

MEMORANDUM OF UNDERSTANDING**THE SANTA ANA RIVER WATERSHED TRUST FUND
FOR COMPENSATION OF RIPARIAN/WETLAND HABITAT IN
SAN TIMOTEO CREEK AND ITS WATERSHED**

This document establishes a compensation agreement, Memorandum of Understanding (MOU), between the U.S. Army Corps of Engineers, Los Angeles District (Corps), and the Santa Ana Watershed Association (SAWA).

The Corps recognized the potential for direct, indirect, and cumulative impacts that may occur to the biological resources in the San Timoteo Creek as a result of activities implemented and authorized by the congressional appropriations for the San Timoteo Creek Reach 3B Flood Control Project. Corps has agreed to provide compensation to offset unavoidable impacts to the biological resources by transferring \$1,620,000.00 to SAWA, a qualified conservation trust fund, for the Santa Ana Watershed Trust Fund, for establishment of a riparian/wetland compensation program in lieu of restoration of 34.56 acres of riparian/wetland habitat on the Santa Ana River. Under this MOU, SAWA will be responsible for acquiring, creating, restoring, and protecting riparian habitat along San Timoteo Creek and its watershed as shown on the map attached to this MOU as Exhibit A.

I. AUTHORITIES

A. The Corps committed in its Record of Decision (ROD) (Exhibit B), dated January 30, 2002, and in discussion with FWS during Section 7 consultation and documented in the Biological Opinion (BO) (Exhibit C), dated January 14, 2001, to compensate for loss of riparian/wetland habitat due to implementation of the San Timoteo Creek Reach 3B Flood Control Project;

B. Under the Authority of the Endangered Species Act and the National Environmental Policy Act, the Corps, San Bernardino Flood Control District, and SAWA have agreed that SAWA will acquire, create, restore, protect, and achieve functional values equivalent to 34.56 acres of riparian/wetland habitat along San Timoteo Creek and its watershed by removing invasive non-native vegetation; providing habitat for the endangered vireo and flycatcher, and other riparian associated species; and removing of cowbird from immediately upstream of the flood control project construction footprint to the Interstate 10 crossing along San Timoteo Creek and its watershed;

C. On May 12, 2003, to provide an equal opportunity to all qualified non-profit organizations, the Corps sent out an information packet and advertised this information on the Internet seeking proposals to complete the tasks identified in the Management Plan (MP) (Exhibit D).

D. Based on review of its proposal, SAWA was selected as the qualified non-profit organization qualified to complete the tasks in the MP incorporated in this MOU. SAWA has demonstrated the ability to acquire land from public and/or private land owners willing to sell their lands for restoration purpose; desire to work with public and private owners to restore riparian/wetland habitat in the San Timoteo Creek and its watershed. SAWA's restoration proposal is incorporated as appendix E to this MOU;

E. SAWA recognizes that land acquired shall be managed by the San Bernardino Flood Control District at the end of the project;

F. The Corps recognizes SAWA as a non-governmental natural resource management organization committed to increase natural resource values within the San Timoteo Creek and its watershed in the context of an established program;

G. SAWA has demonstrated experience in eradicating Arundo for the purpose of compensatory mitigation;

II. SAWA Agrees to:

A. Ensure that restoration effort of riparian/native habitat will be accomplished by the removal of invasive non-native vegetation; restoring native/riparian vegetation, and cowbird trapping which would provide habitat for the endangered vireo and flycatcher, and other riparian associated species in accordance with the MP;

B. Maintain a dedicated interest-bearing account on the \$1,620,000.00 transferred by the Corps for the Santa Ana River Watershed Trust Fund for the purpose of riparian/wetland habitat restoration;

C. Apply all earned interest from the interest-bearing account for purposes stated in IIB of this MOU. SAWA will annually evaluate costs and provide a detailed cost analysis to the Corps.

D. Accept legal responsibility to ensure compensation terms are fully satisfied. SAWA shall refer to the Management Plan to measure the success of the restored areas, monitoring and survey report requirements.

E. Provide expertise, oversight, and assistance in all aspects of the activities that will be associated with the implementation of this MOU, including permit compliance (federal 401/404 and state 1601 certifications and Waste Discharge Permits) reporting. Obtain all appropriate environmental permits, clearances, or approvals necessary to perform the removal and restoration work contemplated by this MOU.

F. Maintain records, documents, and other evidence pertaining to monies received and expenses incurred related to removal of invasive exotics, mapping, monitoring, reporting, acquisition, and other costs. By October of each year, SAWA will provide the Corps and SBFCO with a statement detailing monies received and expenses incurred. Maintain accurate records for expenditure of funds and documentation of restored areas showing date the work began for each parcel and total number of acres restored, all of which will be included in the annual reports submitted to the Corps. SAWA will provide annual reports for each restoration activity for twenty years.

G. SAWA shall remove non-native invasive vegetation and plant native vegetation within the 26 acres of land owned by SBFCO, which is set aside for preservation; Removal non-native vegetation such as but not limited to *Arundo donax*, maintain the site free of invasive non-native vegetation for twenty years and provide annual monitoring reports to the Corps.

H. Plant native seedlings, rooted cutting, and propagules in areas where exotics are removed in a manner simulating natural riparian growth where there is a specific, compelling, biological or hydrological need to hasten natural recovery as identified in the attached Management Plan.

I. Facilitate access to the restored areas by the Corps staff for the purpose of compliance inspections.

J. Perform vireo, flycatcher surveys every other year and cowbird-trapping surveys every year for twenty years starting from the implementation of this MOU. Perform annual monitoring and maintenance of planted riparian/native vegetation and as needed of all restored areas for twenty years.

K. Obtain conservation easements or rights of entry before work is to be performed on private lands. These easements will allow for the treatment protocol as described in the attached Management Plan.

L. SAWA will obtain approval of public and private landowners prior to conducting any work on their lands

L. SAWA shall not be relieved of its obligations under this MOU to restore and maintain the areas for which it has received funds through the first twenty years from the execution of this MOU.

III. The Corps Agrees to:

A. Perform annual visits to assess the conditions of the restored areas, recommend corrective measures, if any, for a period of twenty years from the date of initial restoration.

B. Provide SAWA the sum of \$1,620,000.00 for deposit in the Santa Ana River Watershed Trust Fund within one week after the effective date of this MOU.

C. The Corps recognizes the utility of eradicating Arundo and other invasive non-native species to increase functions and values of riparian ecosystems to compensate for unavoidable impacts to biological resources such as vireo, flycatcher, and other sensitive species habitat and riparian/native vegetation.

IV. It Is Mutually Agreed by the Corps and SAWA:

A. All money deposited in the Santa Ana River Watershed Trust Fund by the Corps will be solely used to restore and enhance riparian/wetland resources by removal of invasive non-native vegetation and planting native plant species; provide habitat for the endangered vireo and flycatcher, and other riparian associated species; cowbird trapping; acquisition of land from willing sellers for restoration purpose as directed by the Corps;

B. This program will be limited to compensation for unavoidable, impacts to riparian/wetland habitat resources in the San Timoteo Creek and its watershed. Use of this compensation program is subject to the approval of the Corps for each task.

C. The Corps and SAWA agree to use their best effort to work cooperatively together and with Fish and Wildlife Service (FWS) and San Bernardino Flood Control District (SBFCD) to implement the priority tasks mutually agreed upon and identified in the work plan, applying the \$1.62 million plus interest earned and any matching funds to the restoration of at least 34.56 acres of riparian woodland, management of endangered birds and animals, control of exotic species, and habitat protection through easements or purchase in the implementation of as much of the work identified in the work plan as the funding available for the mitigation of the San Timoteo Flood Control Project will allow. If the work deviates from the work plan, the Corps and SAWA, in coordination with FWS and SBFCD, will revisit and amend the work plan.

D. Funds provided by the Corps shall only be used for the tasks identified in this MOU and its attached Management Plan.

E. Of the \$1,620,000, \$500,000 shall be set aside for trapping and surveys over a period of 20-years. Vireo and flycatcher surveys shall be performed every other year and cowbird trapping every year over a period of twenty years.

F. If SAWA does not meet the requirements identified in this MOU, the Corps has the rights to discontinue the compensation taskings and revoke all transferred funding and any interest earned on the account. However, SAWA shall not be relieved of its obligations under this MOU to restore and maintain the areas for which funds have been received without written approval of the Corps.

G. This MOU shall become effective on the date of signatures by the parties.

H. This MOU may be amended by both signatory parties.

By: Richard G. Thompson

Date: 09/29/03

Richard G. Thompson
Colonel, US Army
District Engineer
Los Angeles District

By: Shelli Lamb

Date: 10-6-03

Shelli Lamb
Chairperson
Santa Ana Watershed Association