

MEMORANDUM OF AGREEMENT
REGARDING ESTABLISHMENT OF
THE SANTA MARGARITA ARUNDO CONTROL FUND
IN-LIEU FEE MITIGATION PROGRAM

This agreement regarding establishment of an In-Lieu Fee Program, hereinafter, the Santa Margarita Arundo Control Fund (Fund) is made and entered into on February 15, 1999, by and among the U.S. Army Corps of Engineers, Los Angeles District (Corps) and the Mission Resource Conservation District (District).

I. PREAMBLE

A. Whereas, the Corps and the District recognize the importance of invasive weed control program for restoring and enhancing native riparian vegetation within waters of the United States including wetlands.

B. Whereas, discharge of dredge or fill material into waters of the U.S. including wetlands is regulated under provisions of Section 404 of the Clean Water Act and administered through a permit program under the auspices of the Corps.

C. Whereas, the Corps recognizes the potential for direct, indirect, and cumulative impacts which may occur to waters of the U.S. as a result of activities authorized under Section 404 of the Clean Water Act. To ensure authorized activities comply with the Section 404(b)(1) Guidelines (40 CFR 230), the Corps requires compensatory mitigation to offset adverse impacts to the aquatic resources.

D. Whereas, the Corps and the District propose to establish the Arundo Control Fund. The Permittees, upon approval of the Corps, will be allowed to pay monies into the Fund to satisfy compensatory mitigation requirements.

E. The District has jurisdiction to work with public and private landowners to implement management of riparian areas in the Santa Margarita Watershed that are infested with invasive weed species, such as but not limited to *Arundo donax* (Arundo), *Ricinius communis* (castor bean), and *Tamarix* spp. (tamarisk).

F. Whereas, the Fund will be solely used to restore and enhance aquatic resources by removal of the non-native species listed above and shall not be expended except with prior approval by public and private landowners under the oversight of the District.

G. Whereas, the following exhibits are incorporated as appendices to this agreement:

Exhibit A. Santa Margarita Watershed Invasive Plant Program

Exhibit B. Map of the Santa Margarita Watershed

H. Whereas, the Corps retains full authority to approve or deny the use of Fund monies to approve proposed project sites and to approve or modify plans.

I. Whereas, this agreement does not in any manner affect statutory authorities and responsibilities of the signatory parties.

II. DISTRICT AGREES TO:

A. Establish a dedicated interest bearing account at an FDIC approved banking institution for the sole purpose of receiving funds to be used for this restoration project.

B. Use the funds generated to support the following tasks: removal or treatment of invasive weeds at a minimum 1:1 ratio of acreage mitigated to acreage impacted, educational programs/workshops, conservation easements, mapping and monitoring (see Exhibit A). When requested by the Corps, the District will annually evaluate the cost per acre and provide a detailed cost estimate.

C. Remove non-native vegetation such as but not limited to *Arundo donax*, *Ricinus communis*, and *Tamarix* spp., maintain the site with no more than 5% cover of these species for a period of ten (10) years (as described in Exhibit A) and provide annual monitoring reports to the Corps for a minimum period three (3) years from establishment of each parcel but not to exceed three years from attainment of the year 5 success criteria. Annual monitoring reports must be submitted until sites remain at 5% or less exotic cover for 24 consecutive months.

D. Plant native seedlings, rooted cutting, and propagules in areas indicated in the mitigation plan (Exhibit A) in a manner simulating natural riparian growth, as needed.

E. Obtain all appropriate environmental permits, clearances, or approvals necessary to perform the removal and restoration work contemplated by this agreement.

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

G. Perform monitoring in accordance to the Mitigation Plan (Exhibit A).

I. Maintain accurate records for expenditure of funds and documentation of restored areas showing date the work began for each parcel, total number of acres restored as of the date of the annual report.

J. Perform maintenance activities for ten (10) consecutive years for each parcel by treating the reinfested areas according to the mitigation plan (Exhibit A). Notwithstanding the ten year commitment above, the program will be reevaluated at the end of seven years by the Corps and the District. At that time, the program will either be redesigned and/or renewed by the parties and extended for a length of time that is mutually agreed upon. If either party decides not to continue the program, it will end three years after the reevaluation (*i.e.* after year ten). If the program is to be discontinued, no new treatment sites will be initiated in years seven through ten. However, The District shall not be relieved of its obligations under this agreement to restore and maintain the areas it has received funds for under this agreement, through the first seven 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 Exhibit A for a period of ten years.

III. The Corps Agrees To:

- A. Review each project requiring a Section 404 permit on a case-by-case basis and determine the suitability to use the Arundo Control Fund to fulfill its compensatory mitigation requirements.
- B. Determine the mitigation ratio for projects requiring a Section 404 permit on a case-by-case basis.
- C. Perform annual Compliance visits to assess the conditions of the restored areas, recommend corrective measures, if any, for a period of three (3) years from the date of initial restoration.

IV. It Is Mutually Agreed:

- A. This program will be limited to mitigation for unavoidable, minimal impacts to aquatic resources in the Santa Margarita River Watershed. Use of this mitigation program is subject to the approval of the Corps on a case-by-case basis.
- B. This mitigation program shall not be used to mitigate for impacts to unique aquatic resources such as vernal pools or tidal/estuarine wetlands.
- C. This mitigation program shall be limited to mitigation for permanent impacts to aquatic resources of one (1) acre or less or to compensate for temporary impacts to aquatic resources.
- D. Success of the restored areas shall be assessed using the following criteria:

Time from start of activities

Year 1-2

Criteria

The project area is treated for removal of non-native vegetation. Non-native vegetation on site consists of 30% of the total vegetation. Necessary grading, irrigation lines, as indicated in the Mitigation Plan (Exhibit A) has been conducted. Revegetation with native riparian vegetation has initiated. The areas of resprouts are being actively treated for removal.

Year 3

Non-native vegetation consists of less than 10% of the total vegetation on site. Successful growth of native riparian vegetation including the herbaceous, shrub and tree species as listed in the mitigation plan (Exhibit A) are present.

Area contains less than 5% exotic vegetation and showing a start of canopy development, with

Year 4-5

shrub and herbaceous understory.

E. This agreement shall become effective on the date of signature by the Corps. This agreement shall terminate on the date ten (10) years from the date the agreement becomes effective, consistent with the provision of Section II.J. Either party to the agreement may terminate the agreement upon written notification to the other party. The District may discontinue receiving funds to conduct restoration activities upon written notification to the Corps. However, The District shall not be relieved of its obligations under this agreement to restore and maintain the areas it has received funds without written approval of the Corps.

John P. Carroll, Colonel
Corps of Engineers, District Engineer

Wallace Tucker
President
Mission Resource Conservation District