

IN-LIEU FEE ENABLING INSTRUMENT

Prescott Creeks Preservation Association

IN-LIEU FEE PROGRAM

This In-Lieu Fee Enabling Instrument (“Instrument”), dated this ____ day of _____, 2013 (“Execution Date”), is made by and between Prescott Creeks Preservation Association (“Program Sponsor” or “PCPA”), the Los Angeles District of the U.S. Army Corps of Engineers (“USACE”), Region IX of the US Environmental Protection Agency (USEPA), US Fish and Wildlife Service (USFWS), Arizona Department of Environmental Quality (ADEQ), Arizona Game and Fish Department (AGFD), Pima County, and the City of Phoenix. These aforementioned agencies comprise and are referred to jointly as the Interagency Review Team (“IRT”). The Program Sponsor and the IRT members who have agreed to sign this Instrument are hereinafter referred to jointly as the “Parties.” This Instrument sets forth the agreement of the Parties regarding the continued use, operation and maintenance of the Prescott Creeks Preservation Association In-Lieu Fee Program (the “Program”).

RECITALS

- A. This Instrument is to continue the operation of the Program Sponsor’s In-Lieu Fee Program in conformance with the requirements of 33 CFR Parts 325 and 332. This Instrument, except for actions covered under Section VI, supersedes the 2006 Memorandum of Agreement (“MOA”) between USACE and PCPA that established an in-lieu-fee program between the parties.

The Program Sponsor is responsible for continuing the operation of the Program. USACE and USEPA have jurisdiction over Waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C § 1251 *et seq.* Waters of the U.S. include jurisdictional wetlands.

- B. The mission of the USEPA is to protect human health and the environment; the mission of the USFWS is working with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people; the mission of the ADEQ is to protect public health and the environment; the mission of the AGFD is to conserve, enhance, and restore Arizona’s diverse wildlife resources and habitats through aggressive protection and management programs, and to provide wildlife resources and safe watercraft and off-highway vehicle recreation for the enjoyment, appreciation, and use by present and future generations; The Pima County Office of Conservation Science and Environmental Policy is located in Pima County; and the City of Phoenix, Office of Environmental Programs, advances environmental protection and sustainability by promoting sound environmental policies and practices.
- C. The IRT is the interagency group which oversees the use, operation, and maintenance of the Program.

- D. The primary goal of the Program is to provide effective Compensatory Mitigation for the Functions and Services of Waters of the U.S. lost through authorized Impacts or as a result of completed enforcement actions pursuant to Section 404 of the CWA.
- E. The objectives of the Program are (1) to provide an alternative to permittee-responsible Compensatory Mitigation by implementing In-Lieu Fee (“ILF”) Projects adequate to meet current and expected demand for Credits in the Service Area; (2) create a Program that has a level of accountability commensurate with mitigation banks as specified in 33 C.F.R. Part 332; (3) provide ILF Projects that meet current and expected demand for Credits; and (4) achieve ecological success on a watershed-basis by siting ILF Projects using the best available decision support tools, and by integrating ILF Projects with ongoing conservation activities being undertaken within the region.
- F. The mitigation plan, as referenced in 33 CFR 332.4 and containing the requirements in paragraphs c2-c14 of that section, will be addressed in each proposed ILF Project by submissions required in Exhibits D-F of this Instrument (Development Plan, Interim Management Plan, Long Term Management Plan).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION I: PURPOSE AND AUTHORITIES

A. Purpose

The purpose of this Instrument is to establish guidelines, responsibilities, and standards for the continued use, operation, and maintenance of the Program. The Program will be used for Compensatory Mitigation for (1) unavoidable Impacts to Waters of the U.S. that result from activities authorized under section 404 of the Clean Water Act or (2) completed enforcement actions under the auspices of section 404 of the Clean Water Act.

B. Authorities

The use, operation and maintenance of the Program will be carried out in accordance with the following authorities:

1. Federal Authorities
 - a. Clean Water Act (33 U.S.C. § 1251 *et seq.*);
 - b. National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*);
 - c. Endangered Species Act (16 U.S.C. § 1531 *et seq.*);
 - d. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*);
 - e. National Historic Preservation Act (16 U.S.C. § 470);
 - f. Regulatory Program of the USACE (33 C.F.R. Parts 320-332); and

- g. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 C.F.R. Part 230).

2. Authority of the USACE

The USACE will make the final decision regarding the amount and type of Compensatory Mitigation to be required of federal permittees, and determine whether and how use of Credits from the Program is appropriate to compensate for unavoidable Impacts.

SECTION II: DEFINITIONS

The initially-capitalized terms used and not defined elsewhere in this Instrument are defined as set forth below.

“Adaptive Management” means an approach to natural resource management which incorporates changes to management practices, including corrective actions as determined to be appropriate by the IRT in discussion with the Program Sponsor based upon annual report results and IRT review of overall Program performance and compliance.

“Advance Credits” means any Credits of the Program that are available for sale prior to being fulfilled in accordance with an approved Development Plan.

“Buffer” means an upland, wetland, and/or riparian area that protects and/or enhances aquatic resource functions associated with wetlands, rivers, stream, and lakes from disturbances associated with adjacent land uses.

“Catastrophic Event” shall mean an unforeseen event, such as the impact of a vehicle or falling aircraft, which has a material and detrimental impact on the ILF Project site(s), and over which the Program Sponsor has no control.

“Compensatory Mitigation” means the Restoration, Establishment, Enhancement, and/or in certain circumstances Preservation of aquatic resources for the purposes of offsetting unavoidable Impacts which remain after all appropriate and practicable avoidance and minimization measures have been achieved.

“Conservation Easement” means a perpetual conservation easement, as defined by Arizona Revised Statute, Ann. §33-271, substantially in the form of **Exhibit H**.

“Credit” is a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at an ILF Project site(s). The measure of aquatic functions is based on the resources Restored, Established, Enhanced, or Preserved.

“Credit Release” means an action by the USACE to make specified Credits available for Transfer pursuant to this Instrument.

“Development Plan” is the document that formally establishes an ILF Project and stipulates the terms and conditions of its construction and habitat establishment activities required to be conducted on the ILF Project site to establish Credits. Each Development Plan will be bound by the terms and conditions of the Instrument by reference.

“Enhance” or **“Enhancement”** means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource Function(s). Enhancement results in the gain of selected aquatic resource Function(s), but may also lead to a decline in other aquatic resource Function(s). Enhancement does not result in a gain in aquatic resource area.

“Establish” or **“Establishment”** means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and Functions.

“Force Majeure” shall mean war, insurrection, riot or other civil disorder, flood, drought, lightning, earthquake, fire, landslide, disease, effects of climate change on habitat or hydrology, condemnation or other taking by governmental body. Other conditions beyond the Program Sponsor’s control will include: interference by third parties; condemnation or other taking by any governmental body; change in applicable law, regulation, rule, ordinance, or permit condition, or the interpretation or enforcement thereof; any order, judgment, action or determination of any federal, state or local court, administrative agency or governmental body; and/or suspension or interruption of any permit, license, consent, authorization or approval.

“Functions” mean the physical, chemical, or biological processes that occur in ecosystems.

“ILF Project” means Compensatory Mitigation implemented by the Program Sponsor under the Program.

“Impacts” mean adverse effects.

“Interim Management Period” means the period from the Program Establishment Date until all the Performance Standards in the Development Plan have been met.

“Interim Management Plan” means the document that describes the management, monitoring, Adaptive Management, reporting and other activities to be implemented by the Program Sponsor during the Interim Management Period. Each Interim Management Plan will be bound by the terms and conditions of the Instrument by reference.

“Long-term Management Period” means the period beginning upon conclusion of the Interim Management Period and continuing in perpetuity, during which each ILF Project is to be managed, monitored and maintained pursuant to the Long-term Management Plan.

“Long-term Management Plan” means the document that identifies specific land management activities that are required to be performed at each of the ILF Project sites, including, but not necessarily limited to, biological monitoring, improvements to biological carrying capacity, enforcement measures, and other actions designed to protect or improve the habitat values of the ILF Project site. Each Long-term Management Plan will be bound by the terms and conditions of the Instrument by reference.

“Performance Standards” means the minimum standards set forth in the Development Plan to define the successful development of Waters of the U.S.

“Phase I Environmental Site Assessment” is an assessment of the environmental condition of the Property performed in accordance with the American Society of Testing and Materials (ASTM) Standard E1527-05 “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,” or any successor to such ASTM Standard which is active at the time of the assessment.

“Preservation” means the protection of existing ecologically important wildlife, habitat or other ecosystem resources in perpetuity.

“Program Account” means an account established by the Program Sponsor at an institution that is a member of the Federal Deposit Insurance Corporation and that is used by the Program Sponsor for the purpose of providing compensatory mitigation for Department of the Army permits.

“Program Effective Date” is the date determined pursuant to Section IV.D., when the Program is considered effective and Transfer of Advance Credits may begin.

“Property Assessment” means the written ILF Project site evaluation signed by the Program Sponsor, using the form attached in **Exhibit I**.

“Remedial Action” means any corrective measures which the Program Sponsor is required to take to ameliorate any injury or adverse Impact to the ILF Project Site as Preserved, Restored or Enhanced or as a result of a failure to achieve the Performance Standards.

“Re-establishment” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area, Functions and Services.

“Rehabilitation” means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource Function, but does not result in a gain in aquatic resource area.

“Restore” or **“Restoration”** means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic Functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

“RIBITS” means the Regulatory In-Lieu Fee and Bank Information Tracking System.

“Services” mean the benefits that human populations receive from Functions that occur in ecosystems.

“Service Area” means the geographic area(s) within which Impacts to Waters of the U.S. that occur may be compensated through Credits from the Program.

“Subordination Agreement” means a written, recorded agreement in which the holder of an interest in, or lien or encumbrance on the ILF Project site makes the lien or encumbrance subject to and of lower priority than the Conservation Easement or equivalent protection mechanism, even though the lien or encumbrance was recorded before the Conservation Easement or equivalent protection mechanism.

“Transfer” means the use, sale, or conveyance of Credits by the Program Sponsor

“Unlawful Act” shall mean the unlawful act of any person or entity other than the Program Sponsor and shall include an event or series of events, such as the intentional release within the ILF Project site(s), or any connected watercourse, of any Hazardous Substance, or the discharge of such a substance in violation of a statute, ordinance, regulation or permit, which event or series of events has a material and detrimental impact on the ILF Project site.

“Waters of the U.S.” mean waterbodies, including wetlands, over which there is federal jurisdiction under section 404 of the Clean Water Act.

SECTION III: STIPULATIONS

A. Disclaimer

This Instrument does not in any manner affect the statutory authorities and responsibilities of the Parties.

B. Exhibits

The following Exhibits are attached to and incorporated by this reference into this Instrument:

- A - Prioritization and Compensation Planning Framework
- B - Service Area
- C - Instrument Modification Procedure
- D - Development Plans
- E - Interim Management Plans
- F - Long-term Management Plans
- G - Statement of Sale of Credit
- H - Real Estate Instrument
- I - Property Assessment Form
- J - Credit Ledger Report Form

SECTION IV: PROGRAM STRUCTURE

A. Framework

This Instrument is intentionally broad and sets the framework under which Program sponsored ILF Projects will be identified, funded, operated, maintained and managed. The Instrument

provides the authorization for the Program to provide Credits to be used as Compensatory Mitigation for Department of the Army permits or as a result of completed enforcement actions under the auspices of section 404 of the Clean Water Act. As ILF Projects are identified, the Program Sponsor will submit site-specific Development Plans, Interim Management Plans, and Long-term Management Plans to the USACE for review and approval as modifications to the Instrument through the process outlined in **Exhibit C**, and included in this Instrument as subparts of **Exhibits D-F**.

B. Service Area

The Service Area for the Program are defined as an area inside the Salt River Subregion (HUC #1506), which includes HUC #150602, Verde River Watershed Accounting Unit and the HUC #150601, Salt River Watershed Accounting Unit as described in **Exhibit A** and shown in **Exhibit B**. This specific service area was chosen based on environmental considerations and socioeconomic conditions, in relation the Program Sponsor's jurisdictional boundary. Use of the program outside of this service area may only be approved by the USACE on a case-by-case basis.

C. Program Account

1. Upon the Instrument being fully executed by all of the Parties and prior to accepting any fees from federal permittees, the Program Sponsor must establish a Program Account. The Program Account will collect deposits from the sale of Credits, and will be used only for the comprehensive costs associated with site selection, design, acquisition, implementation, and management of ILF Projects, and administrative costs for the Program Sponsor. Administrative costs equal to 18% of each Credit sale will be allowed for the Program Sponsor to manage the Program. All interest and earnings from the Program Account will remain in that account for the purpose of providing Compensatory Mitigation for unavoidable Impacts to Waters of the U.S. Funds for the operation of the Program may be obtained from other sources and repaid as Credits are sold.
2. Complete budgets for individual ILF Projects will be approved as part of Development Plans.
3. Annual accounting reports will be presented by September 30th for approval by the USACE. Reports will include detailed summaries of Program Account deposits and disbursements for each ILF Project made over the previous state fiscal year (July 1 – June 30) (Section VII). Any deviation in excess of ten percent from the approved budget will require USACE approval before additional funds are disbursed. The USACE may review Program Account records with 14 days written notice. When so requested, Program Sponsor shall provide all books, accounts, reports, files, and other records relating to the Program Account.

D. Program Effective Date

The Program Effective Date will occur and Transfer of Advance Credits may begin only after (1) the Instrument has been fully executed by all of the Parties and (2) the Program Account has been established. Within 30 days of the Program Effective Date, the Program Sponsor shall

upload the final, signed Instrument including all of its Exhibits, to RIBITS and provide an electronic copy each member of the IRT.

E. ILF Projects

Program Sponsor will identify potential ILF Projects consistent with the Instrument and submit a Development Plan, including a project budget, Interim Management Plan, and Long-term Management Plan to the USACE along with a written request for an Instrument Modification (**Exhibit C**). Program Sponsor will implement the ILF Projects upon approval and report annually to the IRT (Section VIII).

F. Establishment and Use of Credits

In accordance with the provisions of this Instrument and upon satisfaction of the Credit Release schedule described in Development Plans (contained herein as subparts of **Exhibit D**) and in Section VII.C, Credits are available for Transfer as Compensatory Mitigation in accordance with all applicable requirements for permits issued under section 404 of the Clean Water Act or completed enforcement actions under the auspices of section 404 of the Clean Water Act. The USACE, based on recommendations of the IRT, will determine the number of Credits available for each ILF Project based upon the approved design and the resulting habitats achieved, in accordance with the terms and conditions contained herein.

SECTION V: ILF PROJECT ESTABLISHMENT AND OPERATION

This section identifies the general framework in which individual ILF Projects will be established and operated. Each ILF Project will be approved individually, as detailed herein, and the specific requirements for its operation, monitoring, and management will meet the USACE standard operating procedures at the time of its approval. The Program Sponsor shall provide for access to the ILF Project site by members of the IRT or their agents or designees at reasonable times as necessary to conduct inspections and compliance monitoring with respect to the requirements of this Instrument. Inspecting parties shall not unreasonably disrupt or disturb activities on the ILF Project site, and will provide written notice within reasonable time prior to the inspection.

A. Establishment

1. Project Site Selection

All individual ILF Projects will be located within the Program Service Area (s). Program Sponsor will seek ILF Projects based on the prioritization and compensation planning framework outlined in **Exhibit A**.

2. Instrument Modifications

As ILF Projects are identified, Program Sponsor will prepare a Development Plan, including a project budget, Interim Management Plan, and Long-term Management Plan and submit a written request to the USACE to modify the Instrument. This process is outlined in **Exhibit C**.

3. Permits

The Program Sponsor will obtain all applicable permits and authorizations needed to construct and maintain the ILF Project(s). This Instrument does not constitute or substitute for any such approval.

4. Financial Assurances

Notwithstanding any other provision of this Instrument, the Program Sponsor's financial obligation for the Program will be limited to funds in the Program Account. The Program Sponsor will take the following actions to ensure funds are available to meet mitigation requirements for Credits Transferred:

- a. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account, and disbursed as work is accomplished to operate and monitor the individual ILF Projects.
- b. Funds outlined in approved ILF Project budgets will be earmarked, held in the Program Account to manage the individual ILF Project, including contingency and Remedial Actions.
- c. A financial assurance for each ILF Project in accordance with 33 C.F.R. 332.3(n).

Each approved ILF Project will have an identified schedule for the release of the financial assurances as the ILF Project meets its approved Performance Standards.

B. *Operation*

1. Development Plans

Program Sponsor shall be responsible for preparing Development Plans in accordance with **Exhibit D**. The Development Plans shall outline measurable objectives, Performance Standards, and monitoring requirements. Pre- and post-ILF Project implementation jurisdictional determination and delineations (as appropriate) and functional assessments will be completed using USACE-approved techniques. Development Plans must include a survey or other document acceptable to the USACE, completed by a professional land surveyor or other qualified person or entity, defining the ILF Project site, and a Property Assessment using the Form in **Exhibit I**. Upon approval of the Development Plan by the USACE, the Program Sponsor shall be responsible for implementing the plan.

2. Interim Management and Monitoring

Program Sponsor shall be responsible for preparing Interim Management Plans in accordance with **Exhibit E**. Upon approval of the Interim Management Plan by the USACE, the Program Sponsor shall be responsible for conducting management and monitoring activities according to the Interim Management Plan until completion of the Interim Management Period.

3. Long-term Management and Monitoring

ILF Projects shall be designed, to the maximum extent practicable, to be self-sustaining once Performance Standards have been achieved. Program Sponsor shall be responsible for preparing Long-term Management Plans in accordance with **Exhibit F**. Once the Interim Management Period is completed, the Program Sponsor shall implement long-term management and monitoring of the ILF Project site(s) according to the Long-term Management Plan. Program Sponsor shall be obligated to manage and monitor the ILF Project site in perpetuity to preserve its habitat and conservation values in accordance with this Instrument, the real estate instrument (e.g., Conservation Easement), and the Long-term Management Plan. Such activities shall be funded through the Program Account, including, but not limited to, the potential transfer of long-term management funds to be managed by the steward in a separate endowment account pursuant to 33 C.F.R. § 332.8(u)(3). Program Sponsor and the IRT members shall meet and confer upon the request of any one of them, to consider revisions to the Long-term Management Plan which may be necessary or appropriate to better conserve the habitat and conservation values of the ILF Project site(s). During the Long-term Management Period, Program Sponsor shall be responsible for submitting annual reports to each member of the IRT in accordance with Section VIII.A of this Instrument. The Program Sponsor shall upload annual reports into RIBITS.

4. Remedial Action Plan

Prior to Program closure, if any Party discovers any failure to achieve the Performance Standards or any injury or adverse impact to the ILF Project site as Preserved, Established, Restored, or Enhanced, the Party making the discovery shall notify the other Parties. Subject to the limitations on any duty of the Program Sponsor to remediate outlined in Section IX.A, the USACE, in consultation with the IRT members, may require the Program Sponsor to develop and implement a Remedial Action plan to correct such condition, as described below. The annual report required under Section VIII.A. shall identify and describe any Remedial Action proposed, approved, or performed and, if the Remedial Action has been completed, evaluate its effectiveness.

- a. Within 60 days of the date of written notice from the USACE, the Program Sponsor shall develop a Remedial Action plan and submit it to the USACE for approval. The Remedial Action plan must identify and describe proposed actions to achieve the Performance Standards or ameliorate injury or adverse impact to the ILF Project site and set forth a schedule within which the Program Sponsor will implement those actions. The Program Sponsor shall implement the necessary and appropriate Remedial Action in accordance with the Remedial Action plan approved by the USACE. In the event the Program Sponsor fails to submit a Remedial Action plan to the USACE in accordance with this section, the USACE will notify the Program Sponsor that the Program Sponsor is in default and may identify Remedial Action the USACE deems necessary. If (a) the Program Sponsor fails to develop a Remedial Action plan or to implement Remedial Action identified by the USACE, in accordance with this section, or (b) conditions have not improved or continue to deteriorate two years after the date that the USACE approved a Remedial Action plan or notified Program Sponsor of Remedial Actions the USACE deemed necessary, then the USACE may direct funds from the Program Account to undertake Remedial Action on the ILF Project site.
- b. If the USACE determines, in consultation with the IRT, that the Program is operating at a Credit deficit (i.e., that Credit Transfers made exceed the Credits authorized for release, as adjusted in accordance with this Instrument), then the USACE shall notify the Program Sponsor. Upon the USACE giving such notice, Program Sponsor shall immediately cease Transfer of Credits. The USACE, in consultation with the IRT, will determine what Remedial

Action is necessary to correct the Credit deficit, and Program Sponsor shall implement such Remedial Action, in accordance with this Section V.B.4.

5. Long-term Ownership and Protection

Program Sponsor shall be responsible for ensuring long-term protection of each ILF Project through the use of real estate instruments in accordance with 33 C.F.R. 332.7(a). Program Sponsor will ensure that the real estate instrument is in place **prior to** ILF Project implementation, as stipulated in each Development Plan. The draft real estate instrument, substantially in the form of **Exhibit H**, shall be

submitted to the IRT for review and USACE approval. The real estate instrument shall include, but is not limited to, assigning long-term management responsibility for the ILF Project and will, to the extent practicable, prohibit incompatible uses that might otherwise jeopardize the objectives of the ILF Project. A copy of the recorded real estate instrument shall be furnished to the Parties and become part of the official Program record. If any action is taken to void or modify an ILF Project real estate instrument, Program Sponsor must notify the USACE in writing.

SECTION VI: PRE-EXISTING ILF PROJECTS

A. ILF Projects (A) previously approved for design under the 2006 MOA and (B) fully funded (for construction through long term management) prior to the Program Effective Date shall be completed in accordance with the terms of the 2006 MOA. If any of the ILF Projects approved under the 2006 MOA are discontinued, abandoned, or completed and closed, any remaining monies shall become unobligated, placed in the Program Account, and managed in accordance with this Instrument.

B. ILF Projects previously approved for design under the 2006 MOA but not fully funded as defined by Section VI A shall be completed in accordance with the terms of this Instrument. For ILF Projects subject to this Section VI B, any funds received prior to the Program Effective Date will be transferred to the Program Account within 10 days of the Program Effective Date.

C. Funds received under the 2006 MOA that remain unobligated as of the Program Effective Date, will be transferred to the Program Account within 10 days of the Program Effective Date and managed in accordance with this Instrument.

Section VII: CREDIT ACCOUNTING

A. Advance Credits

Upon the Program Effective Date, Program Sponsor is permitted to Transfer sixty (60) Advance Credits. The number of Advance Credits that are approved for Transfer was developed in coordination with the USACE and IRT and is based on (1) the historic loss of wetlands/aquatic resources and future threats within the Service Area as outlined in the compensation planning framework in **Exhibit A**, (2) the Program Sponsor's past performance for implementing Enhancement, Restoration, Establishment, and/or Preservation activities within the Service Area, and (3) the projected financing necessary to begin planning and implementation of ILF Projects. No more than 25%, or 15 Advance Credits, may be Transferred and later fulfilled as Preservation Credits. At least 75% of the Advance Credits must be fulfilled as Establishment, Enhancement, Buffer and/or Restoration Credits.

Once the Program Sponsor has sold all of its Advance Credits, no more Advance Credits may be sold until an equivalent number of Credits has been released in accordance with the approved Credit Release schedule outlined in an ILF Project-specific Development Plan. Once all Advance Credits are fulfilled, an equivalent number of Advance Credits may be made available for Transfer, at the discretion of the USACE, in consultation with the IRT.

Program Sponsor shall complete land acquisition and initial physical and biological improvements by the third full growing season after the Transfer of Advance Credits. If Program Sponsor fails to meet these deadlines, the USACE must either make a determination that more time is needed to plan and implement an ILF Project or, if doing so would not be in the public interest, direct the Program Sponsor to disburse funds from the Program Account to provide alternative Compensatory Mitigation to fulfill those compensation obligations.

B. Generation of Credits

Each approved ILF Project Development Plan will include the method for determining the Credits generated by the individual ILF Project. Program Sponsor may only generate Credits from an ILF Project when there is a net benefit to aquatic resources at the site as determined by the difference between pre- and post-site conditions. Credit generation will be determined using a USACE approved functional assessment method on a per-acre basis. Preservation of existing waters of the United States that support a significant population of rare plant or animal species, or that are a rare aquatic resource type may be proposed to generate Credits. Credits may also be proposed for Preservation or improvements of riparian areas, Buffers and uplands if the resources in these areas are essential to maintain the ecological viability of a Water of the U.S. Credits generated for Preservation and Buffers will be determined on a case-by-case basis by the USACE, in consultation with the IRT, in accordance with 33 C.F.R. 332.3(h) and (i).

C. Credit Release

Each approved ILF Project Development Plan will include a Credit Release schedule referenced to Performance Standards. As milestones in an individual ILF Project's Credit Release schedule are reached (i.e., Restoration, Establishment, Enhancement and/or Preservation is implemented), Advance Credits are converted to released Credits. At a minimum, Credits will not be released until the Program Sponsor has obtained USACE approval of the Development Plan for the ILF Project site, has achieved the applicable milestones in the Credit Release schedule, and has submitted a request for Credit Release to the USACE along with documentation substantiating achievement of the criteria for release to occur and Credit Releases have been approved by the USACE. If the ILF Project does not achieve the performance-based milestones, the USACE may modify the Credit Release schedule, including reducing the number of Credits.

1. Establishment, Enhancement, Restoration Credits. In general, the Credits for Establishment, Enhancement, and Restoration areas may be released according to the following schedule:

a. Up to 25% of advance credits may be released upon approval of a Development Plan and recordation of a real estate instrument for the purpose of implementing an ILF Project.

b. Up to an additional 25% of advance credits may be released upon completion of improvements per the approved Development Plan and USACE approval of the as-built report.

c. Up to an additional 25% of advance credits may be released incrementally upon achievement of short term (i.e., Years 2-4) Performance Standards.

d. The remaining generated Credits may be released upon achievement of long-term (i.e., Year 5) Performance Standards.

2. Preservation and Buffer Credits. In general, because Preservation and Buffers do not involve construction of improvements or meeting short term Performance Standards, up to 80% of advance credits associated exclusively with Preservation and Buffers may be released upon acquisition and full legal protection of the lands to be Preserved. Up to an additional 20% of advance credits may be released upon achievement of long-term Performance Standards, which, under normal circumstances, will be no later than five (5) years after the approval of the Development Plan for the site.

D. Balance of Credits

The Program will have available for Transfer the number of available Advance Credits for the Program, plus any released Credits generated by ILF Projects beyond those required to fulfill Advanced Credit Transfers.

E. Fee Schedule

The cost per unit of Credit must include the expected costs associated with the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources in the Service Area. These costs must be based on full cost accounting, and include, as appropriate, expenses such as land acquisition (including, without limitation, options to purchase), project planning and design, construction, plant materials, labor, legal fees, monitoring, and remediation or adaptive management activities, as well as administration of the Program. This list is not meant to be exhaustive and may include other categories, as appropriate, as determined by the Program Sponsor on a case-by-case basis. The cost per unit of Credit must also take into account contingency costs appropriate to the stage of project planning, including uncertainties in construction and real estate expenses. The cost per unit of Credit must also take into account the resources necessary for the long-term management, protection of the ILF Project, and enforcement of the long-term instrument or other protection mechanism. In addition, the cost per unit of Credit must include financial assurances that are necessary to ensure successful completion of ILF Projects. These fees shall be reviewed at least annually and updated as appropriate.

F. Transfer of Credits

1. All activities regulated under section 404 and 401 of the Clean Water Act may be eligible to use the Program as Compensatory Mitigation for unavoidable Impacts.
2. Credits purchased may be used in conjunction with a USACE permit authorization or resolution of an unauthorized activity. Credits may also be purchased under the Endangered Species Act/Habitat Conservation Plans and other tribal, state, or local

wetlands regulatory programs, along with other federal programs and Department of Defense military construction projects consistent with the term and requirements of these programs and provided that all requirements at 33 CFR, §332 (j)(1) are met.

3. Deposits for such Credits shall be placed in the Program Account.
4. The USACE will make decisions about the most appropriate Compensatory Mitigation on a case-by-case basis, during evaluation of a Department of the Army permit application. This Instrument does not guarantee that the USACE will accept the use of Program Credits for a specific project, and authority for approving use of the Program for Compensatory Mitigation lies with the USACE.
5. The responsibility to provide Compensatory Mitigation remains with the permittee unless and until Credits are purchased from the Program. Upon USACE approval of purchase of Credits from the Program, the permittee may contact the Program Sponsor to secure the necessary amount and resource type of Credits, as outlined in Department of the Army permit conditions. Upon Transfer of Credits, the Program Sponsor shall enter the Transfer into RIBITS.
6. Program Sponsor assumes all legal responsibility for fulfilling Compensatory Mitigation requirements for USACE-authorized activities for which fees have been accepted. The transfer of liability is established by: 1) the approval of this Instrument; 2) receipt by the USACE of a Credit sale certificate that is signed by the Program Sponsor and the permittee and dated (see **Exhibit G**); and 3) the transfer of fees from the permittee to the Program Sponsor. A copy of each certificate will be retained in the administrative and accounting records for the Program Instrument. Other than what is described in this paragraph, no other legal responsibility for the permit will transfer to the Program Sponsor, unless a separate agreement is entered into between the Program Sponsor and the permittee.
7. Debits will be reflected in annual accounting reports as outlined in Section VIII.
8. Subject to the limitations on any duty of the Program Sponsor to remediate outlined in Section IX.A, if a ILF Project site is damaged after the Program Effective Date, and such damage materially impairs Waters of the U.S. or habitat values on such damaged ILF Project site, then the USACE, in consultation with the IRT, may, at its discretion, direct Program Sponsor to suspend the Transfer of Credits and/or reduce the number of Credits allocated to

9. the ILF Project in proportion to such damaged area unless and until the Program Sponsor has reasonably restored such damaged area, if required, pursuant to a Remedial Action plan approved by the IRT.

SECTION VIII: PROGRAM REPORTING

A. Annual Report

Program Sponsor shall upload an annual report to RIBITS and furnish a copy to each member of the IRT, in hard copy and in editable electronic format, on or before September 30th of each year following the Program Effective Date. Each annual report shall cover the period from July 1 of the preceding year (or if earlier, the Program Effective Date for the first annual report) through June 30th of the current year (the “Reporting Period”). The annual report shall address the following:

1. ILF Project Development

The annual report shall document the degree to which each ILF Project site in the Program is meeting its Performance Standards. The annual report shall describe any deficiencies in attaining and maintaining Performance Standards and any Remedial Action proposed, approved, or performed. If Remedial Action has been completed, the annual report shall also evaluate the effectiveness of that action.

2. Interim Management and Long-term Management

The annual report shall contain an itemized account of the management tasks conducted during the reporting period in accordance with the Interim Management or Long-term Management Plan for each ILF Project site, including the following:

- a. The time period covered, i.e. the dates “from” and “to”;
- b. A description of each management task conducted, the dollar amount expended and time required; and
- c. The total dollar amount expended for management tasks conducted during the reporting period.

3. Credit Ledger Report

The annual report shall include an updated Credit Transfer Ledger (**Exhibit J**, for each ILF Project site) showing the beginning and end balance of available Credits and permitted impacts for each resource type, all additions and subtractions of Credits, and any other changes in Credit availability (e.g., additional Credits released, Credit sales suspended).

4. Program Account

The annual accounting report in accordance with Section IV.C.3.

B. Credit Transfer Reporting

Upon the Transfer of each and every Credit, the Program Sponsor shall enter the Credit Transfer into RIBITS and submit to each member of the IRT:

1. A copy of the certification in the form provided at **Exhibit G** that identifies the permit number, a statement indicating the number and resource type of Credits that have been secured from the Program Sponsor, and that legal responsibility has transferred from the permittee to Program Sponsor; and
2. An updated Credit Transfer Ledger, in hard copy and in editable electronic format in the form provided at **Exhibit J**.

SECTION IX: OTHER PROVISIONS

A. Force Majeure

1. The Program Sponsor shall be responsible to maintain the ILF Project site and perform Remedial Action except for damage or non-compliance caused by Catastrophic Events, events of Force Majeure or Unlawful Acts. In order for such exception to apply, the Program Sponsor shall bear the burden of demonstrating all of the following:
 - a. That the damage or non-compliance was caused by circumstances beyond the control of the Program Sponsor and any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants;
 - b. That neither the Program Sponsor, nor any person or entity under the direction or control of the Program Sponsor, including its employees, agents, contractors and consultants, could have reasonably foreseen and prevented such damage or non-compliance; and
 - c. The period of damage or non-compliance was a direct result of such circumstances.
2. The Program Sponsor shall cease Transfer of Credits and notify the USACE and IRT within seventy-two (72) hours of occurrence of a Catastrophic Event, event of Force Majeure, or Unlawful Act, and as promptly as reasonably possible thereafter Program Sponsor, USACE, and the IRT shall meet to discuss the course of action in response to such occurrence. In the meantime, Program Sponsor shall continue to manage and maintain the ILF Project to the full extent practicable.

B. Default

1. *Notice of Violation.* In the event that the Program Sponsor is in violation of the terms of this Instrument or that a violation is threatened, any Party may demand the cure of such violation. In such a case, the Party shall issue a written notice to the Program Sponsor (hereinafter "Notice of Violation") informing the Program Sponsor of the actual or threatened violations and demanding cure of such violations.

2. *Time to Cure.* The Program Sponsor shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the Program Sponsor shall, within the thirty (30) day period, submit to the other Parties for review and approval a plan and time schedule to diligently complete a cure. The Program Sponsor shall complete such cure in accordance with the approved plan. If the Program Sponsor disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter “Notice of Dispute”) to the other Parties within thirty (30) days of receipt of written Notice of Violation.

3. *Failure to Cure.* If the Program Sponsor fails to cure the violation within the time period(s) described in Section IX B. 2., the USACE may take appropriate action. Such actions may include, but are not limited to, suspending Credit sales, Adaptive Management, decreasing available Credits, directing funds to alternate locations, taking enforcement actions, or terminating the Instrument. The USACE cannot directly accept, retain, or draw upon funds in the Program Account in the event of a default. Any delay or failure of the Program Sponsor to comply with the terms of this Instrument or an approved Development Plan shall not constitute default if and to the extent that such delay or failure is primarily caused by any Force Majeure or other conditions beyond Program Sponsor’s reasonable control and significantly adversely affects its ability to perform its obligations hereunder. Program Sponsor shall give written notice to the other Parties if the performance of its ILF Project is affected by any such event in accordance with Section IX.A.2.

4. *Notice of Dispute.*

a. If the Program Sponsor provides the other Parties with a Notice of Dispute, as provided herein, the other Parties shall meet and confer with the Program Sponsor at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the other Parties receive the Notice of Dispute. The other Parties shall consider all relevant information concerning the disputed violation provided by the Program Sponsor and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by a Party or Parties is appropriate in light of the violation.

b. If, after reviewing the Program Sponsor’s Notice of Dispute, conferring with the Program Sponsor, and considering all relevant information related to the violation, the Parties determine that a violation has occurred, the Parties shall give the Program Sponsor notice of such determination in writing. Upon receipt of such determination, the Program Sponsor shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the Program Sponsor shall, within the fifteen (15) day period, submit to the Parties for review and approval a plan and time schedule to diligently complete a cure. The Program Sponsor shall complete such cure in accordance with the approved plan.

C. Dispute Resolution

Resolution of disputes concerning the Parties' compliance with this Instrument shall be in accordance with those stated in 33 C.F.R. 332.8. Disputes related to satisfaction of Performance Standards may be referred to independent review from government agencies or academia that are not part of the IRT. The Parties will evaluate any such input and determine whether the Performance Standards have been met.

D. Modification, Amendment and Termination of Instrument

1. *Modification and Amendment.* This Instrument, including its Exhibits, may be amended or modified only with the written approval of the Parties. Instrument modifications, including the addition or expansion of ILF Projects, will follow the process outlined in **Exhibit C**. The USACE may use a streamlined modification review process for changes reflecting Adaptive Management of an ILF Project site, Credit Releases, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant (**Exhibit C**).

2. *Termination/Program Closure.* Any Party to this Instrument may terminate its participation in this Instrument by giving 60 days written notice to the other Parties. In the event that the Program operated by Program Sponsor is terminated (i.e., closed), Program Sponsor is responsible for fulfilling any remaining ILF Project obligations including the successful completion of ongoing mitigation projects, relevant maintenance, monitoring, reporting, and long-term management requirements. Program Sponsor shall remain responsible for fulfilling these obligations until such time as the long-term financing obligations have been met and the long-term ownership of all mitigation lands has been transferred to the party responsible for ownership and all long-term management of the ILF Project(s). Funds remaining in the Program Accounts after these obligations are satisfied must continue to be used for the Restoration, Establishment, Enhancement, and/or Preservation of aquatic resources within the Service Area. The USACE shall direct the Program Sponsor to use these funds to secure Credits from another source of third-party mitigation, such as another in-lieu fee program, mitigation bank, or another entity such as a governmental or non-profit natural resource management entity willing to undertake the compensation activities. The funds should be used, to the maximum extent practicable, to provide compensation for the amount and type of aquatic resource for which the fees were collected.

E. Controlling Language

The Parties intend the provisions of this Instrument and each of the documents incorporated by reference in it to be consistent with each other, and for each document to be binding in accordance with its terms. To the fullest extent possible, these documents shall be interpreted in a manner that avoids or limits any conflict between or among them. However, if and to the extent that specific language in this Instrument conflicts with specific language in any document that is incorporated into this Instrument by reference, the specific language within the Instrument shall be controlling. The captions and headings of this Instrument are for convenient reference only, and shall not define or limit any of its terms or provisions.

F. Entire Agreement

This Instrument, and all exhibits, appendices, schedules and agreements referred to in this Instrument, constitute the final, complete and exclusive statement of the terms of the agreement between and among the Parties pertaining to the Program, and supersede all prior and contemporaneous discussions, negotiations, understandings or agreements of the Parties. No other agreement, statement, or promise made by the Parties, or to any employee, officer, or agent of the Parties, which is not contained in this Instrument, shall be binding or valid. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in accordance with Section IX.D. Each of the Parties acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any of the other Parties or anyone acting on behalf of any of the Parties unless the same has been embodied herein.

G. Reasonableness and Good Faith

Except as specifically limited elsewhere in this Instrument, whenever this Instrument requires a Party to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed. If a Party disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining Party shall furnish its reasons in writing and in reasonable detail within 30 days following the request.

H. Successors and Assigns

This Instrument and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns subject to the limitations on transfer set forth in this Instrument.

I. Partial Invalidity

If a court of competent jurisdiction holds any term or provision of this Instrument to be invalid or unenforceable, in whole or in part, for any reason, the validity and enforceability of the remaining terms and provisions, or portions of them, shall not be affected unless an essential purpose of this Instrument would be defeated by loss of the invalid or unenforceable provision.

J. Notices

1. Any notice, demand, approval, request, or other communication permitted or required by this Instrument shall be in writing and deemed given when delivered personally, sent by receipt-confirmed facsimile, or sent by recognized overnight delivery service, addressed as set forth below, or five days after deposit in the U.S. mail, postage prepaid, and addressed as set forth below.
2. Notice by any Party to any other Party shall be given to all Parties. Such notice shall not be effective until it is deemed to have been received by all Parties.
3. Addresses for purposes of giving notice are set forth below. Any Party may change its notice address by giving notice of change of address to the other Parties in the manner specified in this Section IX.J.

Program Sponsor:

Prescott Creeks Preservation Association
PO Box 3004, Prescott, AZ 86302
Attn: Michael Byrd
(928) 445-5669
(928) 445-5671(fax)

IRT Members:

USACE:

U.S. Army Corps of Engineers
Los Angeles District – Regulatory Division
915 Wilshire Blvd.
Los Angeles, CA 90017
Marjorie.E.Blaine@usace.army.mil

AGFD:

Arizona Game and Fish Department
5000 West Carefree Highway
Phoenix, AZ 85086
BBroscheid@azgfd.gov

USEPA:

USEPA, Region IX
WTR-8
75 Hawthorne Street
San Francisco, CA 94105
Goldman.Elizabeth@epamail.epa.gov

Pima County:

Pima County
201 N. Stone Ave., 6th Floor
Tucson, AZ 85701
Julia.Fonseca@pima.gov

ADEQ:

ADEQ
Mailstop 5415A-1
1110 W. Washington
Phoenix, AZ 85007
Taunt.Linda@azdeq.gov

City of Phoenix:

City of Phoenix
Office of Environmental Programs
200 W. Washington Street
14th Floor
Phoenix, AZ 85003
Wendy.Wonderley@phoenix.gov

K. Counterparts

This Instrument may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute a single executed agreement.

L. No Third Party Beneficiaries

This Instrument shall not create any third party beneficiary hereto, nor shall it authorize anyone not a Party hereto to maintain any action, suit or other proceeding, including without limitation, for personal injuries, property damage or enforcement pursuant to the provisions of this Instrument. The duties, obligations and responsibilities of the Parties to this Instrument with respect to third parties shall remain as otherwise provided by law in the event this Instrument had never been executed.

M. Availability of Funds

Implementation of this Instrument by the Parties is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. § 1341, and the availability of appropriated funds. Nothing in this Instrument may be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the California State Treasury. No Parties are required under this Instrument to expend any appropriated funds unless and until an authorized official affirmatively acts to commit to such expenditures as evidenced in writing.

N. No Partnerships

This Instrument shall not make or be deemed to make any Party to this Instrument an agent for or the partner or joint venturer of any other Party.

O. Governing Law

This Instrument shall be governed by and construed in accordance with the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and other applicable federal and state laws and regulations.

P. Headings and Captions

Any paragraph heading or captions contained in this Instrument shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this Instrument.

Q. Right to Refuse Service

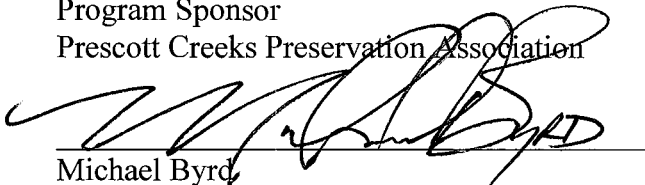
USACE approval of Transfer of Credits from the Program does not signify Program Sponsor's acceptance or confirmation of Program Sponsor's offer to Transfer. Program Sponsor reserves the right to refuse to Transfer Credits from the Program for any reason.

SECTION X: EXECUTION

Each of the undersigned certifies that he or she has full authority to bind the Party that he or she represents for purposes of entering into this Instrument. This Instrument shall be deemed executed on the date of the last signature by the Parties.


IN WITNESS WHEREOF, the Parties have executed this Instrument as follows:

Program Sponsor
Prescott Creeks Preservation Association


Michael Byrd
Executive Director


14 Jun 2013
Date

U.S. Army Corps of Engineers, Los Angeles District


David J. Castanon
Chief, Regulatory Division
Los Angeles District

6-27-13
Date

Concurring Interagency Review Team


Marjorie E. Blaine
Interagency Review Team Chair

6-10-2013
Date

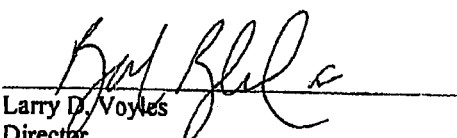
Concurring Agencies:

U.S. Environmental Protection Agency, Region IX


Jason Brush
Manager, Wetlands Office, Water Division

7.22.13
Date

Arizona Game and Fish Department


Larry D. Voyles
Director

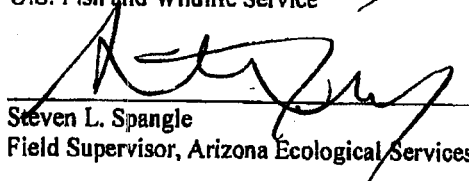
6/22/13
Date

Pima County


Chuck Huckelberry
County Administrator


6/17/13
Date

U.S. Fish and Wildlife Service


Steven L. Spangle
Field Supervisor, Arizona Ecological Services Field Office

6/24/13
Date

Arizona Department of Environmental Quality


Linda Taunt
Deputy Director, Water Quality Division

6/17/13
Date

City of Phoenix

Philip McNeely
Environmental Programs Manager

Date

Exhibit A: Prioritization and Compensation Planning Framework

A. Service Areas

Verde River Watershed Service Area

The Program is intended to utilize the Verde River Watershed, USGS Accounting Unit #150602 as a service area. The Verde River Watershed is located in central Arizona, and spans four counties; Coconino, Gila, Maricopa, and Yavapai, with 50% of the watershed being in Yavapai County (Arizona NEMO 2005). The major cities/towns within the Verde River Watershed include Prescott, Sedona, Seligman, Ash Fork, Chino Valley, Camp Verde, and Cottonwood. The Verde River Watershed also contains portions of the Phoenix Metropolitan Area (US Census Bureau 2010), the City of Phoenix has stated that 50% of their water supply comes from the Salt River Project, of which approximately 40% is from the Verde River Watershed (Verde River Basin Partnership 2012).

The Verde River watershed is located in the Transition Zone between the Colorado Plateau and the Basin and Range physiographic provinces (Springer and Haney 2008), and ranges from 1,323 to 12,617 feet above sea level over its 6,622 square miles (Arizona NEMO 2005). Streamflow in the upper 26 miles of the Verde River is sustained by surface runoff and groundwater discharge from the upper Verde River Springs, and spring discharge is comprised chiefly of water from the Big Chino (80%) and Little Chino (14%) aquifers (Wirt et al 2005). Streamflow in the middle Verde River is sustained by surface runoff, base flow from the upper Verde River, groundwater sources, and contributions from tributaries, where the flow of the river then increases significantly (Springer and Haney 2008) into the lower Verde River.

The Verde River is a tributary to the Salt River in the Colorado River Basin (HUC 15) and lies within the Salt River Subregion (HUC 1506). Its major tributaries are Chino Wash, Williamson Valley Wash, Walnut Creek, Granite Creek, Hell Canyon, Sycamore Creek, Oak Creek, Beaver Creek, and West Clear Creek (Springer and Haney 2008), illustrated in Figure 3. The Verde River is perennial from a group of springs near the confluence of Granite Creek to the Horseshoe/Bartlett Reservoirs, and “unlike many rivers in the West, most of the watershed is unregulated (no significant dams) and thus retains a natural flood regime (Pearthree 2008).”

The Verde River supports 10 native fish species, including the federally endangered razorback sucker (*Xyrauchen texanus*) and Colorado pikeminnow (*Ptychocheilus Lucius*), along with the threatened spinedace (*Meda fulgida*). Three sensitive riparian herpetofauna species survive in the watershed; the northern Mexican gartersnake, the narrow headed gartersnake, and the lowland leopard frog. The Verde River supports over 200 recorded resident and neo-tropical migratory birds, and species such as the federally endangered southwestern willow flycatcher and the yellow-billed cuckoo depend on the river’s woody riparian forests. Finally, the Verde River supports the largest number of bald eagle breeding areas any river in the state, is one of only three rivers in Arizona with

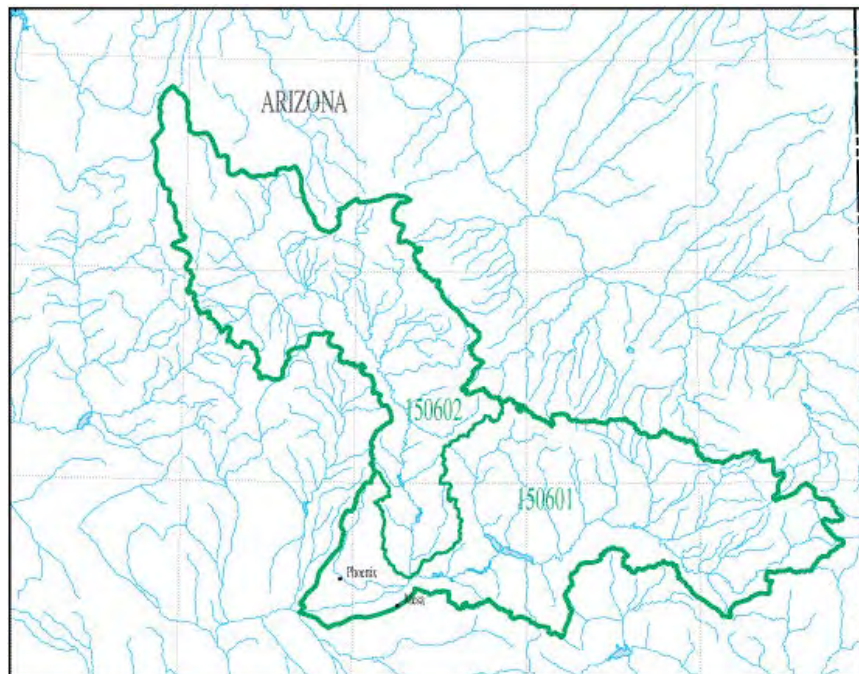
population of river otter (*Lontra canadensis*) (Northern Arizona University), and an increasing population of beaver (*Castor canadensis*).

The Verde River Watershed supports a variety of diverse riparian habitats such as cottonwood/willow gallery forests, velvet mesquite (*Prosopis velutina*) bosques, and mixed broadleaf communities consisting of Arizona sycamore (*Platanus wrightii*), velvet ash (*Fraxinus velutina*), cottonwood, Arizona alder (*Alnus oblongifolia*), Arizona walnut (*Juglans major*), and willows. Upland habitats include Semi-desert Grassland, Great Basin Conifer Woodland, Sonoran Desert scrub (Rivers.gov), Pinyon pine (*Pinus edulis*) and Juniper (*Juniperus sp*) forests, and Ponderosa pine (*Pinus ponderosa*) forests.

The Verde River Watershed is made up of three smaller watersheds (USGS Cataloging Units): HUC #15060201-Big Chino-Williamson Valley, HUC #15060202-Upper Verde River, and HUC #15060203-Lower Verde River (Figure 3). Program Sponsor shall use a watershed approach and landscape perspective within each of these watersheds to identify types and locations of individual mitigation projects and subsequently design projects to maximize the watershed benefit and offset impacts to aquatic resources caused by USACE permitted activities.

Salt River Watershed Service Area

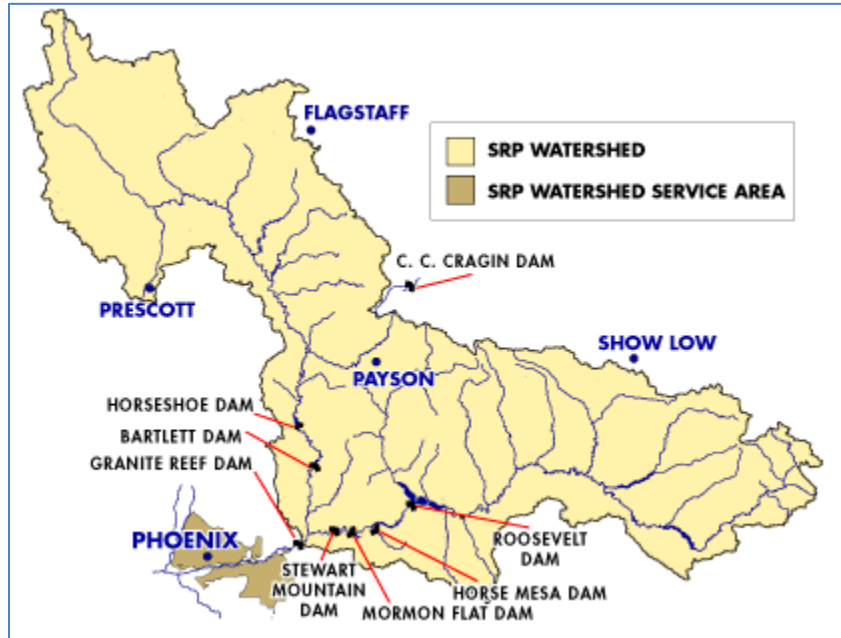
The Program is intended to utilize the Salt River Watershed, USGS Accounting Unit 150601 as a service area. The Salt River Watershed is located in East/Central Arizona primarily within Gila County, and portions of Navajo, Apache, Greenlee, Graham, Pinal, and Maricopa Counties. As with the Verde River Watershed (HUC 150602), the Salt River Watershed/Accounting Unit is located within the larger Salt River Subregion (HUC 1506), illustrated below:



The Salt River Subregion contains both the Salt River Watershed (150601) and the Verde River Watershed (150602) (USGS)

SRP

The primary need for this service area is due the fact that these 2 watersheds/accounting units contain the entire Salt River Project (SRP) “Watershed” (SRP Watershed) shown below:



Source – www.srpnet.com/water/dams

According to SRP, the water from this 13,000 square mile SRP Watershed originates as rain and snow that drain into the Salt and Verde Rivers in an area that extends from the White Mountains near the New Mexico border to the Seligman Area in north central Arizona. In this area, SRP “brings water from the high country to the desert through a complex system of dams, lakes, canals, laterals, ditches, pipes and valves...with runoff from the watershed collected in six reservoirs.”

According to the Bureau of Reclamation, SRP has a “water service area of about 375 square miles and an electric service area covering 2,900 square miles spanning portions of Maricopa, Gila, and Pinal Counties in central Arizona. In addition to the aforementioned dams/reservoirs, SRP also contains a “Distribution and Drainage System,” consisting of “131 miles of irrigation canals, 878 miles of laterals, and 250 miles of drain ditches.”

SRP’s system also includes “about 250 deep-well pumps located throughout the Valley that help supplement our surface water supplies” (srpnet.com). The total pumping capacity of these wells is 738,595 acre-feet (usbr.gov). In total, SRP delivers “roughly one million acre-feet of water each year” (phoenix.gov) and serves more than 890,000 electric customers in the greater Phoenix metropolitan area (usbr.gov). As a result, “SRP is now the third-largest public power utility in the nation.”

Public Need

The Verde River Watershed is a significant contributor to the SRP Watershed. According to the Verde River Basin Partnership, 50% of the Phoenix Water Supply comes from SRP, of which approximately 40% is from the Verde River. Therefore, the Verde River and Salt River Watersheds/Accounting Units are not only connected hydrologically, but both are dependent on one another to provide water to the 6th largest city in the Country (US Census Bureau).

Impacts to Waters of the US/Wetlands within the Salt River Subregion and Verde/Salt Accounting Units will likely continue to occur, as the Arizona Department of Administration projects that the Phoenix Metropolitan area will increase from 4,273,900 (2012) to 5,205,600 (2022). Similarly, the population of Arizona will increase from 6,498,600 (2012) to 7,758,600 (2022). To support this population growth, improving infrastructure (roads, utility lines) will be critical, especially improving the capacity/efficiency of reservoirs, dams, and other water-related projects. Along with continued development (commercial, residential, industrial), a public need exists to ensure that aquatic resources are protected and that as many options as possible are available to provide mitigation for these future impacts.

The volume and capacity of SRP is extensive and is essential for the City of Phoenix, which represents 66% of the entire population of Arizona and a major hub in the southwest. Considering the water needs of a growing population in Phoenix, the general lack of aquatic resources (wetlands, riparian areas, groundwater), and a likely shortage of appropriate mitigation opportunities, there is a public need for an expanded service area to provide mitigation for impacts within the Salt River Accounting Unit, which supports SRP and others dependent on this water supply.

Mitigation Opportunities

While impacts to aquatic resources occur within the Salt River Accounting Unit (150601), providing available mitigation sites may be difficult. According to the Arizona Department of Water Resources, 59% of the of the land in the “Salt River Basin” (which excludes the City of Phoenix) is under tribal ownership, 38.6% is federally owned/managed by the United States Forest Service, with 1.5% being privately owned. This represents a significant hurdle to securing appropriate mitigation site, along with many of the aquatic resources in this area ultimately being managed by SRP.

The Verde River Watershed/Accounting Unit contains 71% of lands managed/owned by the United States Forest Service (ADWR). However, 20.2% of the land is private, with a majority of this private land being in the northwestern portion of the watershed, which shares a “checkerboard” pattern with state land (7.4% of the watershed). Since compensatory mitigation is typically more practicable on private lands, providing mitigation within the Verde River Watershed/Accounting Unit for impacts within the Salt River Watershed/Accounting Unit may be appropriate and/or the only option in certain circumstances.

B. *Existing Threats to Aquatic Resources*

Essentially, all riparian ecosystems in the Southwest are considered to be at risk for decline (Dobyns 1981). In 2006, American Rivers pronounced the Verde River as the 10th Most Endangered River in the United States (Smith et al 2009). Although this is due primarily to excessive groundwater pumping, other threats to the watershed include population growth and development activities, tourism, agriculture/livestock activities, water control projects, invasive vegetation, and mining.

Groundwater

Major aquifers such as the Big Chino Aquifer and Little Chino Aquifer supply at least 80% and 14% the base flow of the upper Verde River, respectively. All domestic, municipal, and industrial water comes from groundwater pumping in the watershed, and additional irrigation water also comes from groundwater in the Big and Little Chino aquifers, above the Verde River's headwater springs (Northern Arizona University). Current and historical excessive use of these aquifers is a threat to the natural flow of the Verde River and the health of its riparian and wetland areas.

In order to manage the usage of these valuable aquifers, the Prescott Active Management Area (AMA) was created by the 1980 Groundwater Code. Operating under the Arizona Department of Water Resources (ADWR), the AMA includes the municipalities of Prescott, Chino Valley, Prescott Valley, Dewey-Humbolt, and other unincorporated areas of Yavapai County (Figure 4).

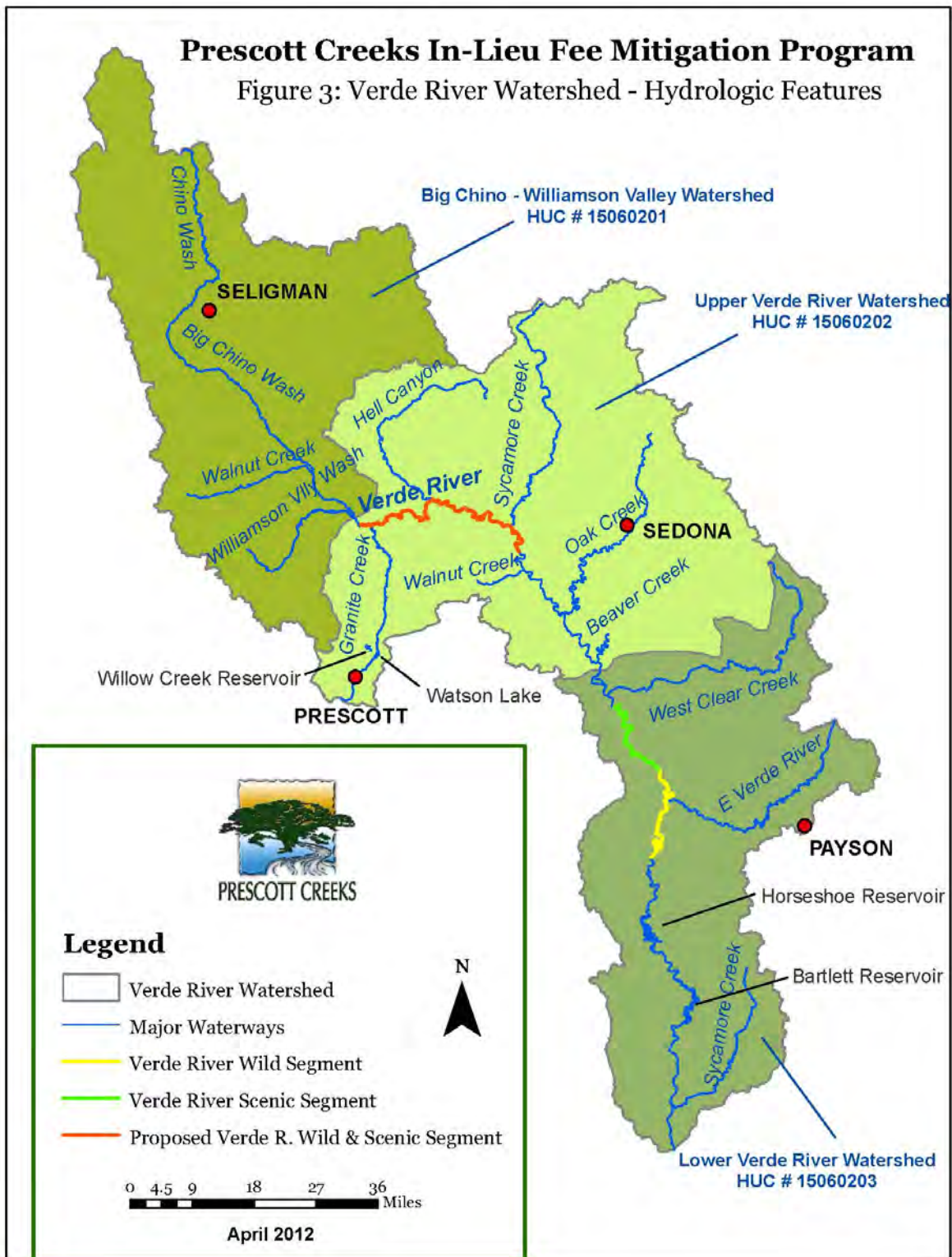


Figure 1-Verde River Watershed-Hydrologic Features

The AMA was created to reduce localized groundwater overdraft and achieve a “safe-yield” by 2025. Safe-yield means that the amount of groundwater pumped from the aquifer on an annual basis must not exceed the amount that is natural or artificially recharged (University of Arizona). Current studies, programs, and planning are underway to accommodate and consider the recent growth in urban and suburban areas, climate change, improve water quality, and alternative water supplies.

A major potential threat to the Verde River is the Big Chino Ranch (BCR) Project, a project that was recently created after the ADWR declared that the Prescott AMA was no longer at a safe-yield. This triggered full implementation of the Assured Water Supply Rules, requiring that only renewable or imported water supplies from outside the AMA be utilized. As a result, Prescott and Prescott Valley purchased the BCR (located above the Big Chino Aquifer), with the intentions of building a series of groundwater wells to extract water from the aquifer, and a 30 mile pipeline from the BCR to Paulden and Chino Valley (Figure 4), which would then tie-into the AMA member’s current water-supply system. The system would be designed to extract and transport up to 12,400 acre-feet of groundwater per year (City of Prescott).

The construction of a 30-mile pipeline and associated facilities will likely have to traverse wetlands, riparian areas, and/or waters of the US, resulting in direct/indirect and permanent/temporary impacts. In regard to groundwater extraction, as rivers and streams are “dewatered,” a succession of plant life overtakes the former riparian corridor. Phreatophytes like cottonwoods and willows are slowly replaced by a succession of upland species. The Verde River is at risk of becoming an intermittent waterway-If that were to happen, biological diversity would plummet, and riparian zones would disappear. Also as floods continue to occur, a lack of riparian areas would lead to severe channelization, bank down-cutting, lateral erosion, and changes in streambed topography (Von Gausig et al 2011) throughout the watershed.

The USGS recently published (April 2013) the “*Human Effects on the Hydrologic System of the Verde Valley, Central Arizona, 1910-2005 and 2005-2110, Using a Regional Groundwater Flow Model.*” As summarized by Ed Wolfe (Vice Chair of the Verde Watershed Association), considering the effects of groundwater extraction within Northern Arizona, the Verde River base flow has decreased by 4,900 acre-feet/year (1910-2005). Where the river exits the Verde Valley below Camp Verde, this flow has decreased by 10,200 acre-feet/year (1910-2005).

For three hypothetical forward-looking runs, the modeled rate of depletion of base flow in 2109 ranges from 7,600-8,700 acre-feet/year where the river enters the Verde Valley above Clarkdale, and the modeled rate of base-flow depletion below Camp Verde ranges from 15,600 to 18,800 acre-feet/year (prescottaz.com).

In order to mitigate for historic and future losses due to excessive groundwater extraction and construction impacts, Program Sponsor shall develop and implement the restoration, establishment, enhancement, and/or preservation of aquatic resources. Riparian and wetland habitat are critical to achieving natural surface flow and contributing to

groundwater recharge. In addition, the conservation of water through natural riparian habitats reduces the need to extract groundwater for irrigation, commercial/industrial, or residential use.

Population Growth and Development

The Verde River Watershed contains Yavapai, Maricopa, Gila, and Coconino Counties. According to the US Census Bureau, these 4 counties contained 66% of Arizona's population in 2010. Yavapai County, which makes up 50% of the watershed, has seen a 49% population growth from 1990-2010 (106,895 to 211,033). Also, the Prescott General Plan forecasts that by 2020, the unincorporated areas of Yavapai County are predicted to grow by 53%. Coconino County, another large presence (34%) within the watershed, has experienced a 28% population growth from 1990-2010 (96,591 to 134,421).

A significant development project known as Yavapai Ranch represents a potential threat to aquatic resources within the Verde River Watershed. Located within the Big Chino/Williamson Valley Watershed, this development currently proposes approximately 12,500 homes and three commercial centers on this remote 51,000 acre ranch (Nellans 2012). This development received initial approval from Yavapai County in late 2012, and there are also discussions of land swaps with the National Forest and potential wind farms. This development has the potential to negatively impact surface water as infrastructure and buildings are constructed, and groundwater as water is extracted for public use.

As population growth in these areas increases, so does the need for additional roads, infrastructure projects, and supporting development activities, which may result in adverse impacts to the aquatic environment. According to City-Data.com, Prescott, AZ was #26 of cities in the United States with the most local government spending on highway construction per resident. The Arizona Department of Transportation (ADOT) has planned \$70.2 million worth of highway projects in Yavapai County through 2016; this includes improvements to turnoffs/exits to Sedona, 12 miles worth of improvements to I-40 near Ash Fork, roadway reconstruction projects near Cottonwood, and a widening of 30 miles of I-17 between the new Cordes Junction and Black Canyon City (Journalaz.com). All of these road projects are designed to accommodate historic, current, and projected development growth.

Sewer improvement projects also have the potential to adversely impact riparian and aquatic ecosystems. For example, in Prescott, many of the existing sewer lines are beneath the actual creek/stream bottom and are in need of repair-any replacement/repair activities would require channel excavation and temporary access/storage in wetlands/riparian areas. Also, Prescott has several projects planned such as improvements to the Airport Water Reclamation Facility and new forcemain projects that will likely affect aquatic ecosystems.

Providing appropriate compensatory mitigation for development-related activities is critical to achieving Program Sponsor' aquatic resource goals and objectives, as this represents a funding mechanism to implement the projects and realize the benefits that

will be achieved by aquatic resource restoration, establishment, enhancement, and/or preservation activities. As credits are secured through the ILF, Program Sponsor will develop and implement mitigation activities commensurate with the impacts to aquatic resources.

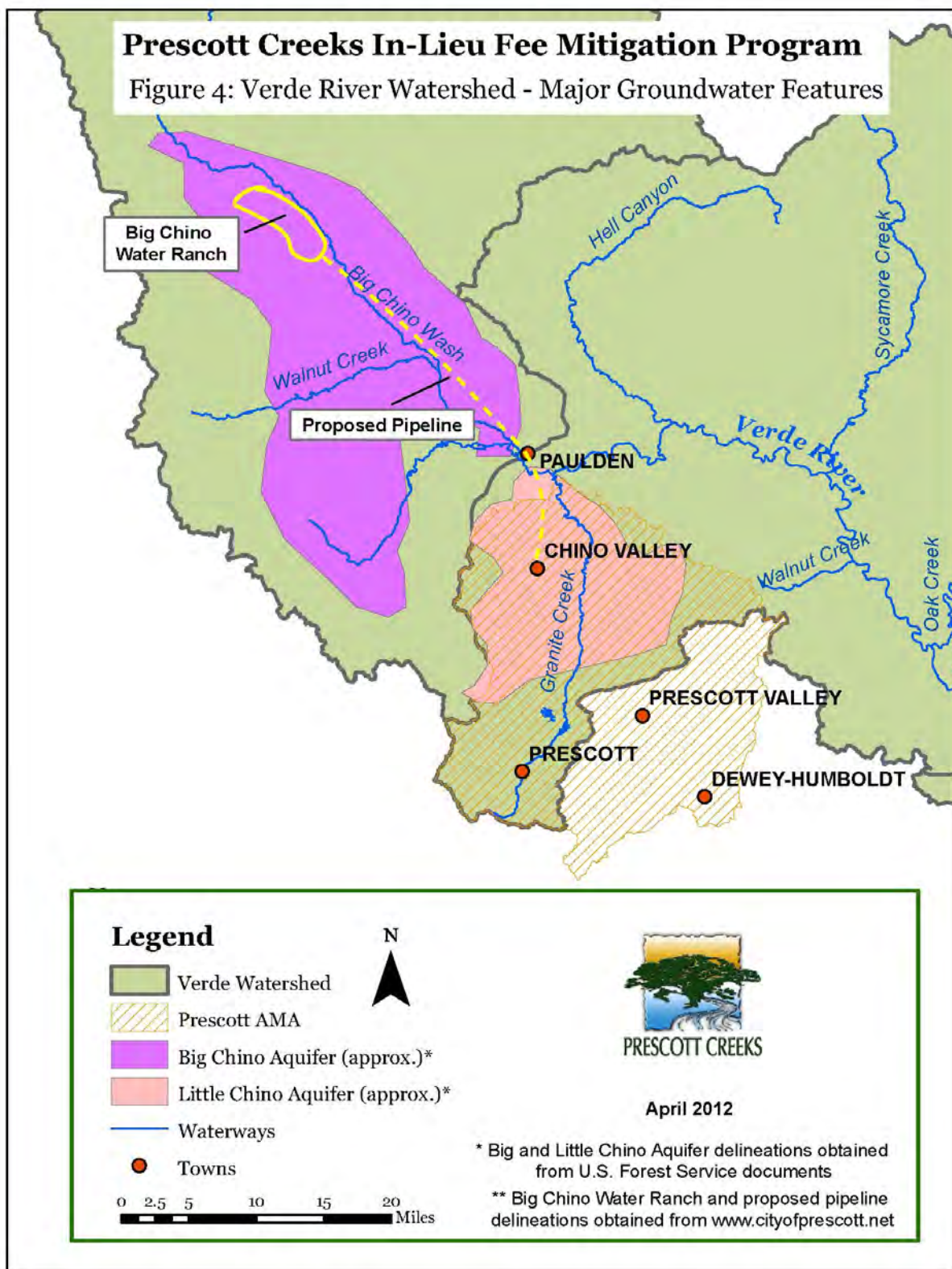


Figure 2-Verde River Watershed-Major Groundwater Features

Tourism

Because the Verde River represents one of the last perennial waterways in Arizona, many tourists travel from inside and outside Arizona to visit the Verde River and its tributaries for hiking/camping, swimming, boating, and hunting and fishing. According to the Arizona Office of Tourism, in 2006-2007, at least one third of the visitors to the Verde Valley came from Arizona, and that visiting state and national parks and historic places were the most popular activities, along with activities directly related to the natural beauty of the Verde Valley and often directly linked to the Verde River itself (Smith and Haney 2008). Visitors to the Verde Valley bring an estimated total economic impact of \$772 million to the area.

Although tourism and water-based recreational activities provide a public benefit, these same activities can adversely impact aquatic ecosystems. Sport fishing and hunting aquatic animals can lead to population declines and affect predator-prey interactions. Off-highway vehicles can lead to habitat destruction and loss of streambank stability and erosion, along with providing access to remote areas, which increases stress and pressure on fish and wildlife in previously inaccessible areas. Pollution from “gray water” and hydrocarbon residues from camping and boating also occurs, which also negatively affects riparian/wetland systems (Regional Aquatics Monitoring Program). Finally, a strong tourism industry increases the need to update/improve road systems and provide additional commercial services-being that the Verde River Valley provides such a significant economic value in regards to tourism, it is likely that new development activities may be located near or at the river itself.

Aquatic resources directly/indirectly impacted by tourism related development shall be compensated by the restoration, establishment, enhancement, and preservation of riparian and wetland areas. Also, mitigation activities will help reduce the amount of pollutants in the water. Finally, education through the ILF program shall increase awareness of how boating, OHV use, and camping can effect aquatic resources, and provide techniques to reduce this impact.

Agriculture and Livestock

Surface water in the Verde Valley is used mostly for irrigation purposes (Arizona Department of Water Resources), which is especially evident in the southern part of the Verde Valley (Owen-Joyce and Bell 1983). Natural waterways are channelized, filled, and diverted to supply this water to farms, which causes erosion, increased sedimentation, loss of natural riparian habitat, and associated water quality issues. High sodium levels from continuous “recycling” of water in the Verde River and its tributaries occur downstream from Camp Verde. Turbidity is also a persistent problem partly due to inadequate range management (AZ Department of Water Resources). Fertilizers also contribute to increased levels of nitrogen, phosphorus, and potassium, which lead to excessive growth of aquatic vegetation, ultimately resulting in low dissolved oxygen levels in the water.

Grazing by domestic animals (i.e. cattle, sheep, goats) has direct and indirect effects on riparian ecosystems (Ohmart 1996). Livestock heavily use riparian areas because of their

high productivity of herbaceous species and readily available water and shade (Webb and Leake 2005). Adverse effects to riparian areas include consumption and trampling of native-plant seedlings, soil compaction, destabilization of channel banks, increase in streamflow sediment concentrations; and displacement of wildlife (Lusby et al 1971; Ohmart 1996).

Program Sponsor will help offset impacts resulting from these threats by restoring/enhancing riparian areas to reduce the level of pollutants in the water and increase stream bank stability. Also, removing livestock from individual mitigation sites, providing effective seasonal management, and/or effective boundary control shall allow for native vegetative regrowth and improve water quality and wildlife habitat.

Water Control Projects

The Verde River Watershed contains several water control projects/features that have the potential to adversely impact the watershed. The major projects include the Watson Lake Dam, Willow Lake Dam, the Barlett Dam, and the Horseshoe Dam. Any change in operation, maintenance projects, or any new construction activities associated with these dams has the potential to directly and/or indirectly affect aquatic resources. As additional riparian areas, wetlands, and/or waterways are filled by additional structures or temporarily impacted for access and construction, securing restored, enhanced, or preserved wetlands/riparian areas at an appropriate ratio shall provide mitigation for these activities.

Invasive Vegetation

Invasive vegetative species in riparian, wetland, and upland buffer areas also represent existing threats to aquatic resources. Invasive species out-compete native grasses, shrubs, and trees, and in some cases can even alter the chemical composition of the soil. Examples of invasive species include, but are not limited to Spotted/Russian Knapweed, Scotch Thistle, Common Teasel, Dalmatian Toadflax, Siberian Elm, and Salt Cedar. Program Sponsor intends to control/manage invasive vegetation on all mitigation sites through means such as physical removal, herbicides where appropriate, supplemental plantings of native vegetation, and active management.

Mining

The Verde River Watershed and surrounding areas are home to numerous active and abandoned copper, gold, sand/gravel, and other mineral mines. Although current National Pollutant Discharge Elimination Systems (NPDES) permitting programs are now in place, past mining operations have resulted in high levels of sodium, turbidity, boron, mercury, iron, ammonium, and selenium in some areas in the Verde River Watershed (Northern Arizona University). Examples of how mitigation activities will address these threats include the restoration of riparian areas/buffer zones to provide filtration of these pollutants or restoring abandoned mining sites into wetlands.

C. Historic Aquatic Resource Losses

In the United States, the lower 48 states have lost over 50% of its original wetlands; ~220 million acres in the 1600's to 103.3 million acres in the mid-1980s (Dahl and Johnson

1991). Major loss of wetland habitat occurred during the mid-1950s to mid-1970s, but since then the rate of loss has decreased to 70,000 to 90,000 acres annually. In addition to the wetlands that have been completely lost, others have just been degraded by chemical contamination and excessive nutrients, fertilizers, and sediments flow. The increase in flood damages, drought damages, and the declining bird populations are, in part, the result of wetland degradation and destruction (USGS 2003).

According to the USGS (2003), less than 1% (729,600 acres) of Arizona's landscape has wetlands. Since the late 1800's, streams and wetlands throughout Arizona have been modified or drained, resulting in the loss of more than one-third of the state's original wetlands (~2.2 million acres). The most extensive Arizona wetlands are in riparian zones, oxbow lakes, marshes, cinegas, and bosques.

The Verde River Watershed makes up approximately 6% (6,622 square miles) of Arizona's 114,000 square miles. By applying the USGS's 1% wetland figure to 6,622 square miles of the watershed's size, the Verde River Watershed contains approximately 42,380 acres of wetlands. Using this information, Program Sponsor has developed the following wetland loss analysis:

- In the late 1800's (1890), there were approximately 63,570 acres of wetlands
- Since 1890, the Verde River Watershed has lost 21,190 acres of wetlands
- Since 1890, the Verde River Watershed has lost 174 acres of wetlands per year

D. Current Aquatic Resource Conditions

The Verde River and the Verde River Watershed contain a significant number of aquatic resources when compared to the remainder of Arizona and much of the southwest. As such, the watershed is home to many unique plant species and ecosystems which have great intrinsic value, but also serve as habitat for a number of animal species (Stevens et al 2008). The AGFD identifies 10 types of riparian areas, and Brown, Lowe and Pace (1979) classified vegetation in the watershed into 9 different biotic communities.

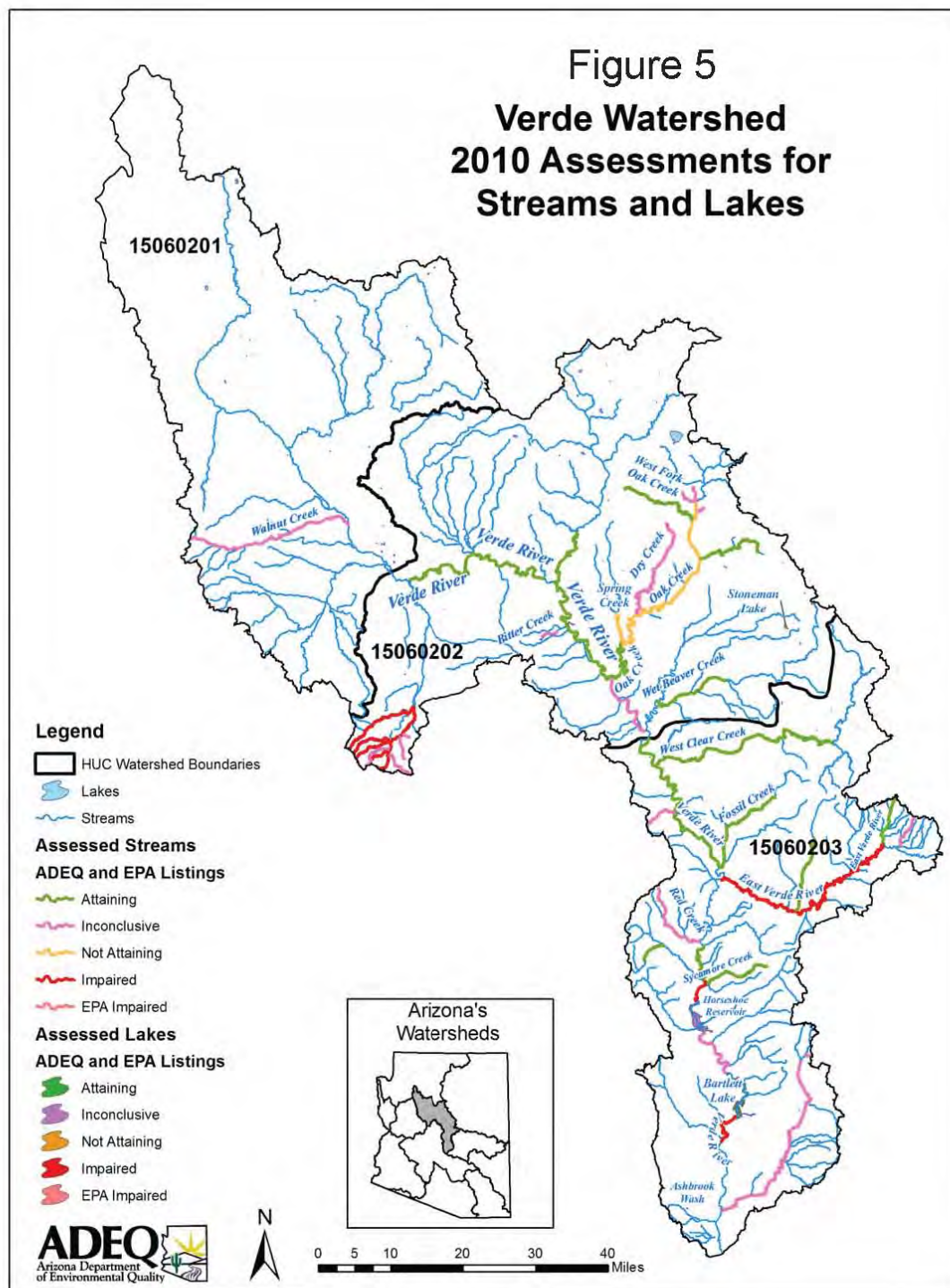
Cottonwood-willow areas cover only 0.13% of the riparian area of the watershed, but are among the riparian types that are more widely used in the watershed by non-fish vertebrates, and are highly sensitive to changes in streamflow (Stromberg 2008, Stevens et al 2008, Smith et al 2009). The Verde River seasonally supports over 248 species of birds (Schmidt et al 2005, Stevens et al 2008), 92 species of mammals (Hoffmeister 1986; Feldhamer et al 2003; Schmidt et al 2005; Stevens et al 2008), and 10 native fish species.

Because of the unique ecological attributes of the Verde River, a portion of the river between Beasley Flats and Sheep Bridge is designated as the only "Wild and Scenic" river in Arizona (Smith et al 2009). According to the National Wildland and Scenic Rivers System (2007), this portion of the river corridor contained outstandingly remarkable scenic, fish and wildlife, and historic and cultural values. Also, additional portions of the Verde River are currently being proposed for Wild and Scenic River Designation (Figure 3-page 12).

While the Verde River Watershed contains many aquatic resources that provide habitat for wildlife, these same attributes have attracted many anthropogenic activities in recent times that have adversely impacted the watershed. The Arizona Department of Environmental Quality's 2010 Verde River Watershed Assessment (Figure 5) shows many of the streams, rivers, and lakes are officially designated as "impaired" including major contributing waterways in the Upper Granite Creek Watershed (Willow, Miller, Butte, Manzanita, and Granite Creeks), the East Verde River, and a portion of the Verde River just downstream from the Bartlett Dam-the last major water control structure before the Phoenix Metropolitan Area. However, several waterways such as segments of the Verde River, West Fork Oak Creek, West Clear Creek, and Fossil Creek are listed as "attaining" appropriate water quality standards.

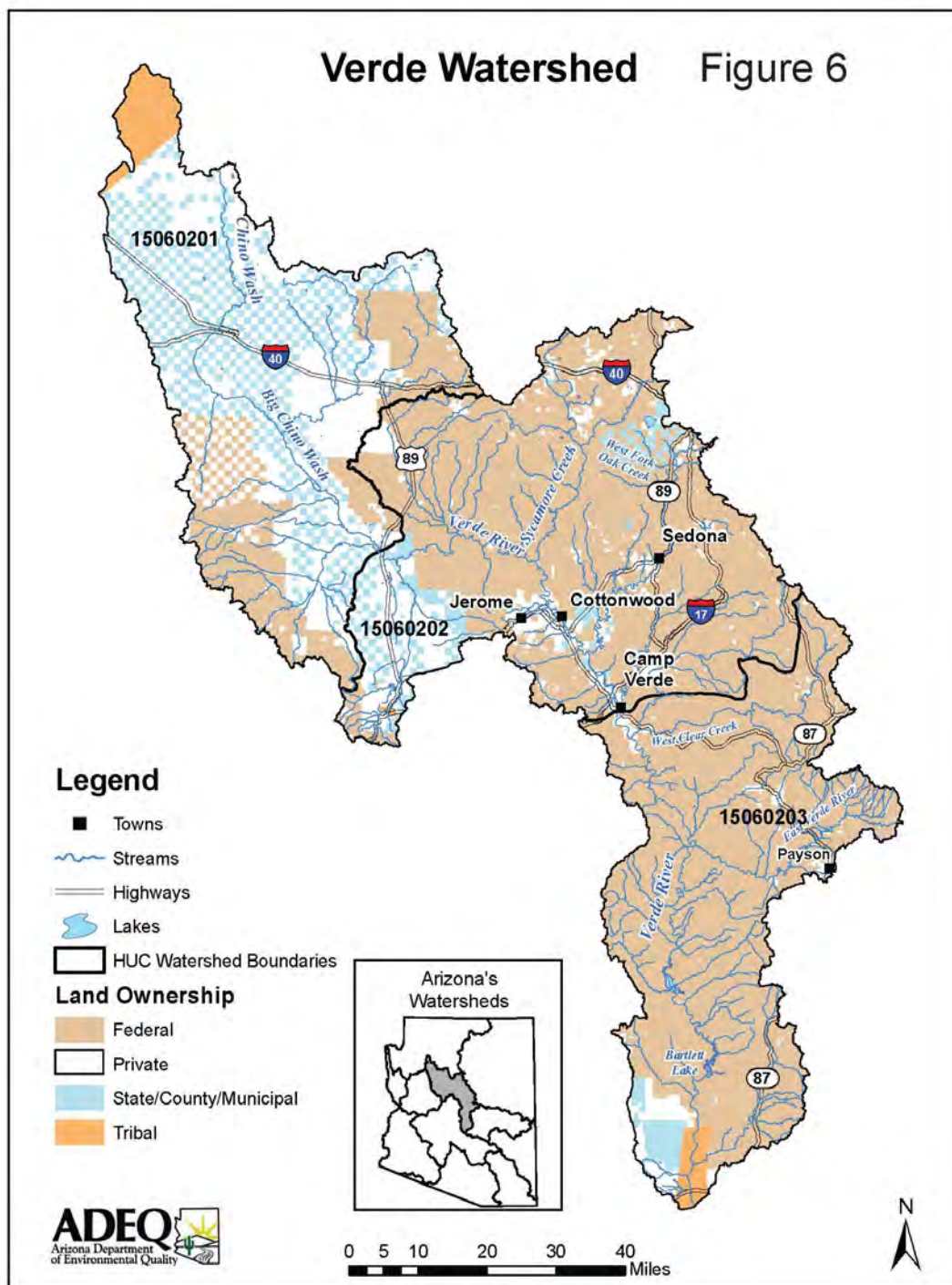
Waterways attaining water quality standards in the Verde River Watershed are evidence that human development activity and the natural environment can successfully share the unique aquatic resources offered by the Verde River. In addition, there are numerous ecologically-based programs throughout the watershed that focus on riparian/wetland restoration/conservation, wildlife habitat, water quality, and education/awareness to maintain and/or further improve the aquatic resource conditions of the Verde River Watershed.

According to the ADWR, the watershed contains 434,000 acres of wilderness areas, and 71% of the watershed is federally owned and managed by the United States Forest Service. Also, 20.2% of the land is private, with a majority of this private land being in the northwestern portion of the watershed, which shares a "checkerboard" pattern with state land (7.4% of the watershed). Because the state/private land contains the most heavily populated and developed areas, the aquatic resources in this portion of the watershed are in the worst condition. Figure 6 illustrates the current land-ownership within the Verde River Watershed.



Verde River Watershed Assessments - 3

Figure 3-Verde River Watershed 2010 ADEQ Assessment



Verde River Watershed Assessments - 2

Figure 4-Verde River Watershed ADEQ Land Ownership

Prescott Creeks In-Lieu Fee Program

Exhibit A

E. Aquatic Resource Goals and Objectives

Program Sponsor has developed a series of goals and objectives within the Verde River Watershed in order to improve the functional capacity of aquatic resources, wetlands, and riparian areas.

1) Meet the national goal of no overall loss of wetlands

- Restore, enhance, establish, and preserve wetlands and riparian areas
- Remove invasive vegetative species to promote native plant growth
- Remove non-native animal species, such as cattle
- Conduct active and adaptive management, maintenance, and monitoring
- Provide long-term protection for mitigation sites

2) Improve water quality and quantity

- Restore wetlands, riparian areas, and associated buffer areas
- Monitor water quality to document wetland/riparian recovery and water quality improvements
- Educate the public on best management practices and the importance of water quality
- Encourage stormwater/surface water management programs to conserve water and promote groundwater recharge

3) Improve wildlife and threatened and endangered species habitat

- Restore wetlands, riparian, and associated buffer areas
- Remove invasive vegetative species
- Remove non-native animal species to reduce competition, predation, and parasitism
- Monitor mitigation sites to document wetland recovery and wildlife usage

4) Promote and celebrate the ecological integrity of riparian systems and wetlands

- Provide educational opportunities for elementary, high school, and college students, as well as adults
- Present informative literature to the public, and provide relevant information at public meetings
- Engage volunteers for cleanup events, water monitoring, maintenance activities, and fundraising events
- Lead guided hikes and tours
- Construct and maintain low impact interpretive trails systems where appropriate

F. Prioritization of Mitigation Areas and Activities

Program Sponsor will prioritize mitigation activities based on the ecological needs of the watershed and the practicability to secure mitigation sites, implement mitigation plans,

and manage/protect these activities for perpetuity. Also, mitigation sites should be located in an area that will provide the most benefit to the public, as humans depend on the aquatic resources in the Verde River Watershed. With these considerations in mind, Program Sponsor has developed a list of priorities that will be applied to identify and implement mitigation activities.

Priority Areas-Figure 7

1) Granite Creek Watershed

The City of Prescott is located within the Upper Granite Creek Watershed (sub-watershed of the Upper Verde River Watershed), which as stated above has 5 creeks/waterways officially listed as “impaired” by the DEQ. Also, Prescott represents the “hub” of Yavapai County (50% of the watershed) and the 3rd largest metropolitan area in Arizona. Although the presence of humans and associated development activities has historically and will likely continue to impact aquatic resources in this area, the primary state/private land ownership represents a means to implement compensatory mitigation activities that will benefit both the environment and the public.

The confluence of Granite Creek into the Verde River represents the approximate location of the river’s perennial flow and convergence of the Big Chino/Williamson and Upper Verde River Watershed. Therefore, restoration and conservation of riparian habitat in this sub-watershed is critical to the overall condition of the Verde River, as this will benefit the downstream portions of the Upper Verde River Watershed, as well as the Lower Verde River Watershed. In addition, the Granite Creek Watershed is located above the Little Chino Aquifer and portions of the Big Chino Aquifer-restoring, enhancing, and/or preserving wetland/riparian habitat in this area will help improve natural hydrology and subsequent groundwater recharge, and will help maintain the Verde River’s perennial flow.

Program Sponsor has recognized the importance of the Granite Creek Watershed and is currently involved with existing programs such as Watson Woods, a 126-acre riparian Preserve which contains Granite Creek and extensive stand of cottonwoods, willows, and riparian habitat. Major funding for this project has come from the Water Protection Fund (WPF), the Arizona Department of Environmental Quality, and USACE mitigation projects. With many wetland/riparian areas already restored/enhanced, Program Sponsor intends to conduct approximately 90 acres of additional mitigation activities.

Program Sponsor is the chair of the Granite Creek Watershed Improvement Council which is currently identifying sources of water impairment, proposing corrective measures, Best Management Practices, as well as identifying potential riparian improvement areas. In addition, Program Sponsor hosts an annual “Granite Creek Cleanup” event, which directly removed over 10 tons of trash/debris in 2011 from various waterways in Prescott. Finally, Program

Sponsor is dedicated to providing educational/awareness opportunities from the elementary to college level along with the general public.

2) Lower Big Chino Wash/Williamson Valley Wash Watersheds

The Lower Big Chino Wash and the Williamson Valley Wash Watersheds are sub-watersheds to the larger Big Chino/Williamson Valley Watershed (HUC #15060201). Beneath these 2 watersheds lies the Big Chino Aquifer, which supplies up to 80% of the Verde River's base flow. Therefore, the restoration of wetland and riparian zones in this area is important to maintaining and improving the health of the Verde River. This watershed is the location of the proposed Yavapai Ranch Development. Also, the land in these watersheds is primarily state and privately owned, so it is likely that a mitigation project in this area will be practicable and will provide a public benefit.

3) Oak Creek Watershed

The Oak Creek Watershed is a sub-watershed of the Upper Verde River Watershed, and contains the city of Sedona, a highly valued area for tourism, natural beauty, and the perennial waterway, Oak Creek. The Oak Creek Watershed is also upstream of Cottonwood and Camp Verde. Oak Creek is officially designated as "not attaining" water quality standards by the ADEQ. Because of frequent human contact with the aquatic resources within this watershed, and this area is considered a high priority because of potential future impairments as well as the potential public benefit that would be achieved by the restoration, establishment, enhancement, and/or preservation of wetland/riparian areas.

4) Camp Creek-Lower Verde River Watershed

The Camp Creek-Lower Verde River Watershed is a sub-watershed of the Lower Verde River Watershed, and contains the community of Rio Verde and portions of Fountain Hills. This watershed is just downstream of the Bartlett Reservoir and contains the segment of the Verde River that is officially classified as "impaired." Also, this watershed contains several agricultural sites that are within the floodplain of the river, which suggests direct loss of riparian and habitat from clearing/filling, ditching, and agricultural planting activities. Landownership in this area is also represented by many state and private interests, so therefore implementing a mitigation project may be practicable.

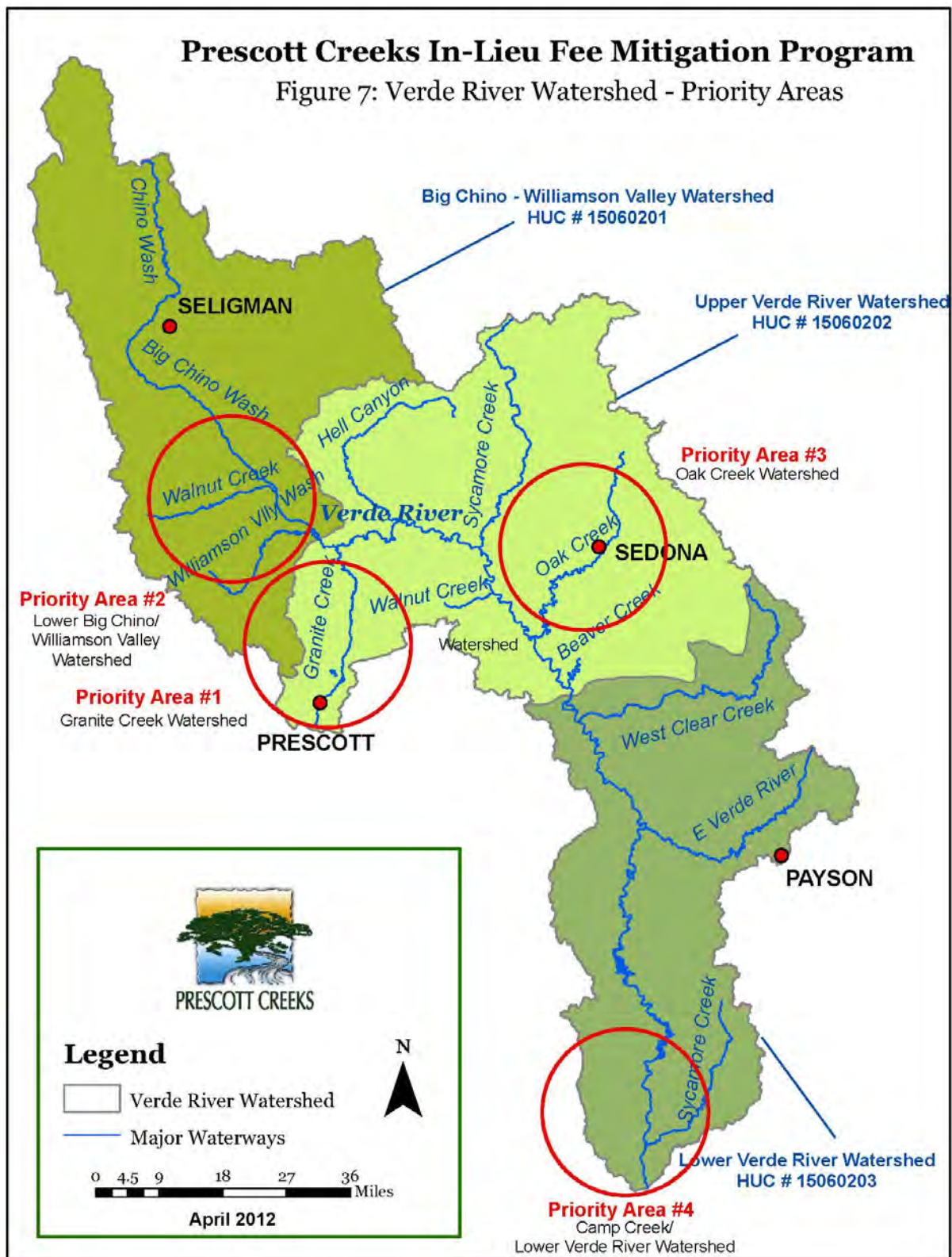


Figure 5-Verde River Watershed Priority Areas

Priority Activities

1) Cottonwood-Willow Gallery Forests

Cottonwood-willow gallery forests are among the rarest riparian habitat type within the Verde River watershed. As stated previously, this habitat type represents approximately 0.13% of riparian areas, but also is utilized extensively by wildlife. Cottonwoods and willows also stabilize stream banks, provide shade, and allow for increased retention of surface water. Having a stable stream bank/riparian system increases natural biological processes throughout the flood plain of a particular waterway.

As demonstrated in the current Watson Woods Riparian Preserve Mitigation Area, cottonwoods and willow “pole cuttings” can be harvested from the branches of existing, larger trees at a relatively inexpensive cost. Coupled with proper hydrological restoration, this technique has been proven effective at Watson Woods, as a recent fall 2011 monitoring survey showed an approximate 80% survival rate. Through the ILF, Program Sponsor intends to continue this technique as a priority activity throughout the Verde River Watershed where appropriate.

2) Urban Riparian Areas

The Verde River Watershed contains numerous waterways and riparian areas that provide habitat for many vegetative and animals species. These same attributes have also attracted humans to conduct development activities along these waterways, which has resulted in many degraded aquatic systems within the Verde River Watershed. Restoring, enhancing, or preserving these waterways and riparian areas in an urban setting and providing long term protection will provide numerous public benefits such as improved water quality, air quality, wildlife habitat, and aesthetics that are not currently being realized in many developed areas.

3) Riparian Buffers/Upland Areas

As the buffer area between wetland and terrestrial habitats, grass shrub, and woodland habitats adjacent to riparian zones provide benefits for both wetlands and terrestrial species. They provide rookeries and stopover grounds for migratory birds, foraging habitat, flood refuge, and dispersal corridors for a variety of animal species. As part of the ILF, Program Sponsor will consider the inclusion of these areas in the development and implementation of its individual mitigation projects.

G. Use of Preservation

Program Sponsor considers the use of preservation as a key component of the ILF and individual mitigation projects because wetlands and riparian areas occupy such a small percentage of land within the Verde River Watershed. Based on the historical wetland loss (174 acres/year) and numerous studies, wetlands and riparian areas within the Verde River Watershed are under a demonstrable threat. Program Sponsor intends to use

preservation along with specific wetland/riparian restoration, enhancement, and establishment activities in order to provide a suite of functions and values that will benefit the watershed. Preservation may be used to compensate for USACE permits provided that all of the following criteria are met:

- 1) The resources to be preserved provide important physical, chemical, or biological functions for the watershed;
- 2) The resources to be preserved contribute significantly to the ecological sustainability of the watershed;
- 3) Preservation is determined by the USACE to be appropriate and practicable;
- 4) The resources to be preserved are under a demonstrable threat of destruction or adverse modifications; and
- 5) The preserved site will be permanently protected through an appropriate legal instrument.

H. Stakeholder Involvement

Assembling the diverse interests and talents in the watershed will provide the basis for successful mitigation projects. Stakeholder involvement is a key component of almost any Program Sponsor effort. The organization has built strong partnerships with federal, state and local governments and agencies (USACE, Prescott National Forest, AZ Department of Environmental Quality, AZ Water Protection Fund Commission, AZ Department of Transportation, City of Prescott, Yavapai County, Yavapai-Prescott Indian Tribe), Prescott College, community businesses (Prescott Chamber of Commerce, Fann Environmental, Natural Channel Design, etc.), and local community members (e.g.; practicing and retired engineers, administrators, interested citizens). Also, Program Sponsor chairs the Granite Creek Watershed Improvement Council, which contains many of the aforementioned organizations/individuals, and meets on a monthly basis to discuss watershed-related topics and action items.

Program Sponsor also solicits stakeholder involvement through the use of watershed residents' social surveys and provides an interactive website that is updated regularly to provide resources and information to the public. Also, community volunteers typically accomplish riparian and/or wetland restoration, establishment, enhancement, and preservation tasks in the field for Program Sponsor, which further increases public awareness of the importance of aquatic resources.

In regards to the Verde River Watershed as a whole, the Verde River Basin Partnership (VRBP) consists of a number of non-profit organizations, local businesses, water managers, and federal, state, and local agencies which have invested in the scientific understanding and protection of the Verde River. The VRBP organizes research, outreach, and talent among these groups. As a group, the VRBP agrees on "The Verde River Guiding Principles" to guide research, education, and decision making for the benefit of the Verde River and fellow citizens (VRBP 2012). As a member of the VRBP, Program Sponsor agrees to incorporate these principles into the operation and management of the ILF and individual mitigation projects:

The Verde River Guiding Principles

- 1) Water makes earth habitable; fresh water, a finite resource, is essential for all life on land.
- 2) The Verde River and its tributaries, seeps, and springs, are interconnected – to each other, the Colorado River system, and ultimately to the Ocean via the Sea of Cortez.
- 3) Groundwater and surface water are interconnected and affect each other; groundwater depletion ultimately depletes surface flows and surface waters depletion can potentially impact groundwater recharge.
- 4) Climate and drought have an impact on the Verde River, including the amount of water available for riparian habitat, wildlife, and human use.
- 5) The Verde River and its perennial tributaries support a broad diversity of life and ecosystems and provide a rare and important corridor for migrating species.
- 6) The Verde River is one of the last perennial river systems in Arizona and has the state's longest stretch of continuous interconnected riparian habitat. The value of the riparian habitat and flows are beyond calculation and must be protected.
- 7) The Verde River system is a regional, state, and national treasure. The river and humans within its watershed are inextricably interconnected. The river is socially, economically, environmentally, and culturally important.
- 8) The Verde River system is a national asset. More than two-thirds of its watershed is managed by federal agencies on behalf of the American public.
- 9) Research to date provides a basic understanding of the Verde River system, yet more remains to be learned, and unbiased science is crucial to water and growth policy and decision making. Providing the public with scientific information about the Verde River system give them a stronger voice in the decision-making process.
- 10) Collaborative decision-making amongst all stakeholders is crucial to protecting the interests of all who depend on the Verde River.

I. Long Term Protection and Management

To ensure permanent protection of each individual mitigation site, Program Sponsor and/or a qualified organization shall execute in-perpetuity conservation easements, deed restrictions, or other similar protective instruments which shall be recorded in the Yavapai County Courthouse or other appropriate county registry. Program Sponsor ensures that the holder of these conservation easements/protective instruments shall be an environmental and/or conservation – based 501(c) (3) non-profit or government organization to be determined. The easement/deed restriction will inure and run with the property title, and will prohibit activities such as clear cutting, unapproved fill discharges, cattle grazing, or other surface development that would diminish the quality or quantity of wetland, riparian, and associated buffer areas.

Program Sponsor shall be responsible for the long-term management of each individual mitigation project and the ILF to ensure long-term viability as functional aquatic resources. Although each individual mitigation project shall be designed to require little or no long-term management efforts once performance standards have been achieved, Program Sponsor shall maintain responsibility unless the long-term management responsibility is formally transferred to a long-term manager with IRT approval. The long-term management plan developed for each project will include a description of the

anticipated management needs with annual cost estimates and an identified funding mechanism such as non-wasting endowments, escrow accounts, trusts, contractual arrangements with future responsible parties, or other appropriate financial instruments.

J. Monitoring, Adaptive Management, and Reporting

Program Sponsor shall be responsible for mitigation monitoring and shall provide annual monitoring reports for a minimum of five years from the date of the initiation of mitigation activities at each individual mitigation site. The monitoring reports shall contain, at minimum, a documentation of relative success of each mitigation activity as it pertains to stated performance standards, geomorphology reporting, survivorship of planted species, evidence of natural vegetative growth, and photographic documentation. Specific monitoring plans for each individual mitigation site shall be submitted as part of each individual mitigation plan.

Program Sponsor shall employ an adaptive management plan for the ILF and individual mitigation projects in order to ensure that the needs of the watershed are met. If any information or circumstances are discovered during regular monitoring and management that may interfere with these needs, or if the needs of the watershed change, Program Sponsor shall implement corrective measures to address these unforeseen situations. All adaptive and corrective measures will be coordinated with the IRT prior to implementation, and the ILF Program and individual mitigation plans shall be revised as necessary to ensure long term sustainability and protection of these corrective measures.

Program Sponsor shall maintain accurate records for the expenditure of ILF funds and documentation of restored areas, including the date restoration work began at each individual mitigation site, the total number of acres restored, and all annual monitoring reports. Program Sponsor shall provide the USACE with an annual financial report containing a detailed account of how all monies from the ILF fund were expended or collected during the preceding year. The report shall be submitted to the IRT annually.

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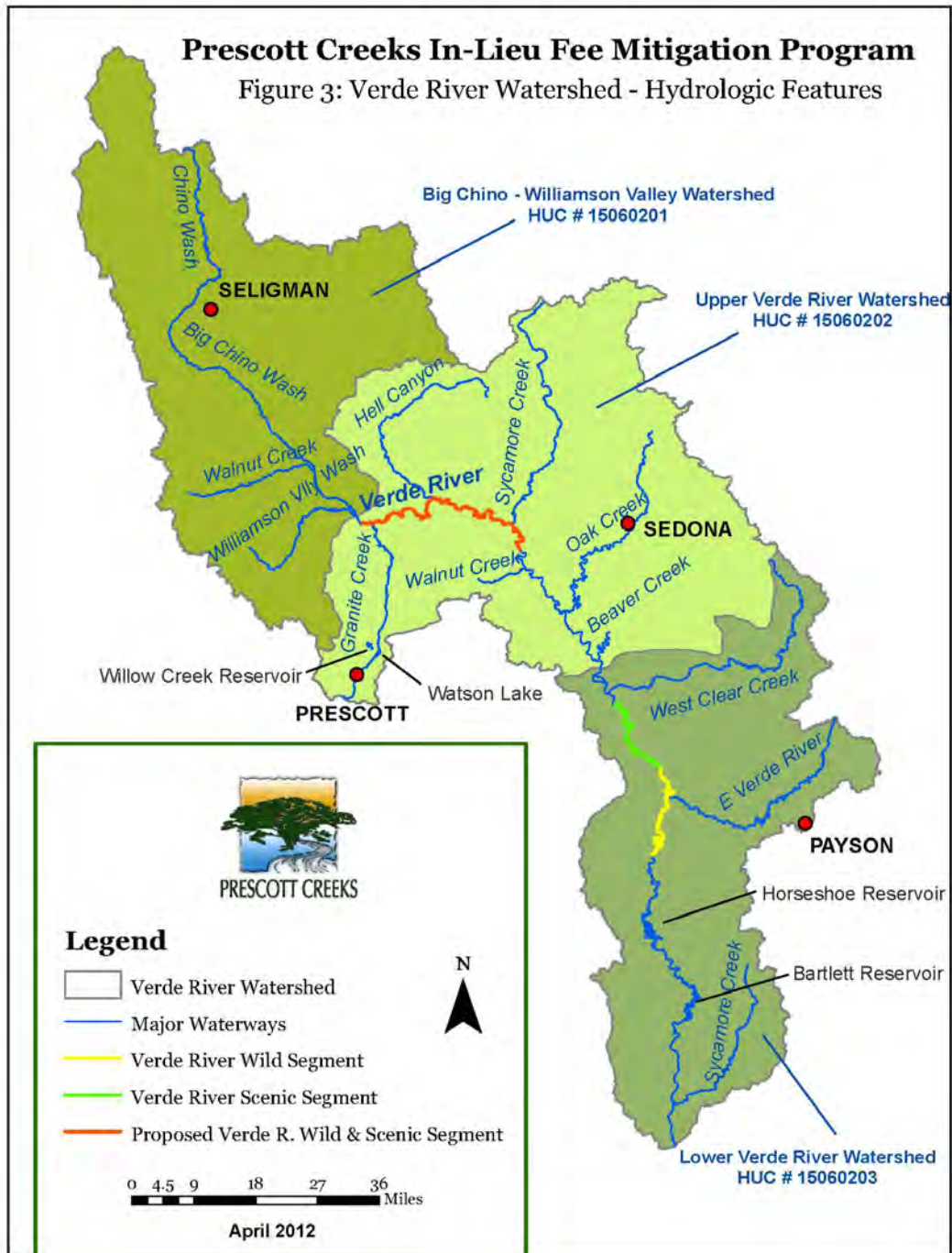
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Exhibit B: Program Service Area(s) Map

SERVICE AREA DETAIL



GENERAL SERVICE AREAS

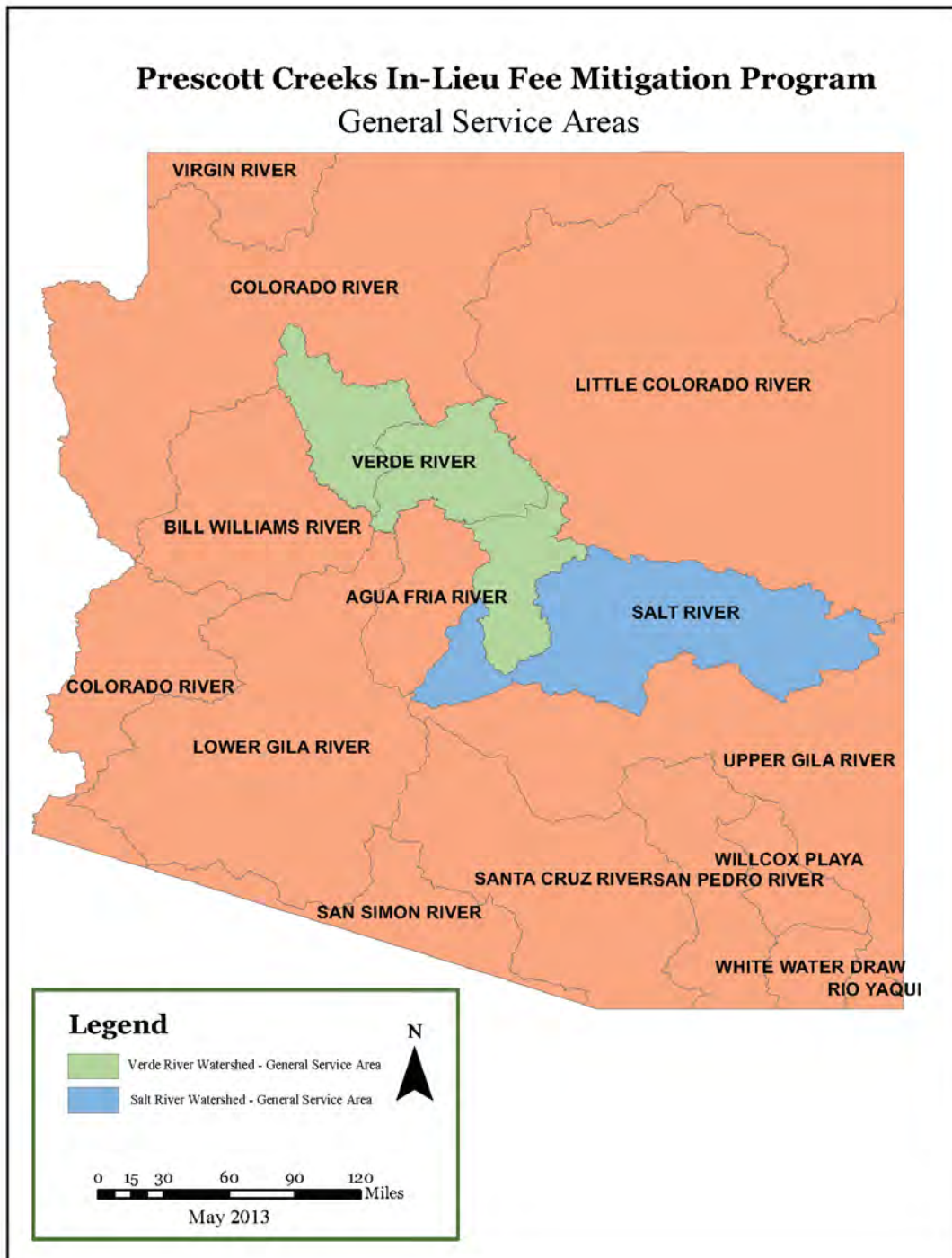


Exhibit C: Instrument Modifications

Instrument Modifications

As ILF Projects are identified or Instrument Modifications are Required, Program Sponsor will submit a written request to the USACE to modify the Instrument according to the process outlined in this Exhibit (33 C.F.R. 332.8). Other forms of Instrument modifications, including expansion of approved ILF Projects, will also follow the process outlined herein.

Requests for Instrument modifications will be accompanied by the appropriate supporting documentation as determined by the District Engineer. The Parties expect that requests for addition of an ILF Project will include the following information:

- The river basin and watershed (hydrologic unit code) of the site
- The goals and objectives of the site related to the watershed compensation planning framework
- Proposed service area
- Site conditions and location
- Proposed preliminary concept plan and/or feasibility study (if complete/available)
- How the project meets the project selection criteria outlined in Exhibit A
- Estimate of proposed acreage/linear footage and type of mitigation
- Proposed protection and long-term management strategy
- Other information as needed

Program Sponsor may elect to ask for a preliminary review and consultation of a modification request. In this case, the USACE will provide copies of the draft request to the IRT and will provide comments back to Program Sponsor within 30 days. Within 30 days of receipt of Program Sponsor's formal request for an Instrument modification, the USACE will notify Program Sponsor whether the Instrument modification request is complete. Within 30 days of receipt of a complete modification request, the USACE will provide public notice of the request that summarizes the project documentation provided by Program Sponsor, and makes this information available to the public upon request. The comment period will be 30 days, unless otherwise determined and justified by the USACE. The USACE and IRT members may also provide comments to the Program Sponsor at this time. The USACE will provide copies of all comments to IRT members and Program Sponsor within 15 days of the close of the public comment period.

Program Sponsor will prepare a draft amendment and submit it to the District Engineer for a completeness review. The draft amendment will include the following information as required by 33 C.F.R. Part 332.4(c):

- Information included in the initial modification request.
- Development Plan with a legend and scale
- Estimate of proposed acreage/linear footage and type of Compensatory Mitigation
- Description of existing functions and services and how they will be improved or enhanced through specific mitigation measures
- Project budget
- Determination of Credits and the Credit Release plan

- Interim and Long-term Management Plans
- Performance Standards
- Property Assessment
- Phase I Environmental Site Assessment of the ILF Project site
- Draft Site Protection Instrument
- Other information as needed

The USACE will notify Program Sponsor within 30 days of receipt of the amendment whether it is complete, or will request additional information. Once any additional information is received and the amendment is complete, the USACE will notify Program Sponsor. Program Sponsor will provide copies of the amendment for the USACE to distribute to the IRT for a 30 day comment period. This comment period begins 5 days after the copies of the amendment are distributed. Following the comment period, the USACE will discuss any comments with the appropriate agencies and Program Sponsor to seek to resolve any issues using a consensus based approach, to the extent practicable. Within 90 days of receipt of the complete amendment, the USACE must indicate to Program Sponsor whether the amendment is generally acceptable and what changes, if any, are needed. Program Sponsor will submit a final amendment to the USACE for approval, with supporting documentation that explains how the final amendment addresses the comments provided by the IRT. Program Sponsor will also provide copies directly to IRT members. Within 30 days of receipt of the final amendment, the USACE will notify the IRT members whether or not it intends to approve the amendment. If no IRT members object by initiating the dispute resolution process within 45 days of receipt of the final amendment, the USACE will notify Program Sponsor of his final decision, and if approved, arrange for signing by the appropriate parties.

Streamlined Review Process

The USACE may use a streamlined modification review process for changes to the Program reflecting Adaptive Management of the Program, Credit releases, changes in Credit Releases and Credit Release schedules, and changes that the USACE determines are not significant. In this event, the USACE will notify the IRT members and Program Sponsor of this determination and provide them with copies of the proposed modification. IRT members and Program Sponsor will have 30 days to notify the USACE if they have concerns with the proposed modification. If IRT members or Program Sponsor notify the USACE of such concerns, the USACE will attempt to resolve those concerns. The USACE will notify the IRT members and Program Sponsor of his intent regarding the proposed modification within 60 days of providing the notice to the IRT members. If no IRT member objects, by initiating the dispute resolution process (33 C.F.R. 332.8) within 15 days of receipt of the notification, the USACE will notify the Program Sponsor of its final decision and, if approved, arrange for it to be signed by the appropriate parties.

Exhibit D: Development Plans

As individual ILF Projects are proposed and Development Plans approved by formal Instrument Modifications per Exhibit C, they will be incorporated into Exhibit D as subparts beginning with Exhibit D1 and continuing sequentially.

Exhibit E: Interim Management Plans

As individual ILF Projects are proposed and Interim Management Plans approved by formal Instrument Modifications per Exhibit C they will be incorporated into Exhibit E as subparts beginning with Exhibit E1 and continuing sequentially.

Exhibit F: Long-term Management Plans

As individual ILF Projects are proposed and Long-Term Management Plans approved by formal Instrument Modifications per Exhibit C they will be incorporated into Exhibit F as subparts beginning with Exhibit F1 and continuing sequentially.

Exhibit G: Statement of Sale of Credit Form



Prescott Creeks Preservation Association
PO BOX 3004, Prescott, AZ 86305

[Date]

Department of the Army
Los Angeles District, Corps of Engineers
Arizona-Area Office
3636 North Central Avenue, Suite 900
Phoenix, Arizona 85012-1939

Subject: Statement of Sale for [Number] Credits from the Prescott Creeks In-Lieu Fee Program
to [Permittee Name]

Prescott Creeks Preservation Association has an agreement with the U.S. Army Corps of Engineers – Los Angeles District to operate an In-Lieu-Fee Program. This letter confirms the sale of [Number of Credits] credits of [Resource Type A], and [Number of Credits] credits of [Resource Type B]. These credits are being used as compensatory mitigation for [Number of Acres] acres of impact to [Resource Type A], and [Number of Acres] acres of impact to [Resource Type B] in the [Impact HUC] as authorized by DA permit [DA permit number]. By selling credits to the above permittee, Prescott Creeks Preservation Association is the party responsible for fulfilling the mitigation aspect of Special Condition(s) _____ of the Permit(s) listed above.

Signed

Exhibit H: Real Estate Instrument

As individual ILF Projects are proposed and approved by formal Instrument Modifications per Exhibit C, a conservation easement or other similar protective instrument will be executed in accordance with the template included in this Exhibit H. Long-term protection of an ILF Project pursuant to Section V.B.5 of this Instrument may also be secured through the recording of a restrictive covenant drafted substantially in the same form as the Conservation Easement template attached and as approved for each ILF Project by the IRT pursuant to V.B.5.

RECORDING REQUESTED BY:)
AND WHEN RECORDED MAIL TO:)
)
Address)
)
)
)
)
)

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this _____ day of _____, 201_ by [insert name], a _____ company, ("**Grantor**"), in favor of Prescott Creeks Preservation Association ("**Grantee(s)**") with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately ____ acres, located in the City of _____, County of _____, State of Arizona, designated Assessor Parcel Number(s) _____(the "Property"). The Property is legally described on **Exhibit "A"** attached hereto and incorporated by this reference. Grantor intends to grant a conservation easement over a ____-acre portion of the Property (the "**Easement Area**"). The Easement Area is legally described and depicted in **Exhibit "B"** attached hereto and incorporated herein by this reference.

B. The Easement Area possesses wildlife and habitat values of great importance to Grantee, the people of the State of Arizona and the people of the United States. The Easement Area will provide high quality natural, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands*: and restored, created, enhanced and/or preserved jurisdictional waters of the United States]. Individually and collectively, these wildlife and habitat values comprise the "**Conservation Values**" of the Easement Area.

C. Grantee is authorized to hold conservation easements pursuant to Arizona Revised Statute Section 33-271, et seq., Specifically, Grantee is an entity identified in Arizona Revised Statute Section 33-271 and otherwise authorized to acquire and hold title to real property.

D. The United States Army Corps of Engineers ("**USACE**") is the Federal agency charged with regulatory authority over discharges of dredged and fill material in waters of the United States pursuant to Section 404 of the Clean Water Act, and is a third party beneficiary of this Conservation Easement.

E. This Conservation Easement is granted pursuant to the In-Lieu Fee Enabling Instrument (the "**ILFEI**") by and between Grantee, the Los Angeles District of USACE, Region IX of the United States Environmental Protection Agency ("**USEPA**"), the U.S. Fish and Wildlife Service (USFWS), the Arizona Game and Fish Department (AGFD), the Arizona Prescott Creeks In-Lieu Fee Program Exhibit H

Department of Environmental Quality (ADEQ), Pima County, and the City of Phoenix dated _____, and the Development Plan (the “**Development Plan**”), and the Interim Management Plan and Long-Term Management Plan (as applicable, the “**Management Plan**”) created under the ILFEI. USACE, USEPA, USFWS, AGFD, ADEQ, Pima County, and the City of Phoenix are together referred to in this Conservation Easement as the “**Signatory Agencies**.” The ILFEI, the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

F. All section numbers referred to in this Conservation Easement are references to sections within this Conservation Easement, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and State of Arizona, including Arizona Revised Statute Section 33-271, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth (“**Conservation Easement**”). This Conservation Easement shall run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

1. Purposes.

(a) The purposes of this Conservation Easement are to ensure that the Easement Area will be retained in perpetuity in its natural, restored, or enhanced condition as contemplated by the ILFEI, the Development Plan, and the Management Plan, and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. Grantor intends that this Conservation Easement will confine the use of the Easement Area to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the ILFEI, the Development Plan and the Management Plan.

(b) The term “**Natural Condition**,” as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition of the Easement Area, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Easement Area that occur directly as a result of the following activities:

(1) Compensatory mitigation activities, including implementation, maintenance and monitoring as described in the Development Plan and Management Plan; or

(2) Activities described in Section 4 and Section 6 herein.

(c) Grantor represents and warrants that there are no structures or improvements existing on the Easement Area at the time this grant is executed. Grantor further represents and warrants that there are no other previously granted easements existing on the Easement Area that interfere or conflict with the Purposes of this Conservation Easement as evidenced by the Title Report attached at **Exhibit “C.”** The present Natural Condition is evidenced in part by the

depiction of the Easement Area attached on **Exhibit “D,”** showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States. Grantor has delivered further evidence of the present Natural Condition to Grantee and USACE consisting of (1) a color aerial photograph of the Easement Area at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Easement Area boundaries on such aerial photograph; and (3) on-site color photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Easement Area.

(d) If a controversy arises with respect to the current Natural Condition of the Property, Grantor, Grantee or USACE or any designees or agents of Grantor, Grantee, and USACE shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

2. Grantee’s Rights. To accomplish the Purposes of this Conservation Easement, Grantor, its successor and assign hereby grants and conveys the following rights to Grantee. These rights are also granted to the USACE or its designees as third party beneficiaries of this Conservation Easement:

(a) To preserve and protect the Conservation Values of the Easement Area;
and

(b) To enter upon the Property and Easement Area at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement, the ILFEI, the Development Plan and the Management Plan, to implement at Grantee’s sole discretion Development Plan and Management Plan activities that have not been implemented, and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall not unreasonably interfere with Grantor’s authorized use and quiet enjoyment of the Easement Area; and

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Purposes of this Conservation Easement; and

(d) To require that all mineral, air and water rights as Grantee deems necessary to preserve and protect the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the Purposes of this Conservation Easement.

(e) All present and future development rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Easement Area, nor any other property adjacent or otherwise; and

(f) The right to enforce by any means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement; and

(g) The right to enhance native plant communities, including the removal non-native species, the right to plant trees and shrubs of the same type as currently existing on the Easement Area, or other appropriate native species. Habitat enhancement activities shall not
Prescott Creeks In-Lieu Fee Program Exhibit H

conflict with the preservation of the Natural Condition of the Easement Area or the Purposes of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

3. Prohibited Uses. Any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantee, and their respective agents, and third parties are expressly prohibited:

(a) Introduction of nuisance water, such as any drainage or overflow, including but not limited to water from pools, aquariums, waterbeds and fountains, and unseasonable and supplemental watering, except nuisance water associated with irrigation outside the Easement Area by adjacent homeowners or others and the natural drainage of rainfall and water related to Grantee's habitat enhancement activities as set forth in the Development Plan;

(b) Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except weed abatement activities necessary to control or remove invasive, exotic plant species except as set forth in the Development Plan or Management Plan;

(c) Use of off-road vehicles and use of any other motorized vehicles except in the execution of management duties;

(d) Grazing or other agricultural activity of any kind;

(e) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing;

(f) Residential, commercial, retail, institutional, or industrial uses;

(g) Any legal or de facto division, subdivision or partitioning of the Easement Area;

(h) Construction, reconstruction or placement of any building, road, wireless communication cell towers, billboard, sign, or any other structure or improvement of any kind except those signs specifically allowed under Section 5(e) or as specifically provided for in the Development Plan or Management Plan;

(i) Dumping soil, trash, ashes, refuse, waste, bio-solids, garbage or any other material;

(j) Planting, gardening, or introduction or dispersal of non-native plant or animal species;

(k) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Easement Area;

(l) Altering the surface or general topography of the Easement Area,

including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Easement Area with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan;

(m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials, (2) prevention or treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, (4) completing the Development Plan and Management Plan, or (5) activities described in Section 2;

(n) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except for as specifically provided for in the Development Plan or Management Plan;

(o) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones;

(p) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, round water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (4) any water from wells that are in existence or may be constructed in the future on the Easement Area;

(q) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Easement Area, or the use or activity in question; and

(r) No use shall be made of the Easement Area, and no activity thereon shall be permitted, that is or is likely to become inconsistent with the Purposes of this Conservation Easement. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Conservation Easement. Grantee, therefore, in its sole discretion, may determine whether (1) proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement or (2) alterations in existing uses or structures, are consistent with the Purposes of this Conservation Easement.

4. Grantor's Duties. To accomplish the Purposes of this Conservation Easement as Prescott Creeks In-Lieu Fee Program Exhibit H

described in Section 1, Grantor, its successors and assigns shall:

- (a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement;
- (b) Cooperate with Grantee in the protection of the Conservation Values;
- (c) Repair and restore damage to the Easement Area directly or indirectly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties within Grantor's control; provided, however, Grantor, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with the Grantee and USACE; and
- (d) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

5. Grantee's Duties. To accomplish the Purposes of this Conservation Easement as described in Section 1, Grantee, its successors and assigns shall:

- (a) Perform, at a minimum on an annual basis, compliance monitoring inspections of the Easement Area; and
- (b) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis; and
- (c) Undertake construction, maintenance and monitoring of mitigated areas pursuant to the Development Plan and Interim Management Plan until issuance of final approval from the USACE confirming that Grantee has successfully completed construction, maintenance and monitoring of mitigated areas pursuant to said Plans ("**Final Approval**"). This duty is non-transferable;
- (d) Upon receipt of Final Approval, perform long-term management of the Easement Area pursuant to the Long-term Management Plan;
- (e) Within 120 days of recordation of this Conservation Easement, install signs and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions. Prior to erection of such signage, the Grantee shall submit plans showing the location and language of such signs to the USACE for review and approval;
- (f) Repair and restore damage to the Easement Area directly or indirectly caused by Grantee, Grantee's guests, representatives, employees or agents, and third parties within Grantee's control provided, however, Grantee, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with USACE.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including

the right to engage in or to permit or invite others to engage in all uses of the Easement Area that are not prohibited or limited by, and are consistent with, the Purposes of this Conservation Easement.

7. Enforcement.

(a) Right to Enforce. Grantor, its successors and assigns, grant to the USACE, the U.S. Department of Justice, and the State Attorney General a discretionary right to enforce this Conservation Easement in a judicial or administrative action against any person(s) or other entity(ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. The USACE, U.S. Department of Justice, and the State Attorney General shall have the same rights, remedies and limitations as Grantee under this Section 7. The rights under this Section are in addition to, and do not limit rights conferred in Section 2 above. The term “Party” means Grantor or Grantee, as the case may be. Grantor, Grantee, and any third party beneficiaries, when implementing any remedies under this easement, shall provide timely written notice to each other of any actions taken under this section, including, but not limited to copies of all notices of violation and related correspondence.

(b) Notice of Violation. In the event that either Party or its employees, agents, contractors or invitees is in violation of the terms of this Conservation Easement or that a violation is threatened, the non-violating Party and/or third party beneficiaries may demand the cure of such violation. In such a case, the non-violating Party and/or third party beneficiaries shall issue a written notice to the violating Party (hereinafter “**Notice of Violation**”) informing the violating Party of the actual or threatened violations and demanding cure of such violations. The Notice of Violation shall be sent to the other Party and third party beneficiaries listed under Section 15 of this Conservation Easement.

(c) Time to Cure. The violating Party shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the violating Party shall, within the thirty (30) day period, submit to the non-violating Party and/or third party beneficiaries, as the case may be, for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan. If the violating Party disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter “**Notice of Dispute**”) to the appropriate Party and/or third party beneficiary within thirty (30) days of receipt of written Notice of Violation.

(d) Failure to Cure. If the violating Party fails to cure the violation within the time period(s) described in Section 7(c), above, or Section 7(e)(2), below, the non-violating Party and/or third party beneficiaries may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the violating Party with the terms of this Conservation Easement. In such action, the non-violating Party and/or third party beneficiaries may:

(1) Recover any damages to which they may be entitled for violation by the violating Party of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area. The non-violating Party shall first apply any

damages recovered to the cost of undertaking any corrective action on the Easement Area. Prior to implementation of any remedial or restorative actions pursuant to this paragraph, USACE shall be consulted.

(2) Enjoin the violation by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(3) Obtain other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury.

(e) Notice of Dispute.

(1) If the violating Party provides the non-violating Party and/or third party beneficiaries with a Notice of Dispute, as provided herein, the non-violating Party and/or third party beneficiaries shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating Party and/or third party beneficiaries receive the Notice of Dispute. The non-violating Party and/or third party beneficiaries shall consider all relevant information concerning the disputed violation provided by the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party and/or third party beneficiaries is appropriate in light of the violation.

(2) If, after reviewing the violating Party's Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the violation, the non-violating Party and/or third party beneficiaries determine that a violation has occurred, the non-violating Party and/or third party beneficiaries shall give the violating party notice of such determination in writing. Upon receipt of such determination, the violating Party shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the violating Party shall, within the fifteen (15) day period, submit to the non-violating Party and/or third party beneficiaries for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan.

(f) Conflicting Notices of Violation.

(1) If any Party receives a Notice of Violation that is in material conflict with one or more prior written Notices of Violation that have not yet been cured by the Party (hereinafter "Active Notice(s) of Violation") such that the conflict makes it impossible for the Party to carry out the cure consistent with all prior Active Notices of Violation, the Party shall give written notice (hereinafter "Notice of Conflict") to the non-violating Party and/or third party beneficiaries issuing the later, conflicting Notice(s) of Violation. The Party shall issue said Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries within fifteen (15) days of the receipt of each such conflicting Notice of Violation. A valid Notice of Conflict shall describe the conflict with specificity, including a description of how the conflict makes compliance with all Active Notices of Violation impossible.

(2) Upon issuing a valid Notice of Conflict to the appropriate non-

violating Party and/or third party beneficiaries, as described above, the violating Party shall not be required to carry out the cure described in the conflicting Notice or Notices of Violation until such time as the non-violating Party responsible for said conflicting Notice(s) of Violation issue(s) a revised Notice of Violation that is consistent with prior Active Notices of Violation. Upon receipt of a revised, consistent Notice of Violation, the violating Party shall carry out the cure recommended in such notice within the time period(s) described in Section 7(c) above. Notwithstanding Section 7(g), failure to cure within said time period(s) shall entitle the non-violating Party to the remedies described in Section 7(d) and Section 7(h).

(3) The failure of the violating Party to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall result in a waiver of the violating Party's ability to claim a conflict.

(g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Party and/or third party beneficiary seeking enforcement pursuant to Section 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Conservation Easement and state and federal law after giving the violating Party at least twenty four (24) hours' written notice before pursuing such remedies. So long as such twenty-four (24) hours' notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or Notice of Dispute as described in Section 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile and shall be copied to the other Party and/or third party beneficiaries listed in Section 15 of this Conservation Easement. The rights of the non-violating Party and/or third party beneficiaries under this paragraph apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party and third party beneficiaries shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 7(g) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Arizona Revised Statute Section 33-271, *et seq.*, inclusive.

(h) Costs of Enforcement. All costs incurred by a Party, where that Party is the prevailing party, in enforcing the terms of this Conservation Easement against the other Party, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by the non-prevailing Party.

(i) Enforcement Discretion. Enforcement of the terms of this Conservation Easement by a Party and/or third party beneficiary shall be at the discretion of the Party and/or third party beneficiary, and any forbearance by such Party and/or third party beneficiary to exercise its rights under this Conservation Easement in the event of any breach of any term of the Conservation Easement by a Party or any subsequent transferee shall not be deemed or construed to be a waiver by the non-violating Party and third party beneficiary of such terms or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the

rights of the non-violating Party and third party beneficiary under this Conservation Easement. No delay or omission by the non-violating Party and/or third party beneficiaries in the exercise of any right or remedy upon any breach by the violating Party shall impair such right or remedy or be construed as a waiver. Further, nothing in this Conservation Easement creates a non-discretionary duty upon the non-violating Party and/or third party beneficiaries to enforce its provisions, nor shall deviation from these terms and procedures, or failure to enforce its provisions give rise to a private right of action against the non-violating Party and/or third party beneficiaries by any third parties.

(j) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantor's control, including without limitation, fire not caused by Grantor, flood, storm, and earth movement;

(2) Any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes;

(3) Acts by Grantee, USACE, or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantor's control.

Notwithstanding the foregoing, Grantor must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

(k) Acts Beyond Grantee's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantor to bring any action against Grantee for any injury to or change in the Easement Area resulting from:

(1) Any natural cause beyond Grantee's control, including without limitation, fire not caused by Grantee, flood, storm, and earth movement;

(2) Any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes;

(3) Acts by Grantor, USACE or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantee's control.

Notwithstanding the foregoing, Grantee must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and

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undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

8. Access. This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

(a) Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance (except Long-Term Maintenance by Grantee) of the Easement Area. Grantor agrees Grantee and USACE shall not have any duty or responsibility for the operation, upkeep, or maintenance (except Long-Term Maintenance by Grantee) of the Easement Area, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Grantor, its successor or assign remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

(b) Hold Harmless.

(1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations or rights specified in Sections 4, 6, 9(a), 10, and 19(l); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

(2) Grantor shall hold harmless, protect and indemnify USACE and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Third-Party Beneficiary Indemnified Party**" and collectively, "**Third-Party Beneficiary Indemnified Parties**") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause and (ii) the obligations or rights specified in Sections 4, 5, 6, 9(a), 10, and

19(l), except that any indemnification under this Section 9(b) shall be inapplicable to Third-Party Beneficiary Indemnified Parties with respect to any Claim due to the negligence or intentional acts only of USACE or any of its employees.

10. Taxes, No Liens. Grantor, its successors and assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority, including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and USACE with satisfactory evidence of payment upon request. Grantor, its successors and assigns shall keep Grantee's interest in the Easement Area free from any liens.

11. Condemnation. The Purposes of the Conservation Easement is presumed to be the best and most necessary public use as defined in Arizona Revised Statute Section 12-1122 notwithstanding. Nevertheless, if the Easement Area is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation in accordance with applicable law.

12. Transfers of Conservation Easement or Easement Area.

(a) Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to Arizona Revised Statute Section 33-271 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Easement Area is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 13.

(b) Easement Area. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the ILFEI, the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 13.

13. Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Area.

14. Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Easement Area (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a “**Transfer**”) any mineral, air, or water right or any water associated with the Easement Area, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the Purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Area. This Section 14 shall not limit the provisions of Section 2(d) or 3(p), nor prohibit transfer of a fee or leasehold interest in the Easement Area that is subject to this Conservation Easement and complies with Section 12. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

15. Notices. Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor:

To Grantee: Prescott Creeks Preservation Association
PO Box 3004
Prescott, Arizona 86305
ATTN: Michael Byrd, Executive Director

With a copy to: District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Room 1535
Los Angeles, California 90017-3401
FAX: 213-452-4217

U.S. Army Corps of Engineers
Los Angeles District, Tucson Resident Office
5205 E. Comanche St
Tucson, AZ 85707
Attn: Marjorie Blaine

United States Environmental Protection Agency
Region IX, WTR-8
75 Hawthorne Street
San Francisco, CA 94105
Attn: Elizabeth Goldmann

Wildlife Management Division
Arizona Game and Fish Department
5000 W. Carefree Hwy
Phoenix, AZ 85086-5000
Attn: Bob Broscheid

Arizona Department of Environmental Quality
Mailstop 5415A-1
1110 W. Washington
Phoenix, AZ 85007
Attn: Linda Taunt

Pima County
201 N. Stone Ave, 6th Floor
Tucson, AZ 85701
Attn: Julia Fonseca

City of Phoenix
Office of Environmental Programs
200 W. Washington Street
14th Floor
Phoenix, AZ 85003
Attn: Wendy Wonderley

US Fish and Wildlife Service
Arizona Ecological Services Field Office
2321 W. Royal Palm Road, Suite 103
Phoenix, AZ 85021
Attn: Mike Martinez

or to such other address a party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

The parties agree to accept facsimile signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission of such a facsimile, the original documents that bear the original signatures.

16. Amendment. This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the USACE, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the Purposes of this Conservation Easement and Arizona law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Easement Area is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

17. Recordation. Grantor shall promptly record this instrument in the official records of _____ County, Arizona and immediately notify the Grantee and USACE through the mailing of a conformed copy of the recorded easement. Grantee may re-record this Conservation Easement at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

18. Estoppel Certificate. Upon request, Grantee shall within fifteen (15) days execute and deliver to Grantor, its successors and assigns any document, including an estoppel certificate, which certifies compliance with any obligation of Grantor, its successors and assigns contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Grantor, its successors and assigns.

19. General Provisions.

(a) Controlling Law. The laws of the United States and the State of Arizona, disregarding the conflicts of law principles of such state, shall govern the interpretation and performance of this Conservation Easement.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to effect the Purposes of this Conservation Easement and the policy and purpose set forth in Arizona Revised Statute 33-271, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Change of Conditions. If one or more of the Purposes of this Conservation Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Conservation Easement as long as any other purpose of the Conservation Easement may be accomplished. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. Grantor and Grantee agree that global warming and climate change-caused effects shall not be a basis for termination of this Conservation Easement.

(d) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(e) Entire Agreement. This document (including its exhibits and ILFEI, the

Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 15.

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

(g) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area. The covenants hereunder benefiting Grantee shall also benefit the USACE as a third party beneficiary.

(h) Termination of Rights and Obligations. Except as otherwise expressly set forth in this Conservation Easement and provided the transfer was consistent with the terms of this Conservation Easement, a party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Property (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon its construction or interpretation.

(j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(k) Exhibits. All Exhibits referred to in this Conservation Easement are attached and incorporated herein by reference.

(l) No Hazardous Materials Liability.

(1) Grantor represents and warrants that there has been no release or threatened release of Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Area, or transported to or from or affecting the Easement Area.

(2) Without limiting the obligations of Grantor under Section 9(b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties (defined in Section 9(b)(1)) from and against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Easement Area at any time, except any Hazardous Materials placed, disposed or released by

Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

(3) Without limiting the obligations of Grantor under Section 9(b)(2) herein, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third Party Beneficiary Indemnified Parties (defined in Section 9(b)(2)) against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Easement Area at any time, except that this release and indemnification shall be inapplicable to the Third Party Beneficiary Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by third party beneficiaries, their employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).

(4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives Grantee and USACE any of the following:

(i) The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, "**CERCLA**"); or

(ii) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or

(iii) The obligations of a responsible person under any applicable Environmental Laws; or

(iv) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(v) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Area.

The term "**Hazardous Materials**" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA; Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); Arizona state laws regarding hazardous waste control and hazardous substance and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or Prescott Creeks In-Lieu Fee Program

local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Conservation Easement.

The term “**Environmental Laws**” includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and USACE that Grantor’s activities upon and use of the Easement Area will comply with all Environmental Laws.

(m) Extinguishment. If circumstances arise in the future that render the preservation of Conservation Values, [*include this phrase only if there are jurisdictional wetlands*: including wetland functions and services,] or other Purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

(n) Warranty. Grantor represents and warrants that Grantor is the sole owner of the Easement Area. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Grantee and USACE pursuant to the Property Assessment signed by Grantor and attached as an exhibit to the ILFEI, [*choose applicable statement*: there are no outstanding mortgages, liens, encumbrances or other interests in the Bank Property (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement or the holder of any outstanding mortgage, lien, encumbrance or other interest in the Easement Area (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the USACE].

(p) Third-Party Beneficiary. Grantor and Grantee acknowledge that the USACE (the “**Third-Party Beneficiary**”) is a third party beneficiary of this Conservation Easement with the right of access to the Easement Area and the right to enforce all of the obligations of Grantor and Grantee under this Conservation Easement.

(q) Funding. Funding for the perpetual management, maintenance and monitoring of the Easement Area is specified in and governed by the ILFEI and the Management Plan.

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement the day and year first above written and have agreed to be bound by the terms and provisions hereof.

GRANTOR:
[insert name]

By: _____
Name: _____
Title: _____

State of Arizona }
County of _____ }

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Conservation Easement by _____, a _____ company, dated _____, 200_, to the _____, is accepted by the undersigned officers on behalf of Grantee.

GRANTEE:

By: _____
Name: _____
Title: _____
Date: _____

Attest:

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Legal Description of Property

[See attached]

Exhibit B

Legal Description and Depiction of Easement Area

[See Attached]

Exhibit C

Title Report

[See Attached]

Exhibit D

Map of the major, distinct natural features on the Easement Area

[See Attached]

Exhibit E

Annual Inspection Report Form

[See Attached]

Exhibit I: Property Assessment Form

Exhibit I

PROPERTY ASSESSMENT

for

the Prescott Creeks Preservation

Association

In-Lieu Fee Program

This Property Assessment (Property Assessment”) is made as of this ____ day of _____, 20__, by [insert property owner full legal name(s)] (“Property Owner”), for the benefit of Prescott Creeks Preservation Association and the Los Angeles District of the U.S. Army Corps of Engineers, and Region IX of the U.S. Environmental Protection Agency, which agencies are jointly referred to in this Property Assessment as the “Signatory Agencies.” Property Owner acknowledges that this Property Assessment and the statements in it may be conclusively relied upon by the Signatory Agencies in entering into a conservation easement or other appropriate real property conveyance document (“Conservation Easement”) for the Prescott Creeks Preservation Association (PCPA) In-Lieu Fee Program.

This Property Assessment provides a summary and explanation of each recorded or unrecorded lien or encumbrance on, or interest in, the Property (as defined below), including, without limitation, each exception listed in the Preliminary Report issued by [insert title company name], [insert title report date], [insert title report number] (the “Preliminary Report”), covering the Property, as described in Attachments 1 and 2, attached hereto and incorporated by this reference. Specifically, this Property Assessment includes a narrative explaining each lien, encumbrance or other exception to title and the manner in which it may affect the Conservation Easement to be recorded upon the Property pursuant to the PCPA ILF Program.

Property Owner covenants, represents and warrants to each of the Signatory Agencies as follows:

1. Property Owner is the sole owner in fee simple of certain real property containing approximately _____ acres located in the City of _____ [insert city name], County of _____ [insert county name], State of Arizona, designated as Assessor's Parcel Number(s) [insert parcel number(s)] (the "Property"), as legally described in the Preliminary Report. Property Owner has, and upon the recordation of the Conservation Easement Property Owner shall have, good, marketable and indefeasible fee simple title to the Property subject only to any exceptions approved in advance of recordation, in writing, by the Signatory Agencies.
2. The Property is available to be burdened by the Conservation Easement for the conservation purposes identified in the Conservation Easement, in accordance with the PCPA Program Instrument.
3. The Property includes legal access to and from [insert name of public street or road]. [If special access rights are required to reach the Property, those access rights must also be addressed in this Property Assessment.]
4. A true, accurate and complete listing and explanation of each recorded or unrecorded lien or encumbrance on, or possessory or non-possessory interest in, the Property is set forth in Attachment 3 attached to and incorporated by reference in this Property Assessment. Except as disclosed in Attachment 3, there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, mineral interests). Attachment 4, attached hereto and incorporated by reference in this Property Assessment, depicts all relevant and plottable property lines, easements, dedications, etc. on the Property.
5. Prior to recordation of the Conservation Easement, Property Owner shall certify to the Signatory Agencies in writing that this Property Assessment remains true, accurate and complete in all respects.
6. Property Owner has no knowledge or notice of any legal or other restrictions upon the use of the Property for conservation purposes, or affecting its Conservation Values, as described in the Conservation Easement, or any other matters that may adversely affect title to the Property or interfere with the establishment and implementation of an In-Lieu Fee Program thereon.
7. Property Owner has not granted any options, or committed or obligated to sell the Property or any portion thereof, except as disclosed in writing to and agreed upon in writing by the Signatory Agencies.
8. The following Appendix and attachments are incorporated by reference in this Property Assessment:
 - a) Attachment 1 – Preliminary Report;
 - b) Attachment 2 - Encumbrance Documents;
 - c) Attachment 3 – Summary and Explanation of Encumbrances; and
 - d) Attachment 4 - Map(s).[Note: Attachment 2 shall include copies from the Official Records of the county recorder's office of all recorded exceptions to title (e.g., leases or easements). Attachment 4 shall include a map(s), preferably in GIS Format, illustrating the area of the Property affected by each exception to title.]

PROPERTY OWNER

[Insert property owner full legal name(s)]

Date

Attachment 1
Preliminary Report

[Attached]

Attachment 2
Encumbrance Documents

[Attached]

Attachment 3

Sample Format for: Summary and Explanation of Encumbrances

MONETARY LIENS

Note: Any deeds of trust or other monetary lien(s) must be released or subordinated to the [identify land use agreement] by a recorded Subordination Agreement approved by the Signatory Agencies.

- Preliminary Report Exception or Exclusion #:
- Amount or Obligation secured:
- Term:
- Date:
- Trustor:
- Trustee:
- Beneficiary:
- Description:

_____ acres of Property subject to lien

_____ acres of Property not subject to lien

EASEMENTS AND RIGHTS OF WAY

- Preliminary Report Exception or Exclusion #:
- Date:
- Grantor:
- Grantee:
- Holder (if different from Grantee):
- Description:
- Analysis: [whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property]

_____ acres of Property subject to easement

_____ acres of Property not subject to easement

LEASES

- Preliminary Report Exception or Exclusion #:
- Date:
- Landlord/Lessor:
- Tenant/Lessee:
- Premises:
- Term:

- Description:
- Analysis: [whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property]
 _____ acres of Property subject to lease
 _____ acres of Property not subject to lease

COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATIONS

- Preliminary Report Exception or Exclusion #:
- Dated:
- Grantor or Declarant:
- Grantee (if applicable):
- Description:
- Analysis: [whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property]
 _____ acres of Property subject to exception/exclusion
 _____ acres of Property not subject to exception/exclusion

OTHER INTERESTS (INCLUDING MINERAL OR OTHER SEVERED INTERESTS)


- Holder
- Description: [must address whether or not the interest includes any surface rights and, if applicable, a description of those rights]
- Analysis: [whether and how this exception will affect the Conservation Easement or the Conservation Values of the Property]
 _____ acres of Property subject to interest
 _____ acres of Property not subject to interest

Attachment 4

Map(s)

[Attached]

Exhibit J: Credit Ledger Report Form

<i>[Insert Name] Mitigation Site</i>					
	Advanced Credits in Service Area			Project Site	
	Advanced Credits Initially Awarded by USACE	Advanced Credits Sold by Prescott Creeks	Advanced Credits Available for Sale	Credits Awarded by USACE from approved Development Plan	Number of Credits Released
Re-Establishment					
Rehabilitation					
Enhancement					
Preservation					
Buffer					
Establishment					
Totals					