock is an allowable land use under this Management Plan. Commercial grazing has been utilized as a grassland and wetland habitat management tool in California for several decades and can be extremely useful in managing diverse plant communities and providing productive wildlife habitat, but grazing must be done in a manner that takes into consideration the needs of the wildlife species for which the subject easement is intended. Fall and early winter grazing can be an effective tool for maintaining the vigor of upland grasses and forbs that serve as nesting habitat for ducks, pheasants, songbirds, and other grassland species. However, these bird species nest on the ground or in the vegetation from mid-February through early July and generally need protection from grazing during the breeding season. Likewise, grazing can also be incorporated into moist-soil management practices to achieve excellent watergrass, smartweed, and sprangletop seed production without excessive accumulation of above-ground stem biomass. This is typically accomplished through high intensity, short duration grazing of the wetlands during June and July, followed by late summer irrigation of the wetlands after removal of livestock.

Grazing of livestock shall be permitted on the property each year in accordance with a written grazing plan. The written grazing plan will establish the timing location, duration and intensity of commercial grazing on the property based on the mutual agreement of the Landowner, the State and Colusa County after a meeting to develop such plan. Failure to reach agreement on the grazing plan shall not preclude grazing on the property. Approval of grazing plan modifications shall not be unreasonably withheld. Landowner shall notify the Colusa County Department of Planning and Building of the date, time, and location of the annual meeting to develop the grazing plan a minimum of five (5) business days before said meeting is to occur.

- 3) The right and obligations of Colusa County and the Landowner under the Williamson Act (Gov. Code Section 51200, et. seq.) are in no way modified or affected by the Agreement and Grant of Conservation Easement, the Management Plan, or this Amendment to Agreement and Grant of Conservation Easement.

Except as herein amended, all terms and conditions of said Agreement shall remain unchanged and in full force and effect.

Executed on May 14, 2003.

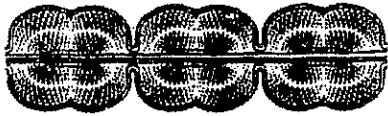
State of California  
Department of Fish and Game:

Grantor:

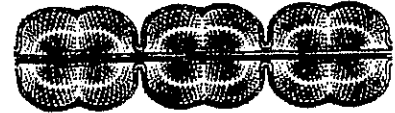
By Al Wright  
Al Wright, Executive Director  
Wildlife Conservation Board

By Leroy V. Traynham III  
Leroy V. Traynham III

# CALIFORNIA



## ALL-PURPOSE



### ACKNOWLEDGEMENT

STATE OF CALIFORNIA )

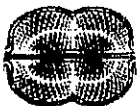
COUNTY OF SACRAMENTO )

On MAY 16, 2003 before me, MAUREEN E. RIVERA, Notary Public,  
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared, AL WRIGHT  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is are subscribed to the within instrument and acknowledged to me that he she /  
they executed the same in his her their authorized capacity(ies), and that by his her their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,  
executed the instrument.

WITNESS my hand and official seal.

Maureen E. Rivera (SEAL)  
NOTARY PUBLIC SIGNATURE



### OPTIONAL INFORMATION



TITLE OR TYPE OF DOCUMENT AMENDMENT TO AGREEMENT AND GRANT OF  
CONSERVATION EASEMENT  
DATE OF DOCUMENT MAY 14, 2003 NUMBER OF PAGES 2  
SIGNER(S) OTHER THAN NAMED ABOVE LEROY V. TRAYNHAM III

STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF COLUSA )

On MAY 14, 2003, before me, MIRRIAN PURVIS,  
the undersigned Notary Public, personally appeared

LEROY W. TRAYNHAM III

X personally known to me - OR -

\_\_\_\_\_ proved to me on the basis of satisfactory evidence  
to be the person whose name is subscribed to the within instru-  
ment and acknowledged to me that he executed the same in his  
authorized capacity, and that by his signature on the instrument  
the person, or the entity upon behalf of which the person acted,  
executed the instrument.

WITNESS my hand and official seal.

Mirrian Purvis  
Notary Public



State of California )  
The Resources Agency )  
Department of Fish and Game )  
WILDLIFE CONSERVATION BOARD )

Recording Requested By: )  
WILDLIFE CONSERVATION BOARD )  
1807 13th Street, Suite 103 )  
Sacramento, California 95814-7117 )

When Recorded Mail To: )  
State of California )  
WILDLIFE CONSERVATION BOARD )  
Attention: Ronald E. Boeck )  
1807 13th Street, Suite 103 )  
Sacramento, California 95814-7117 )



Official Records - Colusa County, Ca  
Kathleen Moran - County Recorder

**02-3533**

Requested By  
STATE OF  
CALIFORNIA

Date: 08/13/2002  
Time: 03:06 PM  
Rec. Fee: \$0.00  
Page Count: 35

01600259

PROJECT: North Central Valley Conservation Reserve  
Enhancement Program (CREP)  
Perpetual Wetlands Conservation Easement  
Traynham Ranch

COUNTY: COLUSA APN's 019-130-15,  
019-130-016, 019-130-049, 019-130-050,  
019-130-051, and 019-130-052.

## AGREEMENT AND GRANT OF CONSERVATION EASEMENT

THIS AGREEMENT AND GRANT OF CONSERVATION EASEMENT (the Agreement) is made and entered into this 28th day of December, 2001, by and between the **STATE OF CALIFORNIA**, acting by and through the Department of Fish and Game, Wildlife Conservation Board, hereinafter called State, and **Leroy V. Traynham III**, hereinafter called Grantor.

### WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property hereinafter described, situated in the County of Colusa, State of California; and

WHEREAS, said property supports or will support habitat of particular importance to waterfowl and other wetland-associated species; and

WHEREAS, Grantor is willing to grant a Conservation Easement to State over said property, thereby restricting and limiting the use of land and contiguous water areas of said property, on the terms and conditions and for the purposes hereinafter set forth in this Agreement; and

WHEREAS, Grantor and State recognize the waterfowl and other wildlife values provided by the property in its present and/or planned state as managed wetland habitat, and have, as evidenced by this executed Agreement, the common purpose of conserving and enhancing the natural and managed wetland habitat and certain upland habitat values of said property, preserving the natural character of said property, and preventing the use or development of said property for any purpose or in any manner which would conflict with the maintenance in perpetuity of those habitat values referred to above.

NOW THEREFORE, for valuable, adequate and sufficient consideration and in further consideration of the mutual covenants, terms, conditions and restrictions hereinafter set forth, Grantor hereby grants and conveys unto State forever and in perpetuity, an interest and Conservation Easement in the lands and water described herein, as provided for in Civil Code 815 et seq. in respect to the lands of Grantor situated in the County of Colusa, State of California, more particularly described as set forth in "Exhibit A", which is attached hereto and made a part hereof. The lands described in Exhibit A shall henceforth be referred to as the Easement Lands.

The terms, conditions, and restrictions of the Conservation Easement are as hereinafter set forth:

1. The terms "State" and "Grantor", respectively, wherever used herein, and any pronouns used in place thereof, shall be held to mean and include the above-named State, the Department of Fish and Game, its officers, employees, successors and assigns, and the above-named Grantor, its heirs, personal representatives, successors and assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of Grantor and State.

2. Grantor reserves all rights of surface entry and the right to continue the use of the property for those purposes deemed by State in its reasonable judgement as not inconsistent with the purposes, intent and specifications of this Agreement. In general, uses of, and activities upon the Easement Lands, which shall be deemed by State as inconsistent with this Agreement, unless specifically provided for in the Management Plan (Exhibit B), are those uses and activities which in any way result in a material diminution in the quality of wetland and waterfowl habitat or the use thereof by wildlife. Such inconsistent uses and activities shall include, but shall not be limited to, the following: (i) the cultivation of agricultural crops for commercial gain on the Easement Lands; (ii) the alteration of the existing topography of, or other alterations or uses, or permitted alterations or uses by third parties of the Easement Lands for any purpose, including the exploration or development of any reserved minerals, in a manner that would change the topographic or vegetative character of the Easement Lands or adversely affect the waterfowl habitat value or waterfowl use of the Easement Lands; (iii) the placement of any new structures on the Easement Lands other than hunting blinds and those water control structures required to achieve the waterfowl habitat conditions described in Exhibit B; (iv) the killing; removal, alteration or replacement of any existing wetland vegetation; (v) the grazing of livestock; (vi) the removal of living or dead standing trees six inches or greater in diameter; excepting any trees that have been planted solely at the expense of Grantor for windbreak, shade, firewood, or aesthetic

value(s), (vii) the application of herbicides, pesticides or other toxic chemicals; (viii) the dumping, burning and/or burying of rubbish, garbage, non-biodegradable materials or any other waste or fill materials.

3. State may permit Grantor to engage in uses and activities on the Easement Lands which are generally considered to be inconsistent with this Conservation Easement as described in Article 2, provided that: (i) Grantor has submitted to State, in writing, the detailed plans for and explanations of the proposed use or activity; (ii) State has thoroughly assessed the probable impact of the proposed use; (iii) if deemed necessary by State, Grantor has prepared or caused to be prepared a detailed mitigation plan to minimize impacts upon both the waterfowl use and wetland habitat values of the Easement Lands and a detailed compensation plan which will fully offset any and all unavoidable adverse impacts thereto, and has made legal and binding assurances that such mitigation and compensation measures shall be implemented in a timely manner; and (iv) all necessary State, local and Federal permits have been obtained for the proposed action.

4. Grantor and State have cooperatively developed a long-term Waterfowl Habitat Management Plan, hereinafter referred to as the Management Plan, designed specifically for the Easement Lands. The Management Plan constitutes Exhibit B, which is attached and hereby made part of this covenant. The Management Plan contains recommended habitat management activities whose implementation is expected to result in the optimization of waterfowl, and/or other wildlife habitat occurring on the Easement Lands. Grantor agrees to judiciously implement each element of habitat maintenance and enhancement as defined in the Management Plan for so long as this Agreement remains in effect. The Management Plan may be amended by the mutual consent of Grantor and State. Grantor may, at Grantor's option, apply to and receive funding through various organizations, including but not limited to State, departments within the U.S. government, Ducks Unlimited, Pheasants Forever, and California Waterfowl Association, for the restoration and further wildlife habitat development of the Easement Lands, provided State has reviewed the proposed action(s) and finds them consistent with the terms and conditions of this Easement Agreement. In the event State is not a participant in such development and restoration of the Easement Lands, upon review of such development plans State shall not unreasonably withhold its permission for such development.

5. State has the right to enter the Easement Lands at all reasonable times, across Grantor's fee if necessary, for the purpose of inspecting said property to determine if Grantor is in compliance with the terms, conditions, restrictions and purposes of this Conservation Easement. State shall not exercise its right to enter Grantor's lands during those periods that Grantor is actively engaged in Grantor's recreational rights without prior written notice given to Grantor by State.

6. The provisions of Article 2 hereof shall not prohibit hunting, fishing, or the 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 he may deem appropriate to improve the Easement Lands as waterfowl habitat and to facilitate the operation of any waterfowl hunting club on the Easement Lands provided that such actions are consistent with the management practices contained in the Management Plan and the provisions of Articles 2 and 3 above. Such actions may include building or relocating blinds, installation of wood duck nesting boxes, providing access to blinds, including but not limited to ditch crossing structures, installing new wells solely for the purpose of supplying water to the Easement Lands and installing and maintaining those water control structures required to achieve the waterfowl habitat conditions described in the Management Plan, irrigating vegetation, fertilizing, planting trees and wetland vegetation, and mowing, disking, and/or burning non-woody vegetation to the extent it encroaches upon the open water areas and interferes with hunting and/or the use of the Easement Lands as waterfowl habitat. Grantor reserves the right without prior State approval to remove and/or burn woody and non-woody vegetation for the purposes of clearing, cleaning, maintenance and restoring of all existing and future water delivery and drainage ditches necessary to support the easement lands and Grantor's adjacent fee ownership. Additionally, Grantor reserves the right, without prior State approval, to maintain and improve existing roads with gravel or other stable materials, install fences and gates, and the right to post the Easement Lands with "no trespassing" notices as necessary to protect the Easement Lands and Grantor's adjacent lands from trespass. In no case shall any action result in the material diminution of either wetland acreage or wetland habitat values.

7. Sixty (60) days prior to the commencement of any activity, use, or enterprise requiring State's approval or which is not entirely consistent with the Management Plan and Article 6 above, Grantor shall provide written notice by registered mail of its intention to commence or undertake such activity, use or enterprise. Said notice shall inform State of all aspects of such proposed activity, use or enterprise.

8. State shall respond within sixty (60) days from the receipt of such notice as required in Article 7 above to inform Grantor of any concerns or objections State may have relative to the proposed activity, use or enterprise. Such objection or concerns, if any, shall be based upon State's opinion that the proposed activity is inconsistent with the purposes, intent or specifications of this Agreement. If, in State's judgment, conformity with the purposes of this Agreement may be achieved by alternative means, State shall, in said response, inform Grantor of the manner in which the proposed activity can be modified to be consistent with this Agreement. Only upon State's express written approval, which shall not be unreasonably withheld, may the proposed activity, use or enterprise be commenced and/or conducted, and only in the manner explicitly represented by Grantor and approved by State.

9. Grantor does hereby grant to State the first priority use of all existing water rights (hereinafter referred to as Easement Waters) as detailed below. The Easement Waters consist of: (i) any riparian water rights appurtenant to the Easement Lands; (ii) any appropriative water rights acquired incident to, or for the purpose of, serving the Easement Lands; (iii) any waters, the rights to which are secured currently or in the



future under contract between Grantor and any private or public entity or individual, for use on the Easement Lands; and (iv) any water from wells currently in existence or which may be constructed in the future that are expressly intended to, or in part, serve and maintain the Easement Lands in a manner consistent with this Agreement. The Easement Waters are limited to use by State and Grantor on the Easement Lands and to the amount of water available to Grantor which is reasonably required to restore, create and maintain wetlands and other significant habitat on the Easement Lands in accordance with this Agreement and the Management Plan.

10. Failure to properly flood the Easement Lands or otherwise duly discharge the habitat management practices described in the Management Plan shall be considered a breach of this Agreement and subject to the remedial measures described in Article 11. However, it shall not be considered a breach of the terms and conditions of this covenant if Grantor is unable to flood the Easement Lands in accordance with the Management Plan due to a curtailment of water deliveries imposed by the serving water district(s) due to drought or the failure of the district's water conveyance system, or due to other temporary conditions that State determines to be clearly beyond the control of Grantor.

11. Upon failure of Grantor to implement satisfactory remedial measures within 30 days of notice by State of a breach of this Agreement, State has the right to enter the Easement Lands at all reasonable times, across Grantor's fee if necessary, and take all necessary steps to perform Grantor's obligation to flood the Easement Lands in the manner prescribed in the Management Plan. In this connection, State shall have, at its sole discretion, the right and option, but not the obligation, to use any and all of the Easement Waters that State deems necessary for waterfowl habitat purposes and to place on the Easement Lands and convey through Grantor's water distribution facilities any other waters State may acquire or have available to it. State shall have the right to make full use of Grantor's water distribution facilities, including both existing facilities and any facilities constructed by Grantor in the future and including all water wells and pumps, to the extent those facilities are capable of serving the Easement Lands and such use does not damage Grantor's remaining fee ownership. Grantor shall be immediately obligated to reimburse State for all costs incurred and said obligation shall bear interest at the maximum rate allowed by law until paid in full by Grantor. However, should State elect to obtain water from a source(s) other than the Easement Waters to flood the Easement Lands and the water thus obtained is more costly than the Easement Waters would have been, then Grantor's obligation to repay State the cost of said water shall not exceed that amount which would have been required had State used the Easement Waters.

In the event State exercises its right to utilize any of Grantor's water distribution facilities and it is proven that those facilities suffered damage due to negligence on the part of State, then State shall be liable to affect the reasonable repair of said damage. The aforementioned damage shall not include the normal wear and tear which could be expected to occur to the water distribution facilities as a result of normal use.

12. In the event that Grantor fails to properly flood the Easement Lands pursuant to the Management Plan (except under the conditions described in Article 10) and, in the interest of waterfowl and habitat protection, State elects to flood the Easement Lands as provided for in

Article 11, Grantor, his agents, invitees and assigns shall not be permitted to hunt for any species of waterfowl on the Easement Lands during the waterfowl season commencing in the year(s) the breach of this covenant occurred. State may grant exception to this restriction only if: i) a waterfowl disease outbreak occurs on the Easement Lands and hunting on the area is determined to be necessary to prevent the concentration of waterfowl on the area while it is being drained of water, or ii) Grantor has, prior to the waterfowl season in question, reimbursed State all of the costs incurred by State for actions taken pursuant to Article 11.

13. In the event that State or Federal government prohibits the hunting of waterfowl in California for a period of three consecutive years, Grantor may apply to State for termination of the Agreement. Such notification shall be made in writing to State on or after February 15 following the third waterfowl season during which Grantor was legally prohibited from hunting waterfowl on the subject property.

14. In the event the State of California or any governmental authority permanently prohibits the discharge of firearms on the subject property, Grantor may immediately initiate release procedures as specified in Article 15 A through C below:

15. In the event that the circumstances in Article 13 or 14 occur and Grantor wishes to be released from the terms and conditions of this covenant, it may pursue, in the same sequence as they appear, the courses of action described below:

A. Grantor must first offer State the first right of refusal to purchase the underlying fee in the Easement Lands. If State elects to pursue the purchase of said lands, State must notify Grantor of its desire to purchase the underlying fee within ninety (90) days of its receipt of this offer. If State elects to purchase, escrow must close not longer than one-hundred and eighty (180) days following receipt of the offer. Should State wish to purchase the underlying fee to the Easement Lands, the purchase price for the underlying fee of the Easement Lands shall not exceed the then current fair market value of the Easement Lands with this Agreement in effect.

B. In the event State declines to exercise its "first right of refusal" to purchase the fee title to the Easement Lands, then Grantor must offer said fee to the U.S. Fish and Wildlife Service and other appropriate public entities or non-profit conservation organizations acceptable to State. Such agencies and organizations shall have ninety (90) days to respond to Grantor from the date of receipt of the offer. In the event of an election to purchase, escrow must close within two hundred, ten (210) days following receipt of the offer. Grantor shall provide State with photocopies of its offers to each of the entities specified above and of any responses received from those entities.

C. If Grantor has been unsuccessful at implementing any of the actions provided for in A and B above, it may then repurchase State's interest in the Easement Lands and so terminate the Agreement. The price for obtaining State's interests shall include any and all costs incurred by State as a result of the repurchase transaction and, at a minimum, the greater of the two following calculated amounts: (1) an amount equal to the difference between the then current fair market value of the Easement Lands at the time of the repurchase transaction with this Agreement in effect and the then current fair market value of the Easement Lands at the time of the repurchase transaction without this Agreement in effect; or (2) the amount paid to Grantor by State under this Agreement plus any interest that would have accrued during the time this Agreement was in affect had said amount been deposited in the State of California Surplus Money Account.

16. Grantor may at any time attempt to divest itself of its remaining interest in the Easement Lands through a donation of said interest. Grantor must first offer said donation to State. State shall consider the offer, but shall not be obligated to accept said donation. In the event that State declines said donation, upon approval by State, which approval shall not be unreasonably withheld or delayed, Grantor may offer to donate its remaining interest in the Easement Lands to an appropriate public entity or non-profit conservation organization acceptable to State.

17. Should Grantor wish to sell the Easement Lands with the terms and conditions of this Agreement in full effect, Grantor must first offer State the first right of refusal to purchase the underlying fee therein. State's purchase price for said underlying fee shall not exceed the then current fair market value of the Easement Lands with this Agreement in effect. However, Grantor is not required to offer individual ownerships to State when the Easement Lands are owned by several individuals (commonly referred to as proprietary ownerships or stockholders) and individual ownerships are to be sold, transferred or traded or the number of proprietary owners or stockholders increased or decreased, provided the Easement Lands remain undivided. Additionally, State's first right of refusal shall not apply for the disposition of the Easement Lands by will, gift, divorce, to, by and between members of Grantor's family.

18. Excepting as authorized in Article 17 above, Grantor shall not sell, grant or otherwise transfer any additional easements, rights-of-way, or other property interests in the underlying estate. In addition, Grantor shall not sell, grant nor transfer those Easement Waters reasonably necessary to maintain the Easement Lands.

19. Grantor agrees that this Conservation Easement shall run with the land and further agrees to provide actual notice of the existence of this Agreement in any subsequent agreement or conveyance by which he divests himself of either the fee title to or of his possessory interest in the project property.

20. State shall record this Agreement in the real property records of the county(s) in which the Easement Lands are located.

21. In the event a violation of any restriction contained in Article 2 hereof, whether by Grantor or a

third party, comes to the attention of State, State shall notify Grantor in writing of such violation. Grantor shall have thirty (30) days after receipt of such notice to, at its sole expense, undertake actions including restoration of that portion of the Easement Lands affected by such activity to a condition which, to the satisfaction of State, is similar or equivalent to the condition that existed prior to the undertaking of such unauthorized activity. If Grantor fails to take such corrective actions to the satisfaction of State, State may, at its discretion, undertake such actions as are reasonably necessary to effect such corrections. State may take legal action to recover the reasonable cost of such corrections and shall be entitled to recovery of State's reasonable expenses, court costs and legal fees from Grantor, provided either Grantor, Grantor's officers, assigns, employees, agents, contractors or other persons permitted by Grantor are determined to be responsible for the violation.

22. Enforcement of the terms and conditions of this Agreement shall be at the reasonable discretion of State, and any forbearance on behalf of State to exercise its rights hereunder in the event of any breach hereof by Grantor shall not be deemed or construed to be a waiver of State's rights hereunder in the event of any subsequent breach.

23. State has the right to prohibit the flooding of the Easement Lands and also to effect immediate drainage of the Easement Lands if either action is deemed by State to be necessary to prevent or control the loss of waterfowl and/or other wildlife species due to disease or environmental contaminants.

24. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall not only be binding upon Grantor but also its agents, personal representatives, heirs and assigns, and all other successors to Grantor in interest and shall continue as a servitude to future owners running in perpetuity with the above-described land.

25. There are excepted and reserved from the Easement conveyed by this Agreement all minerals, including gas, oil and other hydrocarbon substances, underlying the Easement Lands, and this Agreement 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. No exercise of underlying mineral rights, existing easements or rights-of-way shall interfere with the conservation purposes of this easement.

26. If any provision of this Agreement, or the application thereof to any persons or circumstances, is found to be invalid, the remainder of the provisions of this Agreement, and the application of such provisions to persons or circumstances other than those which were found to be invalid, shall not be affected thereby.

27. The interpretation and performance of this Agreement shall be governed by the laws of the State of California and the United States of America.

28. The terms and conditions herein set forth may be amended at any time by mutual agreement of the undersigned parties.

29. In the event that a property adjacent to the Easement Lands, whether owned in fee by Grantor or another, is damaged or said damage appears to be imminent due to water seepage as a result of water management on the Easement Lands pursuant to and consistent with the Management Plan (Exhibit B), Grantor shall immediately notify State. State shall work cooperatively with Grantor to identify appropriate remedies to the seepage problem. Nonetheless, Grantor shall be solely responsible for taking immediate action to remedy the problem, compensate the affected party(s) if necessary and affect whatever measures may be necessary to prevent future damage while continuing to properly implement the Management Plan.

The parties to this Agreement do hereby agree to the terms and conditions of this Agreement as set forth above.

Executed on 4/29, 2002.

State of California  
Department of Fish and Game:

By Al Wright  
Al Wright  
Executive Director  
Wildlife Conservation Board

Grantor:

By Leroy V. Traynham III  
Leroy V. Traynham III

Leroy V. Traynham